

An effective multi-stakeholder strategy for environmental sustainability in oil and gas-producing areas.

DEBSKI, J.A.

2023

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An Effective Multi-Stakeholder Strategy for Environmental Sustainability in Oil and Gas Producing Areas.

2023

**AN EFFECTIVE MULTI-STAKEHOLDER STRATEGY FOR
ENVIRONMENTAL SUSTAINABILITY IN OIL AND GAS-PRODUCING
AREAS**

**THIS THESIS IS SUBMITTED IN FULFILMENT OF THE
REQUIREMENTS OF THE ROBERT GORDON UNIVERSITY FOR THE
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**THE LAW SCHOOL
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CANDIDATE: JOY ANWULIKA DEBSKI

**SUPERVISORS: DR ELIMMA EZEANI
DR LEON MOLLER**

FEBRUARY 2023

Declaration

I, Joy Anwulika Debski, hereby declare that the work on which this thesis is based is my original work (except where acknowledgements indicate otherwise) and that neither the whole work, nor any part of it has been, is being, or is to be submitted for another degree in this or any other university. I authorise the university to reproduce for research either the whole or any portion of the contents in any manner whatsoever.

Student number: 1312845

Signature: *JDebski*

Dedication

This thesis is dedicated to my mother, Ada Agatha Okolocha, and my darling daughter Ilona Debski who love me unconditionally.

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Abstract

Environmental sustainability dominates global discourse because of the increasing challenges of mitigation and adaptation to global warming. The aims and targets of ongoing international initiatives are proving insufficient and particularly difficult to implement in developing countries. As a result, stricter measures to prevent human exploitation of the environment are urgently needed.

It has therefore become imperative for major stakeholders, identified as governments, the oil and gas industry, and host communities, to work collaboratively towards the common goal of environmental sustainability. This research also advocates a governance strategy for Nigeria to ensure the achievement of environmental sustainability. To achieve this aim, the research critically examines regional and global strategies/institutional frameworks for environmental sustainability, analyses the strategies that major oil and gas companies have put in place to improve stakeholder engagement, before finally examining host community engagement in order to enhance environmental sustainability.

The research concludes that although environmental sustainability is vital for the identified stakeholders, it is impossible to achieve this goal without a more collaborative approach. Thus, it advocates a Multi-Stakeholder Strategy for environmental sustainability, through the establishment, by the government concerned, of a Corporate Social Responsibility (CSR) Commission for Environmental Sustainability. This Commission, through its agreed mandate, can facilitate partners with requisite stakeholders and endorse company policies aimed at securing this goal.

The novel approach adopted by this research can, at the same time, point policymakers in Nigeria in the right direction, after previous unsuccessful efforts to enact CSR legislation. Concurrently, oil and gas companies can improve and centralise their goals for environmental sustainability through the research-proposed CSR Commission, which will also provide competency training and stakeholder engagement strategies. Finally, host communities will be empowered by the expertise of the CSR Commission to negotiate their agendas with oil and gas companies, guaranteeing the environmental sustainability of their precious heritage and natural environment.

Keywords: Corporate social responsibility, Oil and gas, Environmental sustainability, Partnerships, Petroleum Industry, Host communities, Petroleum Industry Act, Multistakeholder

List of acronyms

ADB	Asian Development Bank
AQG	Air Quality Guidelines
ATCA	American Tort Claims Act
BOE	Barrels of Oil Equivalent
BPD	Business Partners for Development
BP	Business Partnerships
BRT	Bus Rapid Transit
CI	Criteria and Indicators
CAI	Clean Air Initiative
CDA	Community Development Agreement
CDB	Community Development Board
CDCB	Community Development Cluster Board
CDC	Community Development Committee
CDL	City Developments Limited
CDP	Carbon Disclosure Project
CED	Committee for Economic Development
CEO	Chief Executive Officer
CEOs	Chief Executive Officers
CMI	Carbon Mitigation Initiative
CNOOC	China National Offshore Oil Company
CNPC	China National Petroleum Corporation
CRS	Corporate Social Responsibility
CSRB	Corporate Social Responsibility Bill
CSRC	China Securities Regulatory Commission
CSRPs	Corporate Social Responsibility Partnerships
DMCs	Developing Member Countries
DPR	Department of Petroleum Resources
DTI	Department of Trade and Industry
EBN	Energie Beheer Nederland
EFCC	Economic and Financial Crimes Commission
EGASPIN	Environmental Guidelines and Standards for the Petroleum Industry in Nigeria

EGPS	<i>Extractives Global Programmatic Support</i>
EIA	Energy Information Administration
EIA	Environmental Impact Assessment
EITI	Extractive Industries Transparency Initiative
EPA	Environmental Protection Agency
EPS	Engineering Safety Management
ESG	Environmental, Social, and Governance
EU	European Union
FPIC	Free, Prior and Informed Consent
FRC	Financial Reporting Council
FTSE	Financial Times Stock Exchange
GCC	Gulf Cooperation Council
GMU	Global Memorandum of Understanding
GRI	Global Reporting Initiative
GSSB	Global Sustainability Standards Board
HCDT	Host Community Development Trust
HKEx	Hong Kong Stock Exchange
HYPREP	Hydrocarbon Pollution Remediation Program
IACtHR	Inter-American Court of Human Rights
ICJ	International Court of Justice
ICPC	Independent Corrupt Practices and Other Related Offences Commission
ICRS	Institute of Corporate Responsibility and Sustainability
IEA	International Energy Agency
IFC	International Finance Corporation
ILO	International Labour Organization
IOC	International Oil Companies
IOGP	international Association of Oil and Gas Producers
IPCC	Intergovernmental Panel on Climate Change
IPIECA	International Oil and Gas Industry Establishment for Environmental and Social Concerns
IRP	International Resource Panel
ISO	International Standards Organization

ITPS	Intergovernmental Technical Panel on Soil
LEED	Leadership in Energy and Environmental Design
LGA	Local Government Area
LNG	Liquefied Natural Gas
LTSC	Land Transportation Safety Subcommittee
MMSD	Mining and Sustainable Development
MMSS	Metals Sector Supplement
MNC	Multinational Corporations
MNOC	Multinational Oil Companies
MOU	Memorandums of Understanding
NAPIMS	National Petroleum Investment Management Services
NDC	Nationally Determined Contribution
NDDC	Niger Delta Development Commission
NDR	Niger Delta Region
NEITI	Nigerian Extractive Industry Transparency International
NEPP	National Environmental Policy Plan
NESREA	National Environmental Standards and Regulation Enforcement Agency Act
NFI	Non-Financial Information
NGO	Non-Governmental Organisations
NIS	Nigerian Industrial Standard
NL-EITI	Netherlands Extractive Industries Transparency Initiative
NL-EITI MSG	Netherlands Extractive Industries Transparency Initiative Multi-Stakeholder Group
NNA	Nigeria National Assembly
NNPC	Nigeria National Petroleum Corporation
NOC	National Oil Companies
NORAD	Norwegian Agency for Development Cooperation
NOSDRA	National Oil Spill Detection And Response Agency
NMPE	Norwegian Ministry of Petroleum and Energy
NUPENG	Nigeria Union of Petroleum and Natural Gas Workers
OCED	Organisation for Economic Co-operation and Development

OML	Oil Mining Lease
OPEC	Organization of Petroleum Exporting Countries
PENGASSAN	Petroleum and Natural Gas Senior Staff Association of Nigeria
PIA	Petroleum Industry Act
PIB	Petroleum Industry Bill
PMEH/AQM	Lagos Management and Environment Health Program /Air Quality Monitoring
RD	Royal Dutch
SCLPs	Short-Lived Climate Pollutants
SDG	Sustainable Development Goals
SDLO	Sustainable Development Licence to Operate
SEPLAT	Seplat Petroleum Development Firm
SINOPEC	China Petroleum and Chemical Corporation
SLO	Social License to Operate
SNEPCO	Shell Nigeria Exploration and Production Company
SNG	Shell Nigeria Gas
SPDC	Shell Petroleum Development Company
TBL	Triple Bottom Line
TPES	Total Primary Energy Supply
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNEP	United Nations Environment Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNFCCC	United Nations Framework Convention on Climate Change
UNGC	United Nations Global Compact
WASH	Water, Sanitation and Hygiene
WHO	World Health Organization
WSSD	World Summit on Sustainable Development
WWA	World Water Assessment Programme

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1 CHAPTER ONE: GENERAL INTRODUCTION

1.1 Introduction

The oil & gas (O&G) industry is highly dynamic and technologically driven, with the first oil and gas exploration and production activities emerging from the United States in 1859,¹ with a commercial well drilled 69.5 feet deep along Oil Creek at Titusville, Pennsylvania. That initial commercial oil discovery forever transformed most global economies, standards of living, societal expectations and culture. Faced with the reality of climate change, the world in 2022 is firmly in the midst of an energy transition driven by the United Nations Framework Convention on Climate Change (UNFCCC). However, oil and gas will remain a significant source of energy and raw material for decades to come. The energy mix will change as alternative energy sources, such as renewable technologies and hydrogen, scale up. However, for as long as oil and gas are needed, they will need to be produced responsibly, with a significant focus on safeguarding the natural environment, guaranteeing its sustainability.² Regardless, crude oil and natural gas remain the primary sources of raw materials and energy, driving a variety of contemporary activities and the global economy at large, causing an increased demand for production over the last 150 years.³

Oil and gas have many uses, and their impact on the environment is commensurately extensive and global.⁴ Most incidents within the oil and gas industry are human-made, and many can be attributed to equipment failure. In recent times most environmental incidents are not entirely detectable, taking place in the atmospheric and marine biospheres⁵ making the industry increasingly

¹ Parke A Dickey, 'The First Oil Well' Journal of Petroleum Technology (1959) Vol 11 Iss 01 page 2 <https://www.onepetro.org/journal-paper/SPE-1195-G>> accessed 2 September 2020.

² Journal of Petroleum Technology, 'IPIECA Sets Strategy for 2021-24'(2021)<https://jpt.spe.org/ipieca-sets-strategy-for-2021-24#:~:text=Oil%20and%20gas%20remain%20at,accelerate%20in%20the%20years%20ahead> accessed 6 January 2023

³ Business Reference Services, Library of Congress 'History of Oil and Gas' (Library of congress.gov,2013)https://www.loc.gov/rr/business/BERA/issue5/issue5_main.html> accessed 1 September 2020

⁴ Peter Matthiessen, 'Environmental Impact of The Offshore Oil and Gas Industry' Science Direct (2000) Vol 110 Iss 2 pp 336- 425

⁵ Amos Necci and others, 'Lessons Learned from Offshore Oil and Gas Incidents in The Arctic and Other Ice-Prone Seas' (2019) 185 Ocean Engineering <https://www.sciencedirect.com/science/article/pii/S0029801819302471> accessed 8 September 2020 page 12-26

unsafe. Globally, there are countless examples of negative oil and gas production impacts; in the US alone there have been thousands of oil spills, with major environmental incidents such as the Deepwater Horizon of 2010 continuing to impact ecosystems, and for many deep sea species living among the sediment surface, recovery could take decades.⁶

In Africa, on account of the historical proliferation of the oil and gas industry, Ogoniland, located in the Niger Delta, is severely environmentally distressed by the industry's impacts, even though the oil industry is no longer active in this region.⁷

Elsewhere, across the EU for example, chronic oil spills in its waters have been reported;⁸ however, the EU is not the only region faced with environmental tragedies caused by oil and gas pollution. In Argentina, Uruguay and Brazil, penguins are fatally oiled by illegal bilge dumping, thereby destroying their natural habitat.⁹

The response to the environmental impacts of oil and gas activities has been identified as a global phenomenon. The United Nations (UN), through its UN Global Compact Initiative and its UN Environmental Programmes, Law of the Sea, and standardised industrial practices,¹⁰ are all aimed at mobilising a global, sustainable and stakeholder-focused movement and building a more sustainable environment. Thus, a genuine concern for the future is a key factor motivating the concept of environmental sustainability. Environmental sustainability inspires oil and gas companies to operate in a way that does not compromise present and future natural environments. The *Rio Declaration on Environment and Development* of 1992 specified 27 sustainability criteria.¹¹ Principles 9, 10 and 11, in particular, give more precise paths for ecologically sustainable growth in the areas of technology, public engagement and regulation. Principle 9 recommended

⁶ World Economic Forum, 'This is how oil spills damage our environment' (2021)

<https://www.weforum.org/agenda/2021/10/oil-spill-environment-ocean/>

⁷ UNEP, 'UNEP Environmental Assessment Of Ogoniland' (UNEP 2011)

https://wedocs.unep.org/bitstream/handle/20.500.11822/25282/ogoniland_chapter1_UNEP_OEA.pdf?sequence=1&isAllowed=y accessed 2 July 2022

⁸ Chronic oiling is the consistent discharge of oil into the sea from oil spills and intentional, illegitimate leakage of oil waste from vessels.

⁹ Ibid Necci 185

¹⁰ ISO 19900 (2013), ISO 19906 (2010)

¹¹ "Rio Declaration on Environment and Development A/Conf.151/26/Vol.I" (www.un.org/June 3, 1992)

https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf accessed July 9, 2022

enhancing the development, adaptation, diffusion and transfer of new and innovative technologies; Principle 10 recommended that environmental issues be addressed with the participation of all concerned citizens; and Principle 11 advocated the importance of effective environmental legislation, standards, management objectives and priorities.

In the same vein, the 2030 Agenda for Sustainable Development is a more recent commitment to achieving environmental sustainability, with 17 sustainable development goals (SDGs) and 169 targets driving action over the next 15 years for people, the planet and prosperity. Goals 6, 7 and 12-15 of the 17 SDGs define the need to safeguard the environment by combating environmental catastrophes such as climate change, land degradation and desertification, as well as preserving and utilising resources such as oceans, forests and eco-friendly manufacturing techniques..¹²

Intrinsically connected to the movement for greater environmental sustainability in the corporate sector, corporate social responsibility (CSR) has been described as a business's contribution to the larger goal of environmental sustainability.¹³ This means conducting businesses diligently and responsibly and using assets and profits for sustainability purposes.¹⁴ Over the previous decades, CSR has evolved from being a socially desirable aspect of companies to emerge as a dynamic and strategic tool to enable businesses secure to their long term sustainability.

Having highlighted the case for environmental sustainability and the adoption of CSR as an effective strategy to achieve its aims, the fundamental question that this thesis aims to answer is how the goals of environmental sustainability can be actualised through the utilisation of a structured multistakeholder strategy in oil-producing areas.

¹² *Transforming Our World: The 2030 Agenda for Sustainable Development* (United Nations 2015)

¹³ Laura Albareda, JosepM.Lozano, AntonioTencati, AtleMidttun and Francesco Perrinin, 'The changing role of governments in corporate social responsibility: drivers and responses' (2008) Volume 17 Number 4, 'Business Ethics: A European Review' P. 358

¹⁴ Oluyomi A. Osobajo, Olushola E. Ajide and Afolabi Otitoju, 'Fostering Sustainable Development: A Corporate Social Responsibility Approach' (2019) *Journal of Management and Sustainability*, 9(2), pages 142-166,144
[\(PDF\) Fostering Sustainable Development: A Corporate Social Responsibility Approach \(researchgate.net\)](#) accessed 2 September 2020

The thesis will address this question by critically appraising relevant stakeholder strategies, particularly in developing countries, and by using a case study in the Niger Delta, looked at through the lens of the 2021 Nigerian Petroleum Industry Act. The shortcomings of existing strategies will be highlighted, including stakeholder coordination failures, and the fundamental lack of trust between host communities, oil and gas companies and the government, and will finally propose a solution to the deep-seated need for CSR policies emanating from both the corporate sector and Nigerian government.

The thesis will thus conclusively demonstrate its originality by proposing and structuring a multi-stakeholder framework aimed at ensuring the desired collaboration between key stakeholders in the oil and gas industry in Nigeria. This will be achieved by critically evaluating global guidance, initiatives, best practices, policies and legislation related to environmental sustainability and CSR, in order to establish a solid foundation for the proposed multi-stakeholder framework.

1.2 Background and Statement of the Problem

The United Nations,¹⁵ the World Bank,¹⁶ the United Nations Framework Convention¹⁷ on Climate Change (UNFCCC), activists and scholars are together proactively seeking the means to enhance the goals of environmental sustainability.

Demonstrated by worldwide, regional and national efforts to combat climate change, it is now apparent that there is an existential problem for the human race because of this phenomenon. There now exists significant academic literature on The Anthropocene, a proposed new geological epoch based on the observation

¹⁵ "What Is CSR?" (*unido.org*) <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr> accessed July 9, 2022

Advocates a CSR approach for environmental sustainability.

¹⁶ "Corporate Social Responsibility: Private Self-Regulation Is Not Enough" (*worldbank.org*2011) <https://documents1.worldbank.org/curated/en/192611468769173749/pdf/multi-page.pdf> accessed July 9, 2022 Indicates and advises for a shift to partnerships between government and companies for CSR. In essence the genuine international guidelines are the OECD Guidelines for Multinational Enterprises, ISO 26000 standard, Global Reporting Initiative, and the Global Compact

¹⁷ "The Paris Agreement" (*unfccc.int*2015) https://unfccc.int/sites/default/files/resource/parisagreement_publication.pdf accessed July 9, 2022 Article 4 (4) calls for developing countries to continue to mitigate their effort while developing countries take the lead. Article 6 (1)(2) calls for parties engaging on a voluntary basis to use cooperative approaches that involve the use of internationally transferred mitigation outcomes and strategies to ensure environmental integrity.

that human impacts on essential planetary processes have become so profound that they have driven the earth out of the previous geological epoch. Peer-reviewed Journals such as *Holocene*, *Nature Climate Change*, *Science*, *Nature* and indeed many others, have published literally hundreds of articles on this subject. A useful review of the historical genesis of the concept is provided in Lewis and Maslin's 2015 article "Defining the Anthropocene".¹⁸

In this context, the oil and gas industry, through its upstream, downstream and petrochemical sectors, is undoubtedly one of the major emitters, and it is increasingly challenging for the industry to operate sustainably- thus, the emergence of the energy transition touched on earlier. The energy transition is currently firmly on the global agenda. Developing countries, due to their low Gross domestic product (GDPs), might find energy transition more challenging, but it poses significant problems for fossil-based energy production and consumption and should be conducted in a much more sustainable manner. The current annual reports of oil and gas majors clearly attest to this.¹⁹ Against this background, achieving the goal of environmental sustainability will require an approach that seeks a more nuanced and coordinated involvement of relevant stakeholders. The global nature of environmental sustainability necessitates engaging with a global approach, while offering a more focused review via case studies. Thus, the research adopts a more focused approach through a case study of one of Africa's largest oil and gas-producing countries, Nigeria in West Africa.

Nigeria is a developing country, and environmental problems persist despite ongoing reform initiatives by the Federal Government of Nigeria (FGN) for oil and gas businesses. The Niger Delta is still in a state of acute underdevelopment.²⁰ Academic scholars²¹ have linked the lack of development to policies that have

¹⁸ Lewis, S.L., and Maslin, M.A. (2015) Defining the Anthropocene. *Nature* Volume 519 pp. 171–180

¹⁹ See for example Shell, 'Sustainability Report' (2021) <https://reports.shell.com/sustainability-report/2021/> accessed 06 January 2023

²⁰ Jędrzej George Frynas, "The False Developmental Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies" (2005) 81 *International Affairs* 581

²¹ V T Jike, "Environmental Degradation, Social Disequilibrium, and the Dilemma of Sustainable Development in the Niger-Delta of Nigeria" (2004) 34 *Journal of Black Studies* 686; Uwafiokun Idemudia and Uwem Ite, "Corporate–Community Relations in Nigeria's Oil Industry: Challenges and Imperatives" (2006) 13 *Corporate Social Responsibility and Environmental Management* p.194; *Ibid* Frynas 2005

failed to improve the welfare of the people and host communities affected by oil and gas producers such as the Shell Petroleum Development Company of Nigeria (SPDC), Shell's operating company in Nigeria.

To be fair, the Federal Government of Nigeria and oil and gas companies such as SPDC have both invested heavily in the Niger Delta region. But both have failed to comprehend the scope and causes of ongoing animosities from host communities, just as they have failed to propose definitive answers to key issues.²² Studies on the Niger Delta have also failed to appreciate the role that key stakeholders can play both individually and collectively in a type of CSR partnership to improve the setting for environmental sustainability.

Thus, this thesis will demonstrate the need for, and the rationale of, a multistakeholder framework that promotes the role of CSR in addressing environmental sustainability in developing countries, specifically within Nigeria and the Niger Delta.

1.3 Arguments

Evidence points to oil and gas companies being amongst the major polluters in the world.²³ Currently we find that, outside the use of more benign technologies,²⁴ certain companies have used other strategies such as corporate social responsibility to improve the goals for environmental sustainability.²⁵ In addition, global guidelines and national laws have been set to either mandate or facilitate the role of CSR. Conversely, CSR now strategically aligns with the goals, objectives and competencies of major global oil and gas companies.²⁶ However, the application of CSR is vague in some areas, a 'greenwash' in others, or an actual strategic framework in others still, resulting in a broad interpretation of it.

²² Rachel Davis and Daniel Franks, *Costs of Company-Community Conflict in the Extractive Sector*, vol 66 (Harvard Kennedy School 2014)

²³ Melissa Denchak, "Fossil Fuels: The Dirty Facts" (NRDC June 1, 2022)

<https://www.nrdc.org/stories/fossil-fuels-dirty-facts> accessed July 11, 2022

²⁴ See sections chapter 6 of the thesis

²⁵ Ibid

²⁶ Sarah Lamba, Jonathan Jennings and Philippe Calainc "The Evolving Role of CSR in International Development: Evidence from Canadian Extractive Companies' Involvement in Community Health Initiatives in Low-Income Countries" (2017) 4 *The Extractive Industries and Society* 614

On this note, the thesis will argue that while CSR, in its voluntary and mandatory aspects, has evolved, developing countries are not adequately empowered to adopt global guidelines and national laws unless an enabling environment has been put in place.

1.4 Research Question

The aim of the research therefore is focused on a single, but complex question that the study will endeavour to answer:

“How the goals of environmental sustainability can be actualised through the utilisation of a structured multistakeholder strategy in oil-producing areas”?

1.5 The Research Aim

Recent trends in environmental sustainability draw attention to the need for companies to foster collaborative techniques that help them develop resilience towards a more significant outcome for all stakeholders.²⁷ This study aims to add to the body of knowledge in Corporate Social Responsibility, by contributing to a deeper understanding of its relevance to environmental sustainability. Thus, the thesis will propose an innovative multi-stakeholder partnership approach that could help improve the regional framework for achieving the goals for environmental sustainability. Strategies derived from international governance policies, institutions and related laws will contribute to the academic research in this field, and provide context-based guidance to governments, host communities and oil and gas companies.

1.6 Research Objectives

- i. Define and analyse the global trends, best practices, and governance strategies in environmental sustainability.
- ii. Define and analyse the concepts, frameworks and current trends in Corporate Social Responsibility.
- iii. Justify the necessity for a re-aligned strategy that encourages the use of Corporate Social Responsibility in the areas of environmental sustainability.

²⁷ Ibid UNEP

- iv. Evaluate the effectiveness of CSR legislation and trends in a developing country such as Nigeria.
- v. Propose a framework that will address and strengthen existing Corporate Social Responsibility initiatives toward the process and implementation of environmental sustainability goals.

1.7 Contribution of the Thesis

Previous studies on corporate social responsibility strategies²⁸ and its role in achieving the 'triple bottom line' have addressed issues such as how to assess the measure of and indicators for CSR,²⁹ the link between CSR and profitability,³⁰ CSR partnerships,³¹ CSR implementation strategies³² and CSR strategies in developing countries.³³ These studies have raised a wide range of issues surrounding CSR and the challenges faced by developing countries in its application. The core issues identified in a developing region are; the presence of multiple actors involved in the formal and informal governance of CSR,³⁴ subtle forms of CSR

²⁸ Fabrizio Zerbini, "CSR Initiatives as Market Signals: A Review and Research Agenda" (2015) 146 *Journal of Business Ethics* 1, Pratima Bansal, Guoliang Jiang, and Jae Jung, "Managing Responsibly in Tough Economic Times: Strategic and Tactical CSR during the 2008–2009 Global Recession" (2015) 48 *Long Range Planning* 69

²⁹ Xiaobei Huang and Luke Watson, "Corporate Social Responsibility Research in Accounting" (2015) 34 *Journal of Accounting Literature* 1; Eduardo Ortas, Igor Álvarez and Eugenio Zubeltzu, "Firms' Board Independence and Corporate Social Performance: A Meta-Analysis" (2017) 9 *Sustainability* 1006; Jaime Guerrero-Villegas J and others, "Board Attributes and Corporate Social Responsibility Disclosure: A Meta-Analysis" (2018) 10 *Sustainability* 4808

³⁰ Adam Lindgreen and others, "The Role of 'High Potentials' in Integrating and Implementing Corporate Social Responsibility" (2011) 99 *Journal of Business Ethics* 73–91

³¹ Andrew Crane and Sarah Glozer, "Researching Corporate Social Responsibility Communication: Themes, Opportunities and Challenges" (2016) 53 *Journal of Management Studies* 1223–1252; François Maon, Adam Lindgreen and Valérie Swaen, "Designing and Implementing Corporate Social Responsibility: An Integrative Framework Grounded in Theory and Practice" [2009] *Globalization and the Good Corporation* 71

³² Dorotheé Baumann and others, "Organizing Corporate Social Responsibility in Small and Large Firms: Size Matters" [2011] *SSRN Electronic Journal* 693–705; Marc Ingham and Christelle Havard, "CSR as Strategic and Organizational Change at 'Groupe La Poste'" (2017) 146 *Journal of Business Ethics* pp.563–589

³³ Gideon Amos, "Researching Corporate Social Responsibility in Developing-Countries Context" (2018) 60 *International Journal of Law and Management* 284; Ataur Belal Mahmood and Rahman Momin, "Corporate Social Reporting (CSR) in Emerging Economies: A Review and Future Direction" [2009] *Research in Accounting in Emerging Economies* 119–143

³⁴ Tanja A Börzel and Thomas Risse, "Governance without a State: Can It Work?" (2010) 4 *Regulation and Governance* 1-22

implementation³⁵ and the varied scopes of CSR initiatives and their effective outcomes.³⁶

Nonetheless, this thesis will go further by providing an updated analysis of how various CSR approaches and environmental sustainability have evolved globally in major oil and gas producing companies, and how a synthesised form of CSR partnership can directly improve the goals of environmental sustainability in oil and gas producing areas in developing countries.

This thesis particularly contributes to knowledge in the following ways:

- Firstly, it closes the gap in the literature by analysing current CSR governance trends in major oil companies. It advances the academic debate on strategic CSR by adding to the body of literature on CSR and environmental sustainability by submitting contemporary issues on these subjects.
- Secondly, through an analysis of contemporary trends in CSR and environmental sustainability in major oil and gas companies, the thesis will evaluate whether the current trends meet the international guidelines that are in place.
- Thirdly, the thesis contributes to academic knowledge by highlighting the implications for the current CSR strategies in Nigeria based on international guidelines.
- Fourthly, the thesis provides an integrative framework for realising effective CSR partnerships in Nigeria. This framework will be useful for policymakers in reforming and consolidating the role of CSR in Nigeria. It will also support business organisations in articulating their plans for enhanced CSR sustainable practice with governments and host communities.

³⁵ Stephen Brammer, Gregory Jackson and Dirk Matten, "Corporate Social Responsibility and Institutional Theory: New Perspectives on Private Governance" (2012) 10 Socio-Economic Review 3-28

³⁶ Adaeze Okoye, "Exploring the Relationship between Corporate Social Responsibility, Law and Development in an African Context" (2012) 54 International Journal of Law and Management 364-378; Kabiru Dandago and Love L Arugu, "Corporate Social Responsibility and Environmental Concerns in Nigeria: A Critical Focus on Oil Producing Communities" (2014) 8 Issues In Social And Environmental Accounting 104; Ibid Frynas

- Finally, it advances the recommendations from the UNEP feedback on major oil and gas projects in the Niger Delta region of Nigeria, by articulating a more detailed pathway for host communities to be more closely involved in CSR practices.

Nigeria policy makers can utilize the best practises identified in this research as a valuable resource when the time arises to enact a CSR commission for the purpose of environmental sustainability. The research serves a valuable database, which policy markers can refer to for informed analysis of the Petroleum industry act the previous CSR bill.

1.8 Overview of Literature

An overview of environmental sustainability literature is provided in this section, along with a list of published CSR frameworks which can potentially assist in tackling these environmental challenges. A critical appraisal of the subject area literature is essential in recognising and critiquing previous studies on topics related to this work.

This thesis, however, does not attempt to review the entire scope of the literature in the areas of environmental governance within corporations. Still, it will focus on relevant articles under the following categories: environmental sustainability systems, corporate social responsibility systems, and effective partnerships in the Niger Delta and elsewhere.

Reviewing the literature on these topics will directly impact the aims and objectives of the thesis. For example, the literature on environmental sustainability is essential in understanding what the concept means to the oil and gas industry, in demonstrating efforts made towards it and governance frameworks for it, in understanding the necessity for environmental sustainability and in illustrating the progress and challenges it faces in different regions in the world. Similarly, the literature on CSR will illustrate the evolutionary nature of CSR and how these changes have shaped and enhanced the current relevance.

1.8.1 Environmental Sustainability in the Oil and Gas Industry

Over three decades have elapsed since the 1992 Earth Summit in Rio de Janeiro, where countries approved 'Agenda 21,' a masterplan to achieve social fairness, encourage economic progress and safeguard the environment.³⁷ This was also one of the first times where the present civilisation's lifestyles were critically evaluated, and where the necessity for a change in production and consumption patterns was formally advocated.

In 1994, the *United Nations Framework Convention on Climate Change* (UNFCCC) did the same.³⁸ It was adopted at the Rio Convention to prevent harmful human interference in the atmosphere. The ultimate goal of the UNFCCC was to stabilise greenhouse gas concentrations in the atmosphere and prevent dangerous human-induced climate change (within a timeframe long enough to allow ecosystems to adapt naturally), and to ensure that food production was not threatened to undermine sustainable economic development.³⁹

According to Parry,⁴⁰ climate change has become extremely apparent, and the goals and commitments established by the Kyoto Protocol to address this are viewed as insufficient by many, particularly developing countries. As a result, there is an urgent need to adopt more stringent standards to limit human exploitation of the environment. In actuality, the method of accomplishing this has proven difficult. It appears that few countries are willing to sacrifice their economic well-being for the sake of the environment.⁴¹ Countries such as Libya, Nigeria and Venezuela rely significantly on their petroleum sectors, and any decrease in demand would negatively impact their economies. As a result, one strategy to address environmental sustainability challenges and enhance performance, is to hold firms accountable for their own environmental atmospheric emissions and require them to implement efficient sustainability systems.⁴²

³⁷ United Nations "United Nations Conference on Environment and Development, Rio De Janeiro, Brazil, 3-14 June 1992" (*United Nations*1992)

<https://www.un.org/en/conferences/environment/rio1992> accessed July 26, 2022

³⁸ United Nations *United Nations Framework Convention on Climate Change* (1992)

³⁹ Ibid UNFCCC

⁴⁰ Parry M and others, *Climate Change 2007: Impacts, Adaptation and Vulnerability: Working Group II Contribution to the Fourth Assessment Report of the IPCC* (Cambridge Univ. Press 2007)

⁴¹ Abson DJ and others, "Ecosystem Services as a Boundary Object for Sustainability" (2014) 103 *Ecological Economics* p.29

⁴² Kyleisha Foote and others, "New Zealand Dairy Farming: Milking Our Environment for All Its Worth" (2015) 56 *Environmental Management* p.709

Recent data⁴³ from the Climate Accountability Institute as well as academic research reflects that fossil fuel companies have driven the climate crisis, despite the industry's awareness of the dangers.⁴⁴

The fossil fuel business has a tumultuous history, as illustrated by high-profile incidents such as the Santa Barbara oil leak in 1969 in California and the Deepwater Horizon catastrophe in the Gulf of Mexico in 2010. Furthermore, corporations in the industry have been implicated in serious environmental and human rights conflicts in various parts of the globe. SPDC's activities in Nigeria's Niger Delta in the early 1990s resulted in river contamination and conflicts with local people of the Ogoni area.⁴⁵ In 2003, indigenous Ecuadorians launched a lawsuit against Chevron for contamination of the Amazon rainforest and the resulting damage on their health.⁴⁶

The literature review therefore reflects that oil and gas companies are the greatest emitters, hence more effort is required and more strategies need to be adopted to ensure implementation.⁴⁷ Although companies have been reported to set the standard for themselves, they often fall short of these standards,⁴⁸ and in some cases companies have been reported as producing 'rosy' reports to hide their

⁴³ It is estimated that the top 20 firms on the list have generated 35% of all energy-related carbon dioxide and methane emissions globally since 1965, totalling 480bn tonnes of carbon dioxide equivalent. Investor-owned businesses such as Chevron, Exxon, BP, and Shell have been highlighted, and so have state-owned enterprises such as Saudi Aramco and Gazprom.

⁴⁴ Climate Accountability "Climate Accountability Institute" (climateaccountability.org) <https://climateaccountability.org/> accessed August 1, 2022, Taylor M and Watts J, "Revealed: The 20 Firms behind a Third of All Carbon Emissions" (*The Guardian* October 9, 2019)

<https://www.theguardian.com/environment/2019/oct/09/revealed-20-firms-third-carbon-emissions> accessed August 1, 2022; See also reply from the fossil companies, Taylor M, "Climate Emergency: What the Oil, Coal and Gas Giants Say" (*The Guardian* October 10, 2019)

<https://www.theguardian.com/environment/2019/oct/09/climate-emergency-what-oil-gas-giants-say> accessed August 1, 2022; Jennifer Schneider and others, "Towards Sustainability in the Oil and Gas Sector: Benchmarking of Environmental, Health, and Safety Efforts Recommended Citation" (2013) 3 *Journal of Environmental Sustainability*,

⁴⁵ Kabiru Dandago and Love L Arugu, "Corporate Social Responsibility and Environmental Concerns in Nigeria: A Critical Focus on Oil Producing Communities" (2014) 8 *Issues In Social And Environmental Accounting* 104

⁴⁶ Oil and Gas Middle East, "Top Ten: Oil and Gas Disasters - Oil & Gas Middle East" (*oilandgas middleeast*2015) <https://www.oilandgasmiddleeast.com/news/article-14593-top-ten-oil-and-gas-disasters> accessed August 1, 2022; Muhammad Mujtaba Asad and others, 'Oil and Gas Disasters and Industrial Hazards Associated with Drilling Operation: An Extensive Literature Review' (2nd International Conference on Computing, Mathematics and Engineering Technologies, January 2019) <https://ieeexplore.ieee.org/abstract/document/8673516> accessed August 1, 2022,

UNEP, Niger Delta Human Development Report (New York 2006) <http://dx.doi.org/10.12774/eod_hd.january2014_reid> accessed 1 August 2022.

⁴⁷ Ibid Okeke 2021

⁴⁸ Ibid Okeke 2021

existing problems. This has been demonstrated in the case of Enron.⁴⁹ Another identified problem is that companies lack a comprehensive framework for environmental sustainability.⁵⁰ Swilling also observes that, despite government pressure to address crucial concerns such as climate change, few in the environmental sector understand how state institutions function.⁵¹

Since there is an increasing desire for creative solutions to complicated environmental concerns, the climate change governance literature is driven by two key assumptions: greater stakeholder participation leads to better results and government-based involvement is usually a top-down occurrence.⁵² Although this might appear to be the case, it is important to note that for successful environmental sustainability, governance, stakeholder engagement and bureaucratic autonomy needs to be tailored to the specific context of the region.⁵³

Attaining the goals for environmental sustainability may be negatively impacted by these gaps in knowledge, specifically considering the increased risk of governance failures, such as implementation and legitimisation problems, caused by public and private actors failing to deliver an optimal policy formulation or implementation process.⁵⁴ To this end, a main objective of this thesis is to address how the goals of environmental sustainability can be actualised through the utilisation of a structured multistakeholder strategy in oil-producing areas.

⁴⁹ Lesley Curwen, "The Collapse of Enron and the Dark Side of Business" *BBC News* (August 3, 2021) <https://www.bbc.co.uk/news/business-58026162> accessed August 1, 2022

⁵⁰ Bruno Silvestre, Felipe Gimenes and Romeu Silva Neto, "A Sustainability Paradox? Sustainable Operations in the Offshore Oil and Gas Industry: The Case of Petrobras" (2017) 142 *Journal of Cleaner Production* 360-370

⁵¹ Mark Swilling *Greening public value: the sustainability challenge in* John Benington and Mark H Moore, *Public Value: Theory and Practice* (Palgrave Macmillan 2011) 89-111

⁵² Adam M Wellstead, Robert Biesbroek, "Finding the Sweet Spot in Climate Policy: Balancing Stakeholder Engagement with Bureaucratic Autonomy" (2022) 54 *Current Opinion in Environmental Sustainability* 101155; Robbert Biesbroek and others, "Opening up the Black Box of Adaptation Decision-Making" (2015) 5 *Nature Climate Change* 493

⁵³ Jale Tosun and Michael Howlett, "Managing Slow Onset Events Related to Climate Change: The Role of Public Bureaucracy" (2021) 50 *Current Opinion in Environmental Sustainability* 43-53

⁵⁴ Michael Howlett, "Governance Modes, Policy Regimes and Operational Plans: A Multi-Level Nested Model of Policy Instrument Choice and Policy Design" (2009) 42 *Policy Sciences* 73 -89

1.8.2 The Corporate Approach to Environmental Sustainability

The literature review on CSR and how it can be used to implement environmental sustainability focuses on academic publications and historical events that have shaped its development as a conceptual framework. Starting with the beginnings of social responsibility, this overview examines the earliest phases of formal and academic writing about businesses' social duties. It then progresses to the most current understanding of CSR. For this reason, this thesis concentrates on publications that have given a unique viewpoint to CSR and the most relevant articles on how CSR has evolved.

After World War II and throughout the 1950s, there was a period of adaptation and shifting views toward the issue of corporate social responsibility. Still, there were few corporate efforts outside charitable operations.⁵⁵ Perhaps the most notable example of a changing attitude toward corporate behaviour came from Bowen,⁵⁶ who believed that large corporations at the time concentrated great power and that their actions had a tangible impact on society. Thus, there was a need to change their decision-making to include consideration of their impacts. Between 1970 and 2005,⁵⁷ the fundamental issues driving CSR academics were as ancient as business itself, such as what a corporation is for and what contribution does it make to society. This assertion is backed by the groundbreaking publication of the Committee for Economic Development (CED),⁵⁸ which identified the core functions of a business within society to include its social, environmental and economic goals. It is worth noting that when the publication referred to the social environment, it meant issues such as poverty and urban blight.⁵⁹ In defining the contribution of business to society Sethi,⁶⁰ in a classic

⁵⁵ Archie B Carroll, "A History of Corporate Social Responsibility: Concepts and Practices, in Andrew Crane and others " *The Oxford Handbook of Corporate Social Responsibility* (Oxford University Press 2008)

⁵⁶ Howard R Bowen, *Social Responsibilities of the Businessman* (University of Iowa Press 1953)

⁵⁷ Richard Eells, *Corporation giving in a free society* (New York: Harper 1956), Committee for Economic Development, *Social responsibilities of business corporations* (USA: Committee for Economic Development 1971) page 11-16; George Albert Steiner, *Business and Society* (Random House 1971), Lee Preston and James Post, *Private Management and Public Policy: The Principle of Public Responsibility* (Stanford Business Books, an imprint of Stanford University Press 1975); Edwin M Epstein, "The Corporate Social Policy Process: Beyond Business Ethics, Corporate Social Responsibility, and Corporate Social Responsiveness" (1987) 29 *California Management Review* 99

⁵⁸ Committee for Economic Development, *Social Responsibilities of Business Corporations a Statement on National Policy* (CED 1971)

⁵⁹ Ibid CED, p. 15

⁶⁰ Sethi SP, "Dimensions of Corporate Social Performance: An Analytical Framework" (1975) 17 *California Management Review* pp58-64

article, clarified that the role of business goes beyond social obligation. He stated that CSR should include social norms, values and expectations of performance. Carroll's⁶¹ definition and the CSR pyramid likewise encapsulate the role of companies to include economic, legal, ethical and discretionary duties.

Many significant events occurred in the 1980s, including; the creation of the European Commission's Environment Directorate-General (1981), the establishment of the World Commission on Environment and Development chaired by the Norwegian Prime Minister, Gro Harlem Brundtland (1983), the publication of "Our Common Future", presented by the Brundtland Commission, which defined sustainable development (1987), and the United Nations (UN) adoption of the Sustainable Development Goals (1988).

The rising concern of the international community for environmental sustainability was mirrored indirectly in business conduct, even if these events had no direct connection to CSR. Carroll,⁶² in the 1980s, argued that society's most pressing concerns and expectations of corporate behaviour revolved around "environmental pollution, employment discrimination, consumer abuses, employee health and safety, quality of work life, degradation of urban life, and questionable/abusive practices of multinational corporations". Academic researchers⁶³ began to investigate alternative topics in this environment, without, however, expressly linking CSR to environmental sustainability.⁶⁴ In the 1980s, phrases like 'business ethics' and 'stakeholder management' became part of the business lexicon as part of a larger conversation about corporate conduct. The publication in 1984 of Freeman's⁶⁵ classic work on stakeholder theory was one of the major highlights of the 1980s. Although the book is not recorded to have had

⁶¹ Archie B Carroll, "The Pyramid of Corporate Social Responsibility: Toward the Moral Management of Organizational Stakeholders" (1991) 34 *Business Horizons* 39

⁶² Ibid Carroll ,p. 36

⁶³ Ibid Carroll ,p. 36

⁶⁴ Thomas M Jones, "Corporate Social Responsibility Revisited, Redefined" (1980) 22 *California Management Review* 59; Frank Tuzzolino and Barry Armandi, "A Need-Hierarchy Framework for Assessing Corporate Social Responsibility" (1981) 6 *Academy of Management Review* 21; Rich Strand , "A Systems Paradigm of Organizational Adaptations to the Social Environment" (1983) 8 *Academy of Management Review* 90; Philip Cochran and Robert Wood, "Corporate Social Responsibility and Financial Performance" (1984) 27 *Academy of Management Journal* 42-56; Steven Wartick and Philip Cochran, "The Evolution of the Corporate Social Performance Model" (1985) 10 *Academy of Management Review* 7pp.758-769

⁶⁵Edward R freeman Freeman RE, *Strategic Management: A Stakeholder Approach* (Pitman 1984)

much effect on CSR in that particular era, it is reported to have had a greater impact in subsequent eras.⁶⁶

The concept of CSR gained more international recognition⁶⁷ in the 1990s. This may be linked to the growth of industrialisation and a weak regulatory framework.⁶⁸ It became clear to many multinational firms that being socially responsible might help them balance the problems and benefits of the globalisation process. As a result, CSR grew more institutionalised.⁶⁹ The Business for Social Responsibility (BSR) was founded in 1992 by 51 companies to become a "force for positive social change a force that would preserve and restore natural resources, ensure human dignity and fairness, and operate transparently"; it is perhaps the most notable example of CSR becoming institutionalised.⁷⁰

The most significant notion that competed with CSR was corporate citizenship. Whether corporate citizenship is a different topic of study from CSR or merely another means of expressing or defining CSR responsibilities is a moot point.⁷¹ During the 1990s, business practices made the most important advancements in corporate social responsibility. This includes the following areas of benefit: education, culture and the arts, health and human services, civic participation, overseas aid and non-profits. Even as corporate social responsibility became more firmly established in the 1990s, the ideas did not progress as much.⁷² This may be due to a lack of CSR coverage and an inadequate grasp of the concept. In their attempt to enhance CSR implementation and benefits for companies, Burke and Logsdon identified the five dimensions of CSR, thus linking it to the positive financial performance of a firm, known as the implementation of strategic CSR. They argued that implementing strategic CSR through these five dimensions would

⁶⁶ Ibid CSR Handbook

⁶⁷ The most significant were the establishment of the European Environment Agency (1990), the Rio de Janeiro UN Summit on Environment and Development, which resulted in the Rio Declaration on Environment and Development, the Adoption of Agenda 21 and the United Nations Framework Convention on Climate Change (UNFCCC) (1992), and the adoption of the Kyoto Protocol (1997),

⁶⁸ Archie B. Carroll, "Corporate Social Responsibility: The Centerpiece of Competing and Complementary Frameworks" (2015) 44 *Organizational Dynamics* 87-96

⁶⁹ Ibid Carroll 2015

⁷⁰ "Overview" (BSR1992) <https://www.bsr.org/en/about/story> accessed July 21, 2022

⁷¹ Ibid Carroll, 1994

⁷² Ibid, Carroll 1999

result in strategic outcomes in the form of value creation that is observable and measurable, but confined to economic advantages for the enterprise.⁷³

In the new millennium, although having gained some recognition, CSR still has a gap in governance in terms of human rights and environmental issues. Perhaps the reason for this being recognised was the landmark speech made by the then Secretary General of the United Nations, Kofi Annan.⁷⁴ As a reaction, the United Nations Global Compact (UNGC) was established in July 2000, bringing together 44 global corporations, six business groups, two labour organisations and 12 civil society organisations. Notably, the objective behind establishing the UNGC was to develop an instrument that would cover the gaps in governance at the time in terms of human rights, social and environmental challenges, and the incorporation of universal values into markets.⁷⁵

The UNGC's most significant success was the development of 10 principles that govern the corporate conduct of its members, who are supposed to implement these into their plans, policies and processes to create a corporate culture of integrity with long-term goals.⁷⁶ While the UNGC was never explicitly tied to CSR, the 10 principles, with their emphasis on human rights, labour, the environment and anti-corruption, attracted worldwide attention towards corporate social responsibility.

In 2000, the United Nations also adopted the Millennium Declaration, which included the eight Millennium Development Goals (MDGs) and established the worldwide plan for the next 15 years. Even when the MDGs and the surrounding debate was not directly linked to CSR, the United Nations Development Program

⁷³ Ibid, Burke and Logsdon.

⁷⁴ Kofi Annan, who said: "I propose that you, the business leaders gathered in Davos, and we, the United Nations, initiate a global compact of shared values and principles, which will give a human face to the global market" see "Kofi Annan's Address to World Economic Forum in Davos Secretary-General" (*United Nations*1999) <https://www.un.org/sg/en/content/sg/speeches/1999-02-01/kofi-annans-address-world-economic-forum-davos> accessed July 21, 2022

⁷⁵ "About the UN Global Compact: Un Global Compact" (*About the UN Global Compact | UN Global Compact*) <https://www.unglobalcompact.org/about> accessed July 21, 2022

⁷⁶ Ibid, UNGC

(UNDP) highlighted it as a framework for UN-private sector cooperation for the achievement of its goals.⁷⁷

The promotion and implementation of CSR as a distinct area in European strategy are evident in a green paper titled *Promoting a European Framework for Corporate Social Responsibility (2001)*,⁷⁸ derived from the new social expectations and concerns of the time, including growing concern about the environmental impact of economic activities.⁷⁹ Notably, the green paper outlined a European approach to CSR that aspired to mirror and be linked to larger international projects such as the UNGC.⁸⁰ This was the first step toward adopting the European Strategy on CSR in 2002. Since then, the European Commission (EC) has led a series of campaigns to promote the European approach to CSR based on the understanding that CSR is "the responsibility of enterprises for their impacts on society and outlines what an enterprise should do to meet that responsibility".⁸¹

The EC issued the revised European Union (EU) strategy for CSR for 2011-2014 in 2011, followed by a public consultation in 2014 on its accomplishments, deficiencies and future problems. According to the 2014 consultation, 83 % of respondents stated that the EC should continue to engage in CSR policy, and 80 % considered that CSR played an essential role in the sustainability of the EU economy.⁸² The EC hosted a multi-stakeholder meeting on CSR in 2015, concluding that the Commission should continue to play an essential role in promoting CSR and in helping companies incorporate social responsibility into their plans.⁸³

⁷⁷ Mauricio Latapí Agudelo, Lára Jóhannsdóttir and Brynhildur Davídsdóttir, "A Literature Review of the History and Evolution of Corporate Social Responsibility" (2019) 4 *International Journal of Corporate Social Responsibility*.

⁷⁸ Commission of the European Communities, *Green paper: promoting a European framework for corporate social responsibility* Brussels (COM (2001) 366 final).

⁷⁹ *Ibid* COM (2001) 366 final

⁸⁰ *Ibid*

⁸¹ "Corporate Social Responsibility: a New Definition, a New Agenda for Action MEMO/11/730" (*European Commission - European Commission*2011) http://europa.eu/rapid/press-release-MEMO-11-730_en.htm accessed July 21, 2022

⁸² European Commission, *The corporate social responsibility strategy of the European commission: results of the public consultation* (2014) <https://www.bing.com/ck/a?!&p=b66e70ad928fe9b9JmItdHM9MTY1ODQwMzYxMCZpZ3VpZD0xNzMyNTI4ZC1kMmU0LTRkYjctOTdkNC01ZjZmNzNkYzBiOGImaW5zaWQ9NTIxNw&ptn=3&hsh=3&fclid=e008cfcc-08e9-11ed-9ddc-ef5417f0a8b2&u=a1aHR0cHM6Ly9lYy5ldXJvcGEuZXUvbmV3c3Jvb20vZGFIL3JlZGlyZWNoaW9uL2RvY3VtZW50LzgzMTM&ntb=1> accessed July 21, 2022

⁸³ European Commission, *EU multi stakeholder forum on corporate social responsibility*, Brussels (*Ares(2015)580495*)

In addition to the EU effort as pioneers in CSR implementation in the 2000s, the ISO 26000 has also become an international guideline for business. It was prepared by 450 experts from 99 nations and 40 international organisations. So far, it has been approved by more than 80 countries as a guideline for national standards based on its recommendations.⁸⁴

With the launch of the 2030 Agenda for Sustainable Development and the adoption of seventeen Sustainable Development Goals (SDGs), representing a "shared vision of humanity and a social contract between the world's leaders and the people", the year 2015 can be considered as a landmark in that decade.⁸⁵ While the SDGs do not contain any private-sector obligations, nations embracing them will be required to develop particular rules and regulations that will put pressure on corporations to implement new business practices or enhance existing ones. This is especially important given that the SDGs span a wide variety of topics, from climate change to poverty and hunger elimination, as well as the promotion of innovation and sustainable consumerism. Furthermore, the SDGs are interrelated, which implies that accomplishing one target may include resolving challenges of another.⁸⁶ Although the SDGs do not outline commitments for companies, the EU, through their directive, have set out mandates, using the Global Reporting Initiative (GRI) to disclose non-financial reporting.

Recent empirical research identified that 2015-2016 had the highest number of CSR publications.⁸⁷ A significant theme that has been identified when examining the most recent academic publications published since 2015 is that their majority revolve around the implementation of CSR and its impact on specific areas of

⁸⁴ ISO 26000 - social responsibility. <https://www.iso.org/iso-26000-social-responsibility.html> accessed July 21, 2022

⁸⁵ UN "Launch of New Sustainable Development Agenda to Guide Development Actions for the next 15 Years" (*United Nations*2015) <https://www.un.org/sustainabledevelopment/blog/2015/12/launch-of-new-sustainable-development-agenda-to-guide-development-actions-for-the-next-15-years/> accessed July 21, 2022

⁸⁶ "Sustainable Development Goals: United Nations Development Programme" (*UNDP*) <https://www.undp.org/sustainable-development-goals> accessed July 21, 2022

⁸⁷ Ibid Agudelo 2019

performance that are related to the SDGs, but do not necessarily contribute to the definitional construct or the evolution of the concept.⁸⁸

According to this review and analysis, the literature on CSR appears to be missing out on particular studies regarding the handling of fundamental business operations through CSR. This suggests that CSR can only be applied partially and even raises issues about its potential advantages. It is worth noting that the literature on CSR in no way undermines the value of it; however, most literature between 2021 to 2022 has made attempts to fill the gap identified in this review by assessing strategies and frameworks for CSR in different regions, industries or through the lens of the Triple Bottom Line.⁸⁹ To this end, this thesis will provide valuable insights on how CSR partnership can be used to enhance the goals of CSR in the oil and gas industries in oil and gas producing areas.

1.8.3 Strategies for Environmental Sustainability

According to social science literature dating back to the early 1990s, stakeholders play an important role in making decisions.⁹⁰ Since Freeman's publication on stakeholder management,⁹¹ substantial research has focused on the nature of these connections in both general⁹² and environmental contexts.⁹³

⁸⁸ L Benites-Lazaro and N A Mello-Théry, "CSR as a Legitimizing Tool in Carbon Market: Evidence from Latin America's Clean Development Mechanism" (2017) 149 *Journal of Cleaner Production* pp. 218-226; Shun-Pin Chuang and Sun-Jen Huang, "The Effect of Environmental Corporate Social Responsibility on Environmental Performance and Business Competitiveness: The Mediation of Green Information Technology Capital" (2016) 150 *Journal of Business Ethics* pp. 991-1009; Erin Kao and others, "The Relationship between CSR and Performance: Evidence in China" (2018) 51 *Pacific-Basin Finance Journal* p.155

⁸⁹ Abdifatah Ahmed Haji, Paul Coram, and Indrit Troshani, "Consequences of CSR Reporting Regulations Worldwide: A Review and Research Agenda" [2022] *Accounting, Auditing & Accountability Journal*; Tahniyath Fatima and Said Elbanna, "Corporate Social Responsibility (CSR) Implementation: A Review and a Research Agenda towards an Integrative Framework" [2022] *Journal of Business Ethics*; Samuel O Idowu, "ISO 26000—a Standardised View of Corporate Social Responsibility Practices, Cases and Facts: An Introduction" [2018] *ISO 26000 - A Standardized View on Corporate Social Responsibility 1*; Iskandarsyah Siregar, "CSR-Based Corporate Environmental Policy Implementation" (2021) 1 *British Journal of Environmental Studies*.

⁹⁰ Hans Wiesmeth, "Stakeholder Engagement for Environmental Innovations" (2020) 119 *Journal of Business Research* pp.310-320

⁹¹ Edward R Freeman, "The Politics of Stakeholder Theory: Some Future Directions" (1994) 4 *Business Ethics Quarterly* 409

⁹² George Zinkhan and Anne Balazs, "A Stakeholder-Integrated Approach to Health Care Management" (2004) 57 *Journal of Business Research* pp. 984-989

⁹³ Shams S M Riad and others, *Stakeholder Engagement and Sustainability* (Routledge 2020), William R Blackburn, *The Sustainability Handbook: The Complete Management Guide to Achieving Social, Economic, and Environmental Responsibility* (Environmental Law Institute 2015); Robert

Public participation in policymaking is frequently a goal of its own, with the intention of enhancing democratic responsiveness and the legitimacy of policy choices.⁹⁴ Stakeholders include industries, corporations, consultancies, non-profit organisations and individuals directly impacted by environmental issues.⁹⁵ Environmental sustainability solutions must be co-created, co-designed and co-implemented by all stakeholders, especially in the early phases of the policymaking process.⁹⁶ Some recognise that the role of stakeholder participation in policy processes and results is still unclear.⁹⁷ However, in the 21st century, the core challenge that has been identified in comprehending stakeholder engagement is the potential of identifying the process by which it can bring about environmental change.⁹⁸ Researchers⁹⁹ and international institutions¹⁰⁰ have made great strides in conceptualising engagement processes with engagement-driven outcomes. This seems promising, yet a comprehensive framework that considers context, techniques, scales of social change, human behaviour and changes in environmental circumstances remains to be seen.

Biesbroek, Guy Peters and Jale Tosun, "Public Bureaucracy and Climate Change Adaptation" (2018) 35 *Review of Policy Research* pp.776-791; Roger Few, Katrina Brown, and Emma Tompkins, "Public Participation and Climate Change Adaptation: Avoiding the Illusion of Inclusion" (2007) 7 *Climate Policy* pp.46-59; Marc Gramberger and others, "Stakeholder Integrated Research (STIR): A New Approach Tested in Climate Change Adaptation Research" (2014) 128 *Climatic Change* p.201

⁹⁴ Ibid Gramberger 2015

⁹⁵ Archon Fung, "Varieties of Participation in Complex Governance" (2006) 66 *Public Administration Review* pp.66-75

⁹⁶ Ibid, Fung.

⁹⁷ Weston Eaton and others, "A Conceptual Framework for Social, Behavioural, and Environmental Change through Stakeholder Engagement in Water Resource Management" (2021) 34 *Society & Natural Resources* pp.1111-1132; Tomas Koontz and Craig Thomas, "What Do We Know and Need to Know about the Environmental Outcomes of Collaborative Management?" (2006) 66 *Public Administration Review* 111; Andrea Gerlak and others, "It's Time to Learn about Learning: Where Should the Environmental and Natural Resource Governance Field Go Next?" (2019) 32 *Society and Natural Resources* pp.1-10.

⁹⁸ Andrea K Gerlak and others, "Learning Our Way out of Environmental Policy Problems: A Review of the Scholarship" (2017) 51 *Policy Sciences* 335; Jens Newig and others, "The Environmental Performance of Participatory and Collaborative Governance: A Framework of Causal Mechanisms" (2017) 46 *Policy Studies Journal* p.269

⁹⁹ Ibid Newig 2018; Alison Feist, Ryan Plummer and Julia Baird, "The Inner-Workings of Collaboration in Environmental Management and Governance: A Systematic Mapping Review" (2020) 66 *Environmental Management* 801; Ryan Plummer and others, "How Do Environmental Governance Processes Shape Evaluation of Outcomes by Stakeholders? A Causal Pathways Approach" (2017) 12

¹⁰⁰ Some of these organisation include but are not limited to The United Nations Environment Programme (UNEP), The World Health Organization, The United Nations Economic and Social Council, International Maritime Organization, Arctic Council, Organization for Economic Cooperation and Development (OECD), and the Global Reporting Initiative see "International Cooperation" (EPA) <https://www.epa.gov/international-cooperation/partnering-international-organizations> accessed August 2, 2022

Governments may significantly impact the nature and degree of democratic participation.¹⁰¹ According to some studies, executives' and legislators' attitudes toward incorporating people as valuable partners are often restricted, thus discouraging their participation.¹⁰² Some critics argue that stakeholder participation is often utilised cynically as a symbolic exercise with the lowest possible engagement.¹⁰³ However, the Research Excellence Framework¹⁰⁴ exemplifies how collaborative methods have resulted in top-rated impacts. For example, consultation with industry, third-sector and the implementation of existing policies prevented wind farms from being built on peatlands.¹⁰⁵

According to Reed, the reason why some highly co-productive partnerships might go wrong and others actually become productive has been linked to the adoption of different engagement options geared towards the purpose and context of the desired outcome. To this end, this research aims to adopt an effective partnership strategy particular to the oil and gas producing areas, while contextualising its findings and recommendations in West Africa.

1.9 Research Methodology

The methodologies utilised for data gathering and analysis must be made clear in this thesis, given its expected addition to the body of knowledge.¹⁰⁶ According to Chynoweth, legal study, like scientific research, relies on the researcher's work showing awareness and adherence to its language's established standards and

¹⁰¹ Article 11 of the EU Commission encourages broad consultation with parties to ensure coherence and transparency see "Consolidated Version of the Treaty on European Union" (2008) https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF accessed August 2, 2022

¹⁰² Elise Bendtsen, Lauge P Clausen and Steffen F Hansen, "A Review of the State-of-the-Art for Stakeholder Analysis with Regard to Environmental Management and Regulation" (2021) 279 *Journal of Environmental Management* 111773, James Evans, *Environmental Governance* (Routledge 2012).

¹⁰³ Mark S Reed and others, "A Theory of Participation: What Makes Stakeholder and Public Engagement in Environmental Management Work?" (2017) 26 *Restoration Ecology*.

¹⁰⁴ "Search Ref Impact Case Studies" (*REF Case study search*) <https://impact.ref.ac.uk/casestudies/> accessed August 2, 2022

¹⁰⁵ Jo Smith, Dali Nayak and Pete Smith, "Avoid Constructing Wind Farms on Peat" (2012) 489 *Nature* 33

¹⁰⁶ Jan Jonker and Bartjan Pennick, *The Essence of Research Methodology: A Concise Guide for Master and PhD Students in Management Science* (Springer-Verlag, 2010).

norms.¹⁰⁷ Bryman¹⁰⁸ further highlights that in order to choose a research methodology or design, several factors have to be considered, such as access to data, ethical considerations, etc. The researcher has to consider whether a multi-method approach would help answer the questions raised in the research. Such an approach can be used to study one or several related phenomena.¹⁰⁹ Simply put, a research methodology in itself might be considered its "approach". This deals with the issues of where to look for pertinent information, how to arrange it and how to evaluate the findings.¹¹⁰

On the other hand, the research method can also relate to the systematic and ordered approach followed in collecting and analysing data to extract knowledge from such data.¹¹¹ Furthermore, depending on the study emphasis and the data relevant to the investigation, a research methodology might be either qualitative or quantitative. Quantitative methods use quantitative qualities (i.e., numerical systems) to investigate the correlations or effects of certain variables. The quantitative technique relies heavily on the collection and analysis of data.¹¹² The qualitative technique is a way of gathering and analysing data that places emphasis on comprehension and the underlying meaning.¹¹³ Non-experimental and emergent research is conducted using the qualitative method. Systems and human behaviour may be studied using this technique in order to determine the "how" and the "why" of both. Specifically, it is a way of looking at phenomena that relies heavily on "words" as the primary kind of data. In general, the process of determining quality is an inductive one.¹¹⁴

As a general rule, the goal of a case study approach is to tell a story or shed light on phenomena via an in-depth, real-time or retrospective investigation of a

¹⁰⁷ Paul Chynoweth, 'Legal Research in the Built Environment: A Methodological Framework' (International Conference on Building Education and Research (BEAR), Building Resilience, 11-15 February 2008) 677.

¹⁰⁸ Tom Clark and others, *Bryman's Social Research Methods* (5th edn Oxford University Press 2016) 10

¹⁰⁹ Ronet D Bachman and Russell K Schutt, *The Practice Of Research In Criminology And Criminal Justice* (7th edn, SAGE Publications, Inc 2019)

¹¹⁰ Darren O'Donovan, "Socio-Legal Methodology: Conceptual Underpinnings, Justifications and Practical Pitfalls, in Laura Cahillane and Jennifer Schweppe " *Legal research methods: Principles and practicalities* (Clarus Press 2016)

¹¹¹ Nicholas William, *Research Methods: The Basics* (Routledge, 2011) 1

¹¹² W Alex Edmonds and Thomas D Kennedy, *An Applied Guide to Research Designs: Quantitative, Qualitative, and Mixed Methods* (SAGE 2017)

¹¹³ Ibid Edmonds

¹¹⁴ Ibid

specific instance. Because of this, concerns such as experimental control and internal validity are not relevant in this technique.¹¹⁵

In this case, the research question seeks to determine the “how” of implementing environmental sustainability initiatives, and so a qualitative method will be employed. The study adopts a socio-legal methodology to answer the research questions and achieve its aims and objectives in the subject area of corporate social responsibility, environmental sustainability implementation, and stakeholder involvement.

1.9.1 Socio-legal Methodology

Scholars in socio-legal studies contend that law does not exist in isolation.¹¹⁶ Several other factors need to be considered. As a result, it is critical to go beyond ‘black-letter’ solutions.¹¹⁷ Although several definitions and meanings have been attributed to the research concept because it is confined to specific academic boundaries, the precise meaning of the term is contentious.¹¹⁸ For example, the Economic and Social Research Council have referred to socio-legal studies as an umbrella term for what is now an exciting, wide-ranging and varied area of research activity.¹¹⁹ Wheeler and Thomas have stated that socio-legal studies mean an interface with a context, within which laws exist in sociological, historical, geographical and other contexts.¹²⁰ In 2009, the Socio-legal Studies Association provided a more acceptable explanation of what it means:¹²¹

Socio-legal studies include fields and topics that are interested in law as a social institution, the social implications of the law, legal procedures,

¹¹⁵ John W Creswell and J David Creswell, *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches* (SAGE Publications, Inc. 2013)

¹¹⁶ Michael Salter, Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson Education 2007); Roger Cotterrell, “Why Must Legal Ideas Be Interpreted Sociologically?” (1998) 25 *Journal of Law and Society* pp.171-192; Don Harris, “The Development of Socio-Legal Studies in the United Kingdom” (1983) 3 *Legal Studies* 315; Dermot Feenan, *Exploring the ‘Socio’ of Socio-Legal Studies* (Palgrave Macmillan 2013)

¹¹⁷ Roger Cotterrell, *Law’s Community* (OUP 1995) p.296

¹¹⁸ William L Twining, *General Jurisprudence: Understanding Law from a Global Perspective* (Cambridge University Press 2009) pp.227-28

¹¹⁹ ESRC “Researching (Socio) Legal Academics” (2004) <https://www.slsa.ac.uk/images/slsadownloads/newsletters/spring%202004-42.1.pdf> accessed August 3, 2022

¹²⁰ Sally Wheeler and P A Thomas, “Socio-Legal Studies, in David Hayton, “ *Law’s future* (Hart 2000).

¹²¹ Socio Legal Studies Association “ SLSA Statement of Principles of Ethical Research Practice ”(2009) <http://www.slsa.ac.uk/index.php/8-general-information/4-slsa-statement-of-principles-of-ethicalresearch-practice> accessed August 3, 2022

institutions, and services, as well as the impact of social, political, and economic elements on the law and legal institutions.

All definitions of the socio-legal methodology have a number of commonalities. As a rule, the following factors are involved:¹²²

- 1) How does the law function in society as a whole? What does this mean?
- 2) It should go beyond legal writings.
- 3) It should supplement legal research.
- 4) It does not fit into either one of the two categories; thus, if you are employing a socio-legal technique, you will need to explain why you are focusing on a particular issue.

¹²² Salter M, Mason J, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research* (Pearson Education 2007).

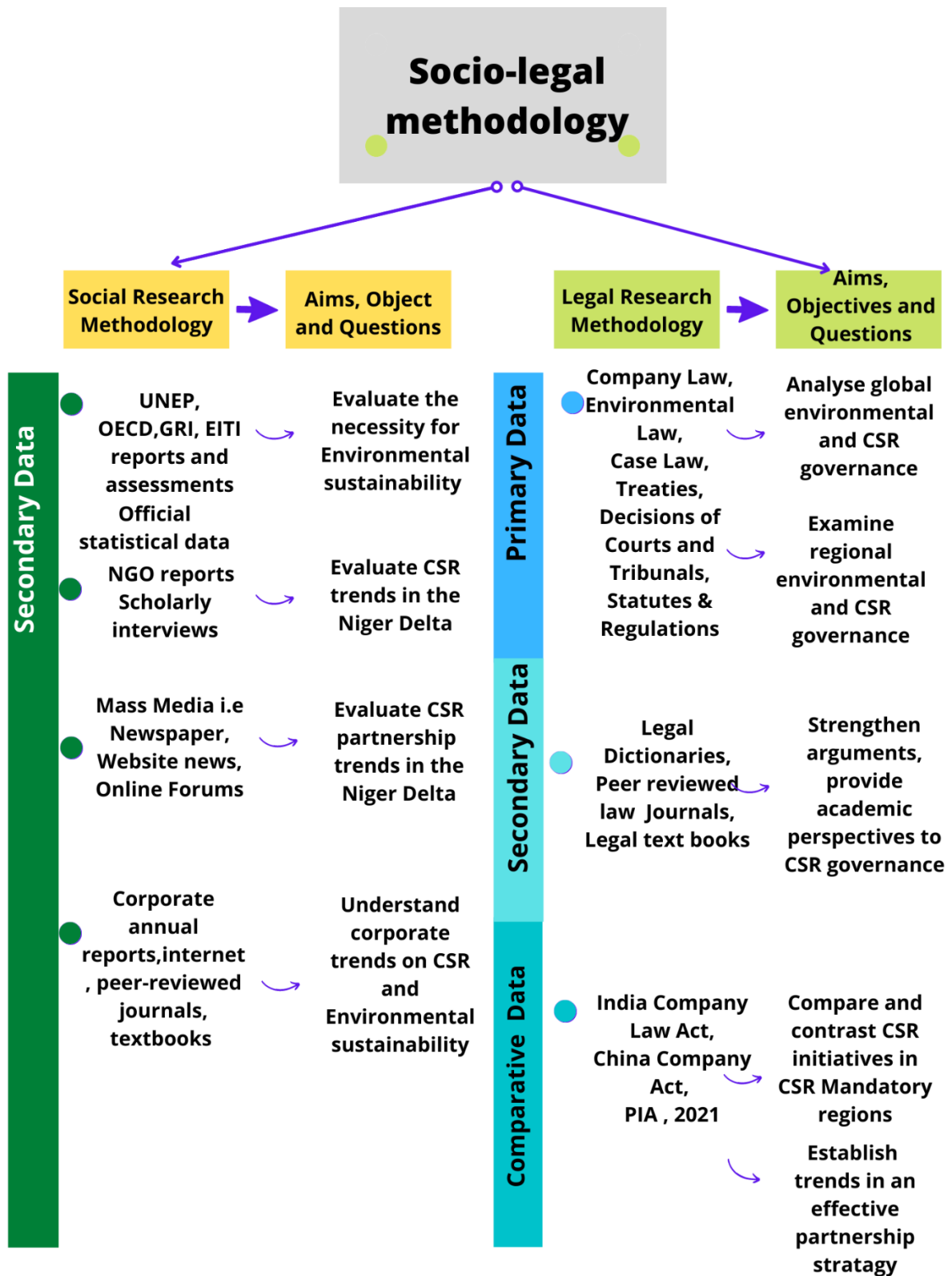


Figure 1:1 Socio-legal methodology design¹²³

¹²³ Designed by Researcher

1.9.1.1 Social Data Collection and Analysis

Social data can be generated from national surveys, interviews with practitioners and relevant parties, observation of processes, practices and outcomes, and secondary data analysis. This thesis will focus on using secondary data, which is a mode of collection that does not require generating new data for analysis. This might involve, for example, an evaluation of the effectiveness of a particular piece of legislation in achieving specific social goals or an examination of the extent to which that legislation is being complied with.¹²⁴

Secondary data analysis involves researchers analysing data that they did not participate in collecting themselves. The secondary researcher examines existing trends from earlier studies and applies this knowledge to the particular research situation. The benefits of using secondary data in research are listed below:¹²⁵

- a) It saves time and cost - it allows the researcher to access good quality data from international and national organisations at no cost or for a marginal subscription fee.
- b) High-quality data –the samples are often national samples and well funded, meaning the information provided is well grounded.
- c) Opportunity for cross-sectoral analysis – this allows the researcher to conduct research from multiple regions to draw best practices.
- d) The possibility for novel interpretations – the researcher can interpret information in a way that a previous researcher did not envisage and help apply the findings to context.

One major loophole in using secondary data is that the researcher has no control over the quality of the data. For this reason, the research adopts the content analysis research method. According to a well-known author:¹²⁶

Content analysis is any technique for making inferences by objectively and systematically identifying specified characteristics in the message.

¹²⁴ Paul Chynoweth, 'Legal Research in the Built Environment: A Methodological Framework' (International Conference on Building Education and Research (BEAR), Building Resilience, 11-15 February 2008) p.37.

¹²⁵ A Dale, S L Arber and M Proctor, *Doing Secondary Analysis* (Unwin Hyman 1988) , Melissa P Johnston, "Secondary Data Analysis: A Method of Which the Time Has Come" (2017) 3 *Qualitative and Quantitative Methods in Libraries* pp.619-626

¹²⁶ Ole Holsti, *Content Analysis for the Social Sciences and Humanities* (1st edn.1969)

Bryman¹²⁷ further states that, given the nature of secondary data, content analysis can help enhance reliability. Examples of content analysis data include newspaper coverage, online forum debates and social media content. For instance, Seigel et al.¹²⁸ have used content analysis to examine the number of alcohol brand references in popular music in the USA. However, this thesis does not adopt quantitative techniques of analysis. Instead, it uses materials such as websites from accredited bodies, and institutions and governments as a rich source of corroboration of secondary data.¹²⁹ Online newspapers have also been used as an excellent source to highlight the perceptions of host communities in the Niger Delta or sometimes used to ascertain corporate efforts.¹³⁰

The justification for using secondary data is based on the nature of CSR. While CSR is a 'hard law' in some countries,¹³¹ this is not so in others.¹³² For the regions where CSR is not hard law, it becomes necessary to understand the existing standards using independent academic qualitative materials that provide insight into stakeholder involvement.

The secondary data used in this respect may be another subject-related PhD thesis, academic journals and global institutional reports. Business documents such as corporate annual reports represent other useful source of secondary data that might have traction in establishing a trend in business organisations.

With reference to the research question of how a multi-stakeholder strategy can be fostered and best practices unlocked in the areas of environmental sustainability in oil-producing areas, a socio-legal approach is the most suitable option to answer these qualitative questions. This approach does not rest on the laws/policies alone but on how they affect society and are perceived within society.¹³³

¹²⁷ Ibid Bryman p. 13

¹²⁸ Michael Siegel M and others, "Alcohol Brand References in U.S. Popular Music, 2009–2011" (2013) 48 Substance Use & Misuse 1475-84

¹²⁹ Ibid Bryman, p. 13

¹³⁰ See Literature Review Section 8 above.

¹³¹ Li-Wen Lin, "Mandatory Corporate Social Responsibility? Legislative Innovation and Judicial Application in China", 2019 Blog

¹³² 'Corporate Social Responsibility (CSR)' (Investopedia, 2020) accessed 22 September 2020.

¹³³ Maria E Maher and Thomas Andersson, 'Corporate Governance: Effects On Firm Performance And Economic Growth' [1999] SSRN Electronic Journal accessed 28 October 2020.

1.9.1.2 Legal Data Collection and Analysis

Legal research is mostly undertaken in two ways: doctrinal legal research and non-doctrinal legal study.¹³⁴ The non-doctrinal aspect, also known as socio-legal, has already been explained. Hence, this section of the thesis will explain what doctrinal legal research means and how it can be used to achieve the research aims and objectives.

Doctrinal study is concerned with legal concepts developed by courts and legislative bodies. As a result, it is frequently a two-step procedure that begins with discovering the source of legislation and then proceeding to interpret and analyse the text.¹³⁵ Before analysing the legislation, a researcher is required to identify it, which may in turn require investigation of historical and precedent legal issues. This enables the researcher to evaluate the norms and standards and to create arguments based on them.

An important function of doctrinal legal research is to lay out the rules that govern a certain legal category, analyse the connections between those rules, identify problematic areas and even forecast future developments.¹³⁶ It is based on the doctrine of doctrinal legal research that the thesis analyses the 2021 Petroleum Industry Act, a new piece of legislation which makes CSR mandatory in Nigeria. It is relevant to the research since it gives the researcher the ability to identify what is wrong or lacking in existing legislation covering similar issues, and how it might be rectified to improve future developments. Similarly, environmental sustainability and corporate social responsibility are significant components of other legislation. According to the IISD,¹³⁷ all countries have implemented environmental laws, meaning that environmental and corporate law, treaties, case laws, and legislation in a particular country must be assessed to establish the

¹³⁴ Mike McConville and Wing Hong Chui, *Research Methods for Law* (Edinburgh University Press, 2012).

¹³⁵ Terry Hutchinson and Nigel Dunca, 'Defining and Describing what we do: Doctrinal Legal Research' (2012) 17 Deakin Law Review, p.83

¹³⁶ Terry Hutchinson and Nigel Duncan, 'Defining and Describing what we do: Doctrinal Legal Research' (2012) 17 Deakin Law Review, p.83.

¹³⁷ "Environmental Laws Impeded by Lack of Enforcement, First-Ever Global Assessment Finds: News: SDG Knowledge Hub: IISD" (*sdg.iisd.org* January 29, 2019) <https://sdg.iisd.org/news/environmental-laws-impeded-by-lack-of-enforcement-first-ever-global-assessment-finds/> accessed August 4, 2022

stance and level of the law vis-a-vis corporate governance mandatory requirements.

Doctrinal research design is concerned with the development of legal doctrines through the review of legal norms. It provides a logical overview of the rules governing a particular legal category, analyses the connection between the rules and clarifies areas of difficulty for new progress.¹³⁸ The doctrinal methodology, also known as the 'black letter law' approach, relies heavily on case law, which includes court judgements and statutory law, in order to explain the position of the law.¹³⁹ Judicial decisions always have two sides: the facts determined, and the legal norms clarified from interpreting a case; therefore it is impossible to establish the facts of a case without taking norms into consideration. More so, judicial decisions are achieved through proof of evidence, making their decisions more substantive.¹⁴⁰ The judge must also understand the statutes to obtain the necessary information concerning the standards.¹⁴¹ The judge and the researcher both have a similar internal perspective in this regard, which can be described as the 'epistemologically internal viewpoint'. This can be explained by comparing a legal researcher's position with that of a social science scholar, meaning there is no need to go outside this sphere to determine the interpretation of the law. Researchers have linked the normative function of law in reaching judicial precedents with research in the empirical social sciences, where the perception of society is vital.¹⁴² However, they differ in the sense that the doctrinal approach is only centred on legal norms while the latter is centred on the behaviour.¹⁴³ Research of this type will be informed by a library desk-based data analysis. It utilises analogical and inductive thought processes to analyse the findings, with a view to reaching a clear and collaborative conclusion.

¹³⁸ Dennis Pearce, Enid Mona Campbell and Don Harding, *Australian Law Schools* (Australian Govt Pub Service 1987).

¹³⁹ Paddy Hillyard, 'Invoking Indignation: Reflections On Future Directions Of SocioLegal Studies' (2002) 29 *Journal of Law and Society* page 650, Mike McConville and Wing Hong Chui, *Research Methods for Law* 4.

¹⁴⁰ Aulis Aarnio (1993), *On the Knowledge of Legal Facts Through Norms*, in: Werner Krawietz and Jerzy Wróblewski, *Sprache, Performanz Und Ontologie Des Rechts* (3rd edn, Duncker & Humblot 1993)p. 4

¹⁴¹ Aulis Aarnio, *The Rational as Reasonable* (Dordrech Reidel 1987) p.8

¹⁴² Aulis Aarnio, *Essays On The Doctrinal Study Of Law* (Springer, Dordrecht 2011) pp.19- 24

¹⁴³ Werner Krawietz and others, *Prescriptive Formality And Normative Rationality In Modern Legal Systems* (3rd edn, Duncker & Humblot 1994) p.15

Comparative law is increasingly integrated into law itself, or seen as a means of support.¹⁴⁴ Many notable lawyers have emphasised the benefits of comparative law as a method of broadening knowledge and better comprehending the law in general.¹⁴⁵ The legal comparison method, whilst it is complex to define, with its boundaries difficult to outline, has been simply described as 'an intellectual activity with law as its object and comparison as its process'.¹⁴⁶ Although this research might be based on best practices proffering effective partnership strategies, it is in no way a piece of comparative legal research. It only uses the process of comparison to analyse some legislation to assess the level of CSR as 'hard law'. It also uses comparison to ascertain the adoption of international law and establish which countries are outstanding in a particular sector, hence it is worth mentioning.¹⁴⁷

1.10 Overview Of Chapters

The thesis's assessment of the research problem and question is divided into 9 chapters. **This introductory chapter** describes the thesis goal, aims, significance and background. It also gives a short overview of the problems facing the implementation of environmental sustainability and adopting CSR partnerships. In addition, the research questions, methods and analysis of the thesis's reference materials are discussed.

In the context of the preceding chapter, the second **chapter (2)** sets the background context, the theoretical framework challenges and governance of environmental sustainability. **Chapter (3)** analyses global and regional environmental sustainability initiatives in an effort to identify the most effective trends for assessing these actions. It accomplishes this goal by examining the theoretical and practical applications of the most important techniques for implementing environmental sustainability. It takes a case study from 5 regions worldwide to establish the application of environmental sustainability. **Chapter**

¹⁴⁴Jan M Smits, *Elgar Encyclopedia of Comparative Law* (2006) p.58

¹⁴⁵ Mary Ann Glendon, Paolo G Carozza and Collin B Picker, *Comparative Legal Traditions in a Nutshell* (West Academic Publishing 2016); Ibid Smits

¹⁴⁶ Konrad Zweigert and Hein Kötz, *Introduction to Comparative Law* (Clarendon Press 1992) p.2

¹⁴⁷ Peter De Cruz, *Comparative Law in a Changing World* (3rd edn Cavendish Publishers,2008) p.77

(4) of the study focuses on the key judicial and legislative actions taken in Nigeria to ensure environmental sustainability. The research analysis is guided by analyses of global and regional initiatives for environmental sustainability discussed in Ch.3. **Chapter (5)** explores the concepts, theories and frameworks of the corporate approach to environmental sustainability through CSR, while **Chapter (6)** critically evaluates the diverse approaches of 5 oil and gas companies towards achieving environmental sustainability through CSR. **Chapter (7)** introduces the final stakeholder to the proposed stakeholder strategy, i.e. host communities. It explores the meaning, challenges and expectations of host communities; taking case studies from host communities in Canada, a developed country, and Nigeria, a developing country and the main research impact area. **Chapter (8)** proposes a framework for an effective multistakeholder partnership and makes a case for the three most relevant stakeholders, as proposed by UNEP. The framework addresses the shortcomings of previous stakeholder strategies.

The thesis is concluded in **Chapter (9)** with recommendations that, if accepted, it can genuinely assist in strengthening the implementation of stakeholder engagement and CSR practices in Nigeria in particular and in developing countries by implication. Together, this will go a long way towards delivering the ultimate goal: environmental sustainability.

Should the recommendations be applied, whether in their totality or in a piecemeal fashion, the researcher firmly believes they can help consolidate the crucial role of CSR in effectively realising the precious prize of environmental sustainability.

2 CHAPTER TWO: THE CONCEPT OF ENVIRONMENTAL SUSTAINABILITY

2.1 Introduction

The Brundtland Commission declared in its 1987 report "Our Common Future"¹⁴⁸ that sustainable development was the key to overcoming environmental concerns. The Report identified a range of serious problems associated with environmental degradation: explicitly, that human activity had led to profoundly adverse effects on the earth, and that development and growth would be unsustainable if this process of environmental exploitation continued. Rachel Carson's *Silent Spring*,¹⁴⁹ Garret Hardin's *Tragedy of the Commons*,¹⁵⁰ the *Blueprint for Survival*,¹⁵¹ and the Club of Rome's *The Limits to Growth Report*¹⁵² all attested to the growing extent of environmental degradation and the desirability of the creation of a new ideology to guarantee a common future for mankind.¹⁵³

The concept of sustainable development in turn inspired the formulation of the United Nations (UN) Environment and Development Conference held in Rio de Janeiro in 1992. This meeting represented the first global effort to develop strategies and action plans for environmental sustainability and more sustainable development. Almost every country in the world sent delegates to the Rio Conference, including more than 100 leaders. In addition to national delegates, some international groups representing civil society also sent representatives to the Conference.

Environmental problems are often interwoven and multifaceted; for example, a global issue such as climate change does not arise spontaneously; it is a build-up of carbon dioxide in the atmosphere caused by the combustion of fossil fuels, related in turn to air pollution in a more local context.¹⁵⁴ To that end, the research

¹⁴⁸ United Nations, *Our Common Future* (Brundtland Commission 1987)

¹⁴⁹ Rachel Carson, *Silent Spring* (Penguin Books 1962)

¹⁵⁰ Garrett Hardin, "The Tragedy of the Commons" (1968) 162 *American Association for the Advancement of Science* 1243

¹⁵¹ Edward Goldsmith and Robert Allen, *A Blueprint for Survival* (2nd edn Penguin; Revised edition 1973)

¹⁵² Donella Meadows and others, *The Limits to Growth: A Report for the Club of Rome's Project on the Predicament of Mankind* (Potomac Assoc Books 1972)

¹⁵³ Mohammad Hadi Hajian and Somayeh Jangchi Kashani 'Sustainable Resource Management: Modern approaches and contexts' in Chaudhery Mustansar Hussain, Juan F. Velasco-Munoz, *Evolution of the Concept of Sustainability. From Brundtland Report to Sustainable Development Goals* (Elsevier 2021)

¹⁵⁴ John S Dryzek, *The Politics of the Earth: Environmental Discourses* (2nd edn Oxford University Press 2005)

in this chapter critically examines definitions of the environment and of sustainability, and explores the notion of environmental sustainability, from its origins up to the present, to ultimately arrive at an acceptable definition. It focuses on environmental sustainability by distinguishing it from related concepts. It further identifies in greater detail the challenges and rewards of achieving environmental sustainability. Finally, it focuses explicitly on the connections between environmental sustainability and the oil and gas industry, which has long been identified as the major emitter of carbon dioxide and a major contributor to challenges facing the achievement of environmental sustainability. The chapter in turn, serves as a foundation for the next chapter, which identifies and analyses global and regional environmental sustainability initiatives.

2.1.1 Environment

The noun 'environment' has its etymological roots in the old French words 'environ' and 'environer' (meaning 'circuit', 'surround', 'enclose', and 'circumstances').¹⁵⁵ When people talk about the environment, they mean the natural environment, which includes living and non-living things. The Cambridge Dictionary defines the environment as the air, water, and land in or on which people, animals, and plants live.¹⁵⁶ The OECD Glossary of Statistical Terms defines the environment as " the totality of all the external conditions affecting the life, development and survival of an organism".¹⁵⁷

The environment sustains all types of life. Rocks, soils, minerals, air, water, bacteria, fungi, plants, and animals all work together to maintain life and its potential to provide and sustainably regulate cultural advantages. The environment's ability to support all of this depends on billions of physical, chemical, and biological interactions.¹⁵⁸

¹⁵⁵ Ralph Jessop, "Coinage of the Term Environment: A Word without Authority and Carlyle's Displacement of the Mechanical Metaphor" (2012) 9 Literature Compass 708

¹⁵⁶ Cambridge dictionary <https://dictionary.cambridge.org/dictionary/english/environment> accessed 12th November 2022

¹⁵⁷ OECD Statistics (*OECD Glossary of statistical terms - environment definition*) <https://stats.oecd.org/glossary/detail.asp?ID=813> accessed November 13, 2022

¹⁵⁸ Scottish Government "Scotland's Environment" (*Environment.gov.scot*) <https://www.environment.gov.scot/media/1163/people-and-the-environment-benefits-from-the-environment.pdf> accessed November 13, 2022

Exploration of the environment to accommodate the needs of society is causing a range of severe environmental impacts,¹⁵⁹ including global warming, environmental degradation¹⁶⁰ such as ocean acidification,¹⁶¹ mass extinction and biodiversity loss,¹⁶² and ecological crises and collapse. Other human activities causing damage, either directly or indirectly to the environment on a global scale, include population growth,¹⁶³ overconsumption, overexploitation, pollution, and deforestation. Some of the problems, including global warming and biodiversity loss, have been suggested as representing catastrophic risks to the survival of the human species.¹⁶⁴

Based on the OECD and Cambridge Dictionary definitions of the environment, this research classifies the environment to include the land, air, and water:¹⁶⁵

i. Land

The land is typically described as the earth's solid, dry surface.¹⁶⁶ Land cover, rivers, shallow lakes, natural resources, non-marine fauna and vegetation (the biosphere), lower regions of the atmosphere (the troposphere), groundwater reserves, and the physical products of human activities on land, such as construction and agriculture, are all examples of land.¹⁶⁷ The UN 2017 Outlook Report confirms that land is finite in quantity. It suggests that with planning, changes in consumer and corporate behaviour, and adaptation to sustainable practices, there is enough available land in the long run to meet both the demand for basic essentials and the need for a broader range of goods and services.¹⁶⁸ Some natural resources, such as wood, are considered renewable because they revert to their original levels when managed sustainably.¹⁶⁹ Coal and other fossil fuels are not considered renewable, since they take millions of years to develop.

¹⁵⁹ William J Ripple and others, "World Scientists' Warning of a Climate Emergency" [2019] BioScience

¹⁶⁰ D J Wuebbles "Executive Summary' in D J Wuebbles, *Climate science special report. Fourth National Climate Assessment* (US Global Change Research Program 2017)

¹⁶¹ Ibid Wuebbles

¹⁶² Richard E Leakey and Roger Lewin, *The Sixth Extinction: Patterns of Life and the Future of Humankind* (Anchor Books 1996)

¹⁶³ Eileen Crist and others, "Scientists' Warning on Population" (2022) 845 *Science of The Total Environment* 157166

¹⁶⁴ Phil Torres, 'Biodiversity Loss: An Existential Risk Comparable to Climate Change' (Chicago, 11 April 2016) <https://thebulletin.org/2016/04/biodiversity-loss-an-existential-risk-comparable-to-climate-change/> accessed November 13, 2022

¹⁶⁵ Michael Allaby, *Macmillan Dictionary of the Environment* (Macmillan Press 1994)

¹⁶⁶ Michael Allaby, *Macmillan Dictionary of the Environment* (Macmillan Press 1994)

¹⁶⁷ United Nations, 'Global Land Outlook(GLO)' (UNCCD, 2017)

¹⁶⁸ Ibid GLO

¹⁶⁹ Ibid GLO page 90

The current coal supply is predicted to peak around the middle of the twenty-first century.¹⁷⁰

Predicated on these concepts, The United Nations has suggested that to deal with land problems, integrative systems and participatory stakeholder methods such as the 'circular economy', rather than linear, sectoral plans, are necessary to effectively negotiate the sustainable use, management, and planning of land resources.¹⁷¹

ii. Air

The Earth is surrounded by a mixture of gases which we call 'air'. Most living things rely on the air around them for vital nutrients and gases like oxygen and nitrogen. Sometimes "atmosphere" is used instead of "air".¹⁷²

At sea level, a mixture of gases known as "Standard Dry Air" makes up the atmosphere. It is the standard unit of measurement in the scientific community. Nitrogen, oxygen, argon, carbon dioxide, neon, helium, krypton, hydrogen, and xenon are the components of Standard Dry Air. Due to the continual motion of air masses, Standard Dry Air cannot be relied upon for precise results everywhere.¹⁷³ Plants and animals each produce mutually dependent gases required for survival. Volcanic eruptions also produce certain gases in the atmosphere.

The air changes with elevation. Mountain climbers frequently utilise oxygen canisters over 3,800 metres (12,500 feet), since most people cannot breathe oxygen in that environment.¹⁷⁴

High in the stratosphere is the ozone layer of the earth's atmosphere.¹⁷⁵ The ozone layer shields the earth from damaging ultraviolet, or UV, rays, allowing the sun's intense radiation to cause less harm to living things.

Unfortunately, pollution significantly impacts the quality of the air we breathe. Air pollution occurs when toxic by-products, such as automotive exhaust fumes, enter the atmosphere. These pollutants have the potential to choke the atmosphere with

¹⁷⁰ Ibid GLO page 90

¹⁷¹ Ibid GLO

¹⁷² Merriam-webster "Air Definition & Meaning" (*Merriam-Webster*) <https://www.merriam-webster.com/dictionary/air> accessed November 13, 2022

¹⁷³ National geographic "Air" (*National Geographic Society*)

<https://education.nationalgeographic.org/resource/air> accessed November 13, 2022

¹⁷⁴ Ibid National Geographic Society

¹⁷⁵ denoted chemically as O₃

smog, a mixture of smoke and fog. They can also produce harmful dust clouds. Other air pollutants, such as methane and excess carbon dioxide, can disrupt the balance of molecules in the atmosphere, adding to global warming.¹⁷⁶

iii. Water

Water (H₂O) is an inorganic, transparent, tasteless, odourless, and almost colourless chemical substance that is a significant component of the earth's hydrosphere and the fluids of all known living species for which it acts as a solvent.¹⁷⁷ Its chemical formula, H₂O, reveals that each molecule comprises one oxygen and two hydrogen atoms linked together by covalent bonds. Water covers 71% of the earth's surface, with seas and oceans accounting for most of the water volume (approximately 96.5%).¹⁷⁸

Around 80% of the world's wastewater is discharged back into the environment, mostly untreated, thus damaging rivers, lakes, and seas.¹⁷⁹ Water contamination or pollution is a severe problem that is exacerbated because water is a natural solvent. This indicates that most substances can degrade in water, which in turn contaminates the environment.

Water pollution, also known as aquatic pollution, is the contamination of water bodies, typically brought about by human activity, which has a detrimental impact on the uses of the water.¹⁸⁰ When pollutants like oil and gas by-products are introduced into these water bodies, water contamination follows.

The number of surface water contamination occurrences grew by more than a thousandfold between 2015 and 2019; most of these events are attributable to water/sewage firms and agriculture.¹⁸¹ Accidental oil spills also account for around

¹⁷⁶ Ibid National Geographic

¹⁷⁷ Water Science School "Water Q&A: Why Is Water the 'Universal Solvent'? Completed" (*Water Q&A: Why is water the "universal solvent"?* | U.S. Geological Survey) <https://www.usgs.gov/special-topics/water-science-school/science/water-qa-why-water-universal-solvent#overview> accessed November 13, 2022

¹⁷⁸ "How Much Water Is There on Earth? Completed" (*How Much Water is There on Earth?* | U.S. Geological Survey) <https://www.usgs.gov/special-topics/water-science-school/science/how-much-water-there-earth> accessed November 13, 2022

¹⁷⁹ Chris Peacock, "What Are the Biggest Sources of Water Pollution?" (*Aquaread* August 27, 2019) <https://www.aquaread.com/blog/what-are-the-biggest-sources-of-water-pollution/> accessed November 13, 2022

¹⁸⁰ Marcos Von Sperling, "Wastewater Characteristics, Treatment and Disposal" (2015) 6 *Water Intelligence Online* 9781780402086

¹⁸¹ Sophie, "The Top Most Water Polluting Sectors" (*Tariff* September 6, 2022) <https://www.tariff.com/news-and-insights/top-water-polluting-sectors/> accessed November 15, 2022

10 - 15% of all oil and gas releases into the oceans yearly. However, the maritime industry's normal discharges, both legal and illicit, account for around one-third of the total. The end result is that such oil leaks are killing sea life and harming fish and birds. In 2021, approximately 15,000 metric tonnes of oil were spilt.¹⁸²

2.1.2 Sustainability

Sustainability means the ability to retain specific natural conditions over time.¹⁸³ It has been defined as the efficient and fair distribution of resources intra-generationally and inter-generationally, utilising socio-economic practices within the boundaries of a finite environment.¹⁸⁴ The definition is extended when connoting developing and maintaining a healthy ecological and social environment for human development.¹⁸⁵ Sustainability targets human actions and their ability to meet human needs without depleting or wasting productive capital at their disposal.¹⁸⁶ This, therefore, embraces concepts about how people lead their social and economic lives based on available natural capital for human development.¹⁸⁷ The common denominator in the several definitions of sustainability draws attention to the need for humanity to conserve resources at its disposal. The planet's security as an ecosystem has become more disrupted in the last hundred years than in all the centuries before.¹⁸⁸ Transforming current global cultural norms relating to the environment is the most pressing challenge confronting man, since it has to consider the capability of the earth to sustain human life.¹⁸⁹

¹⁸² ITOPF, 2022, available at: <https://www.itopf.org/>

¹⁸³ Andrew D Basiago, 'Economic, Social, And Environmental Sustainability in Development Theory and Urban Planning Practice' (2020) 19 *Environmentalist*

<https://link.springer.com/article/10.1023/A:1006697118620#citeas> accessed 5 July 2020.

¹⁸⁴ Milena Bottero and others, 'A Pocket Guide to Sustainable Development ... - Stakeholder Forum - MAFIADOC.COM' (mafiadoc.com, 2020) https://mafiadoc.com/a-pocket-guide-to-sustainable-development-stakeholder-forum_59bf2f0e1723ddfa70fc9797.html accessed 5 July 2020.

¹⁸⁵ Markus J Milne and Rob Gray, 'W(H)ither Ecology? The Triple Bottom Line, The Global Reporting Initiative, And Corporate Sustainability Reporting' (2012) 118 *Journal of Business Ethics* page 13-29 <https://link.springer.com/article/10.1007/s10551-012-1543-8> accessed 6 July 2020

¹⁸⁶ Craig F Thomas, 'Naturalizing Sustainability Discourse: Paradigm, Practices and Pedagogy of Thoreau, Leopold, Carson And Wilson' (Baylor.edu, 2015) https://repository.asu.edu/attachments/150805/content/Thomas_asu_0010E_15079.pdf accessed 6 July 2020

¹⁸⁷ Justice Mensah and Sandra Ricart Casadevall, 'Sustainable Development: Meaning, History, Principles, Pillars, And Implications For Human Action: Literature Review' (2019) 5 *Cogent Social* <https://www.tandfonline.com/doi/abs/10.1080/23311886.2019.1653531> accessed 2 July 2020

¹⁸⁸ Marco Keiner, *The Future of Sustainability* (Springer 2006)

¹⁸⁹ Tomáš Háek, Svatava Janoušková and Bedřich Moldan, 'Sustainable Development Goals: A Need for Relevant Indicators' (2016) 60 *Ecological Indicators* pages 565-573

<https://www.sciencedirect.com/science/article/pii/S1470160X15004240?via%3Dihub> accessed 6 July 2020

Among a host of international bodies, the World Bank continues to call for innovative systems to manage the earth's resources.¹⁹⁰ Much recent research¹⁹¹ draws attention to cross-generational needs. Still, since the future's needs are not easy to ascertain, contemporary research focuses on prioritising environmental, economic, and social challenges in a manner deemed beneficial.¹⁹² The economic model attempts to do this by sustainably accumulating and using natural and financial capital. The social model seeks to improve political, cultural, religious, educational, and healthcare frameworks in addition, the social models seek to improve political, cultural, religious, educational, and healthcare frameworks, ensuring fundamental human rights and well-being, to achieve sustainable development.¹⁹³ The environmental model is based on biodiversity and ecological integrity.

2.2 The Origins of Environmental Sustainability

As touched on earlier, growing environmental pollution concerns in the 1960s and 1970s were epitomised by Rachel Carson's book *Silent Spring*,¹⁹⁴ as well as the founding of the Club of Rome in 1968 and the establishment of Greenpeace in 1971. Pollution awareness laid the foundation for what was subsequently considered as sustainability and sustainable development. This process began in the 1970s, with concerns about negative impacts on natural ecosystems or natural resources and the human environment. These were subsequently expanded to include all of the systems that support life on earth, including human society.¹⁹⁵ It was perceived that reducing such negative environmental consequences would enhance environmental sustainability.¹⁹⁶

¹⁹⁰ The World Bank 'Atlas of Sustainable Development Goals 2017: From World Development Indicators: World Bank Atlas' (*Elibrary.worldbank.org*, 2020)

<https://elibrary.worldbank.org/doi/abs/10.1596/978-1-4648-1080-0> accessed 6 July 2020

¹⁹¹ UN, *Transforming our world: the 2030 Agenda for Sustainable Development* (United Nations General Assembly 2015)

¹⁹² Farrukh Hussain, Muhammad Nawaz Chaudhry and Syeda Adila Batool, 'Assessment of Key Parameters in Municipal Solid Waste Management: A Prerequisite for Sustainability' (2014) 21 *International Journal of Sustainable Development & World Ecology* page 519-525

<https://www.tandfonline.com/doi/full/10.1080/13504509.2014.971452> accessed 6 July 2020

¹⁹³ Bars Evers, 'Why Adopt the Sustainable Development Goals? The Case of Multinationals in The Colombian Coffee and Extractive Sector' (*Erasmus University Rotterdam*, 2018)

<https://thesis.eur.nl/pub/41819/Evers-Bas.pdf> accessed 6 July 2020.

¹⁹⁴ *Ibid* Carson

¹⁹⁵ Paul Raskin, *Great Transition: The Promise and Lure of the Times Ahead* (SEI, Stockholm Environment Institute 2002) page 31

¹⁹⁶ Page 34

While environmental pollution is not a new occurrence, it has primarily been a local or regional concern for most of human history. In response to the public outcry propelled by works such as Carson's *Silent Spring*, the United States passed the *National Environmental Policy Act* (NEPA) in 1969. This law came into effect on January 1, 1970, and it sparked worldwide chaos, particularly since it mandated an Environmental Impact Assessment (EIA) for significant projects with public involvement. This approach was later adopted in Germany and elsewhere in Europe.¹⁹⁷

Article 2 of NEPA states¹⁹⁸ that an EIA must identify, anticipate, and assess the consequences of a project with public engagement on:

1. Humans, including human health, animals, plants, and biological variety.
2. The earth, its resources, atmosphere, weather, and topography
3. Cultural assets and other material assets; and
4. The interplay of the foregoing assets.

This all-encompassing method treats environmental preservation as an eco-systemic problem, laying the groundwork for both environmental management and sustainability administration.¹⁹⁹ A series of UN Environmental Conferences significantly impacted the development of the new global environmental policy.²⁰⁰ This is also where the concept of environmental sustainability emerged and achieved widespread attention. The most notable conference, known as the Earth Summit,²⁰¹ was highly productive, resulting in the adoption of six agendas that were recognised as the most critical areas of action in global environmental sustainability concerns:

1. Rio Declaration on the Status of the Environment and Development (known as the Rio Declaration)
2. Forest Principles
3. Framework Convention on Climate Change

¹⁹⁷ Edmund A Spindler, "The History of Sustainability the Origins and Effects of a Popular Concept" [2013] Sustainability in Tourism 9

¹⁹⁸ The U.S. National Environmental Policy Act (NEPA) of 1969

¹⁹⁹ Ibid Spindler

²⁰⁰ 1st Environmental Conference in 1972 in Stockholm, 2nd Environmental Conference in 1982 in Stockholm, 3rd Environmental Conference in 1992 in Rio de Janeiro, 4th Environmental Conference in 2002 in Johannesburg 5th Environmental Conference in 2012 in Rio de Janeiro (Rio+20)

²⁰¹ The UN Conference on Environment and Development of 1992

4. Convention on Biological Diversity
5. Convention to Combat Desertification
6. Agenda 21

A subsequent and major initiative, known as the Sustainable Development Conference of 2015,²⁰² reaffirms all of Agenda 21's goals as the foundation for sustainable development,²⁰³ identifying a total of 17 goals, all of which revolve around the same themes as Agenda 21: people, planet, prosperity, peace, and collaboration. Environmental sustainability is intimately connected to Goals 6, 7, 12, 13, 14, and 15. The aims underpinning these goals are primarily related to the natural environment. These goals focus on preventing biodiversity loss, battling land degradation and desertification, providing access to inexpensive, clean energy, using natural resources sustainably, and protecting life in aquatic and terrestrial ecosystems from climate change.

Climate change has been described as an existential threat to humanity.²⁰⁴ Global warming gases (GHGs) are projected to grow by 50% by 2050 due to rising population and energy consumption.²⁰⁵ According to an International Energy Agency's global assessment report, carbon emissions increased in 2018 by 1.7% due to a 2.3% increase in energy consumption, which is ten times more rapid than the previous decade.²⁰⁶ About 90% of the world's population breathes dirty air, and the World Health Organization estimates that 7 million lives are lost annually due to exposure to particulate matter.²⁰⁷

Global data demonstrate unequivocally that things are worsening, especially regarding environmental sustainability. In fact, it can be plausibly argued that the environment and climate are in a state of emergency right now.

²⁰² United Nation, *Transforming Our World: The 2030 Agenda for Sustainable Development* (United Nations 2015)

²⁰³United Nations General Assembly "Resolution adopted by the General Assembly" 25 September 2015

²⁰⁴ By both the UN and OECD Ibid

²⁰⁵ OECD, *Environmental Outlook to 2050* (OECD 2012)

²⁰⁶ SDG knowledge hub: IISD, "Global Energy Demand in 2018 Grew at Fastest Pace in a Decade" (*SDG Knowledge Hub*2019) <https://sdg.iisd.org/news/global-energy-demand-in-2018-grew-at-fastest-pace-in-a-decade/> accessed November 19, 2022

²⁰⁷ Climate & Clean Air Coalition(CCAC secretariat), "World Health Organization Releases New Global Air Pollution Data" (*Climate & Clean Air Coalition* September 22, 2018) <https://www.ccacoalition.org/en/news/world-health-organization-releases-new-global-air-pollution-data> accessed November 19, 2022

2.3 The Research Definition of Environmental Sustainability

In defining environmental sustainability, this research looks to the dictionary as an ideal starting point and then subsequently to the definition created by international institutions for environmental sustainability. The Online Cambridge Dictionary defines sustainability as "the quality of being able to continue over a period of time."²⁰⁸ The current definition of sustainability in the Oxford English Dictionary is "The property of being environmentally sustainable; the degree to which a process or enterprise is able to be maintained or continued while avoiding the long-term depletion of natural resources".²⁰⁹

The U.S. Environmental Protection Agency (EPA) defines environmental sustainability as "the ability to create and maintain the conditions under which humans and nature can exist in productive harmony to support present and future generations".²¹⁰

Academic researchers have defined environmental sustainability as a condition of balance, resilience, and interconnectedness which allows human society to satisfy its needs, neither exceeding the capacity of its supporting ecosystems to continue to regenerate the services necessary to meet those needs, nor by human actions diminishing biological diversity.²¹¹ According to Goodland, environmental sustainability "seeks to improve human welfare by protecting the sources of raw materials used for human needs and ensuring that the sinks for human wastes are not exceeded, in order to prevent harm to humans".²¹²

²⁰⁸ Cambridge Dictionary "Sustainability" (*Cambridge Dictionary*) <https://dictionary.cambridge.org/dictionary/english/sustainability#:~:text=the%20quality%20of%20causing%20little,See> accessed November 19, 2022

²⁰⁹ Mike Halliday, "How Sustainable Is Sustainability?" (*Oxford College of Procurement and Supply* November 12, 2019) <https://www.oxfordcollegeofprocurementandsupply.com/how-sustainable-is-sustainability/#:~:text=The%20current%20definition%20of%20sustainability,term%20depletion%20of%20natural%20resources%E2%80%9C> accessed November 19, 2022

²¹⁰ National Research Council; Policy and Global Affairs; Science and Technology for Sustainability Program; Committee on Incorporating Sustainability in the U.S. Environmental Protection Agency, "Sustainability and the U.S. EPA" (*The National Academies Press* August 2, 2011) <https://nap.nationalacademies.org/catalog/13152/sustainability-and-the-us-epa> accessed November 19, 2022

²¹¹ John Morelli, "Environmental Sustainability: A Definition for Environmental Professionals" (2011) 1 *Journal of Environmental Sustainability* 1

²¹² Robert Goodland, "The Concept of Environmental Sustainability" (1995) 26 *Annual Review of Ecology and Systematics* 1

Holdren et al.²¹³ refer to environmental sustainability as allowing present and future generations to advance economically and socially within a framework of cultural diversity while maintaining (a) biological diversity and (b) the biogeochemical integrity of the biosphere through prudent conservation and use of air, water, and land resources

The OECD Environmental Strategy for the First Decade of the Twenty-First Century has also delivered an essential contribution to the notion of environmental sustainability.²¹⁴ The Strategy establishes four specific criteria for environmental sustainability:

1. Regeneration (renewable resources must be used efficiently, and their use must not exceed their long-term rates of natural regeneration).
2. Substitutability (non-renewable resources must be used efficiently, and their use must be limited to levels that can be offset by substitution with renewable resources or other forms of capital).
3. Assimilation (releases of hazardous or polluting substances must be avoided).
4. Avoiding irreversibility

It further proposes five interconnected goals for improving a cost-effective and operational environmental sustainability policy in the context of long-term development, including:

- Maintaining ecosystem integrity through efficient natural resource management.
- Decoupling environmental pressures from economic growth.
- Improving decision-making information by measuring progress through indicators.
- The social and environmental interface: improving the quality of life.
- Global environmental interdependence: improving governance and cooperation.

²¹³ J P Holdren and others "The meaning of sustainability: biogeophysical aspects" In Mohan Munasinghe and Walter Shearer, *Defining and Measuring Sustainability* (Distributed for the United Nations University by the World Bank 1995)

²¹⁴ OECD, *OECD Environmental Strategy for the First Decade of the 21st Century* (Organisation for Economic Co-operation and Development 2001)

Based on the definitions and understanding of environmental sustainability established above, it would appear that the general understanding and the usage of the reference is linked to human interaction with the ecosystem. Thus this research defines environmental sustainability as:

"The intersection of human activity with the natural environment in a manner that benefits the present and future generations".

The fundamental motivation behind this attempt to define environmental sustainability has been to support environmental professionals and others in conceptualising a component of the notion of sustainable development as outlined in Our Common Future.

2.4 Concepts and Theories of Environmental Sustainability

The evolution of the concept of Environmental Sustainability is intricately linked to that of sustainable development. Hence the analysis of Sustainable Development theories cannot be isolated from the application of relevant environmental sustainability policies. This is captured in table 2.1. below:

Table 2:1 Timeline of Sustainable Development Trends²¹⁵

Initiatives	Sustainable Development Milestones	Mitigation Principles	Thesis Research Implications
The United Nations Conference on the Human Environment (1972)	The emergence of concerns about environmental problems.	Held the world summit in Stockholm in 1972. ²¹⁶	Environmental concerns were highly important to the developed world, while poverty issues were prioritised in emerging countries.
Publication of "Our Common Future" (1987)			The first comprehensive definition that is widely accepted. Emphasis on the need to change the current developmental model.
Rio Declaration on Environment and Development (1992) Agenda 21		Held the United Nations Conference in Rio de Janeiro, Brazil, in 1992.	This conference highlighted the concept of common but differentiated responsibility. ²¹⁷

²¹⁵ Compiled by the researcher

²¹⁶ Ibid Our Common Future.

²¹⁷ Meaning that developed countries can help developing countries through funding and transfer of technology.

Initiatives	Sustainable Development Milestones	Mitigation Principles	Thesis Research Implications
			Established the need for global governance and partnership. ²¹⁸ Established the three pillars of SD. ²¹⁹
The United Nations Millennium Summit (2000) should this entry appear after the 199 one?	Extreme poverty.	Identified the Millennium Development Goals (MDGs). Set 21 operational targets. ²²⁰	The MDG is now a major international and national set of guiding principles with operational targets.
The science of sustainable development (1999)	Integration of science to measure and conceptualise SD. ²²¹	Published the Sustainability of Science in 2001. ²²²	
"Rio+20" Summit (2012)	The conflict between the three pillars of SD. ²²³	Identified the Green Economy as key to solving the developmental and environmental conflict. ²²⁴	SD has grown from three foundations to four: economic, social, environmental, and inter/intra-generational equity. ²²⁵
Transforming our World – the 2030 Agenda for Sustainable Development (2015)	Issues implementing the MDG.	Approved a new strategy, 'Transforming our world – the 2030 Agenda for SD.' ²²⁶	SDG became more focused on inclusive growth of all pillars.

i. The economic aspect of sustainability

The word economy can mean "household management" and is derived from the Greek word 'Oikos', meaning "house", and 'nomos', which means "practice" or "law". Economic sustainability refers to policies that encourage long-term economic development without having a detrimental effect on the social, environmental, and cultural aspects of society. An optimal and sustainable economy offers the least amount of resource use and environmental damage,

²¹⁸ Longyu Shi and others, 'The Evolution of Sustainable Development Theory: Types, Goals, And Research Prospects' (2019) 11 Sustainability page 5.

²¹⁹ Ibid Agenda 21.

²²⁰ 'United Nations Millennium Development Goals' (*Un.org*) <http://www.un.org/millenniumgoals/> accessed 24 January 2021.

²²¹ J. M. Anderies and others, 'Panaceas, Uncertainty, and the Robust Control Framework In Sustainability Science' (2007) 104 Proceedings of the National Academy of Sciences pages 15194–15199.

²²² Robert Kates, William C. Clark et al., 'Sustainability Science' [2001] SSRN Electronic Journal <https://science.sciencemag.org/content/292/5517/641> accessed 26 February 2021.

²²³ Economy, Society and Economy.

²²⁴ E. B. Barbier, 'The Green Economy Post Rio+20' (2012) 338 Science pages 887-888.

²²⁵ Otto Spijkers, 'Intergenerational Equity and the Sustainable Development Goals' (2018) 10 Sustainability page 3836.

²²⁶ United Nations, 'Transforming Our World: The 2030 Agenda for Sustainable Development' (United Nations 2015).

thereby contributing to overall well-being. To be fully economically sustainable, the total consumption of natural resources (also known as an ecological footprint) must be less than the renewable resource supply of nature itself (also known as biocapacity). The economic systems in most developed countries provide a decent standard of living and well-being for a high percentage of their people in comparison with developing regions.²²⁷ Once an economy reaches a specific size (measured in GDP per capita), further growth would be counterproductive and detrimental. Given that developed economies keep growing, continue to harm the environment and are not greatly increasing people's well-being, what can be done? Economic growth, therefore, demands the most inclusive and fiscally responsible decision-making, route while considering other aspects of sustainability.

ii. The social aspect of sustainability

The first six principles of the UN Global Compact concentrate on the corporate social element, of which human rights is its basis.²²⁸ Social sustainability is about identifying and managing positive and negative impacts on people. The quality of relations between an organisation and its stakeholders is essential. The concept means that people matter, as development is about people.²²⁹ In contrast to environmental and economic systems, where there is a flow and the cycles are readily apparent, the dynamics within the social system are highly intangible and unable to be easily modelled.²³⁰ Research from the 19th and 20th centuries suggests that resilience is an integral part of social sustainability. A community's resilience will determine its capacity to mobilise and react appropriately to stress, making it essential to social sustainability.²³¹ Economic resources are significant

²²⁷ 'National Income Growth And Standard Of Living Of Developed Nations' (*UKEssays.com*, 2015) <https://www.ukessays.com/essays/education/national-income-growth-and-standard-of-living-of-developed-nations.php> accessed 17 March 2021.

²²⁸ 'The Ten Principles | UN Global Compact' (*Unglobalcompact.org*, 2020) <https://www.unglobalcompact.org/what-is-gc/mission/principles> accessed 12 July 2020.

²²⁹ Elimma C Ezeani, *The WTO and its Development Obligation: Prospects for Global Trade* (2010, Anthem Press) page 55-106, also see Kim Harrison, "Reputation and stakeholder relations: Stakeholder relations", (*Cutting Edge PR Insights*, 2020) <https://cuttingedgepr.com/stakeholder-relations-management-key-skill/> accessed 12 July 2020.

²³⁰ Jack Rabin, Gerald Miller and W. Bartley Hildreth, *Handbook of Strategic Management* (M Dekker 2000) page 67.

²³¹ Renschler, "A Framework for Defining and Measuring Resilience at the Community Scale" (National Institute of Standards and Technology 2010), Technical Report MCEER-10-0006.

to sustainability, but alone cannot make a community resilient.²³² The research identifies 8 primary components which further define and operationalise community resilience. These 8 community resilience dimensions comprise:

- 1) community resources.
- 2) community resource development.
- 3) community resource engagement.
- 4) active agents.
- 5) collective action.
- 6) strategic action.
- 7) equity
- 8) impact.²³³

The community development research and literature will elaborate more on these strategies and components of community resilience.

iii. The environmental aspect of sustainability

The concept of environmental sustainability is about the Earth's natural surroundings and the processes involved.²³⁴ It relates to the productive resilience needed to sustain human life, and concerns the integrity of ecosystems and capacity-building of the natural environment.²³⁵ This means that natural resources must be harvested no faster than they can be regenerated, while waste must be released no faster than the atmosphere can fully integrate it.²³⁶ Goodland's conceptualisation²³⁷ of environmental sustainability is acceptable in the resource-

²³² Graham A. Tobin, 'Sustainability and Community Resilience: The Holy Grail of Hazards Planning?' (1999) 1 *Environmental Hazards* pages 13-25
https://www.tandfonline.com/doi/abs/10.3763/ehaz.1999.0103?casa_token=R29yITnowJkAAAAA:bVHSzTnKZBKKJCbW6RiwuLTavAfgUFOu0Lr21KzT7ox0yqRxQur1hHe7uxJh4J9yVcZSVbAIUVK6 accessed 13 July 2020.

²³³ Kristen Magis, 'Community Resilience: An Indicator of Social Sustainability' (2010) 23 *Society & Natural Resources* pages 401-416
<https://www.tandfonline.com/doi/abs/10.1080/08941920903305674> accessed 9 July 2020.

²³⁴ Michael L Morrison, Bruce Marcot and William Mannan, *Wildlife-Habitat Relationships* (3rd edn, Island Press 2006) page 417.

²³⁵ Christian Brodhag and Sophie Taliere, 'Sustainable Development Strategies: Tools For Policy Coherence' (2006) 30 *Natural Resources Forum* pages 136-145
<https://onlinelibrary.wiley.com/doi/abs/10.1111/j.1477-8947.2006.00166.x> accessed 13 July 2020.

²³⁶ David Mollica and Tom Campbell, *Sustainability* (Taylor and Francis 2009).

²³⁷ R Goodland, 'The Concept of Environmental Sustainability' (1995) 26 *Annual Review of Ecology and Systematics* page 1-24
<https://www.annualreviews.org/doi/abs/10.1146/annurev.es.26.110195.000245> accessed 13 July 2020.

limited ecological and economic framework of the "Limits of Growth".²³⁸ The concept has become globally accepted; and the most significant example of the concept is the OECD.

In recent times, the quest for growth has increased demands on the Earth's capacity, thereby causing strains.²³⁹ The effects of climate change²⁴⁰ provide a compelling argument for the need for environmental sustainability. To sustain this argument, it has been observed by the scientific community that the current trends in climate change are showing negative impacts on biodiversity, particularly in the reproductive cycles of some animal and plant species, the migration patterns of animals, species distributions, and population sizes.²⁴¹ The full impacts of global warming are still yet to be ascertained. It is predicted that by the year 2080, about 20% of coastal wetlands could be lost due to rising sea levels.²⁴² Evidence to support the concerns around environmental sustainability continues to increase.²⁴³ Hence it is crucial that society must adapt to the realities concerning the management of ecosystems and the natural limits to growth.²⁴⁴

²³⁸ The report argues that the biosphere has a limited ability to absorb human population growth, production, pollution: see Donella Meadows, Dennis L. Meadows and Jørgen Randers, *Limits to Growth* (Meadows 2012).

²³⁹ Måns Nilsson, David Griggs and David McCollum, 'A Guide to SDG Interactions: From Science to Implementation - International Science Council' (*International Science Council*, 2020) <https://council.science/publications/a-guide-to-sdg-interactions-from-science-to-implementation/> accessed 13 July 2020.

²⁴⁰ Climate change refers to significant and long-lasting changes in the climate system caused by natural climate variability or by human activities, see James C Coomer, *Quest for A Sustainable Society* (Woodlands conference by pergamon press 1979).

²⁴¹ Suresh Kumar, A Raizada and Hrittick Biswas, 'Prioritising Development Planning in the Indian Semi-Arid Deccan Using Sustainable Livelihood Security Index Approach' (2014) 21 *International Journal of Sustainable Development & World Ecology* page 332-345 https://www.researchgate.net/deref/http%3A%2F%2Fdx.doi.org%2F10.1080%2F13504509.2014.886309?_sg%5B0%5D=QPe6PBI9RXse4XE-pFsr9GKK2Oo2ubYtTf2bJbCIUt9sgRZDe2desmsMAyqZ-xSttWKKGJbTsMQXeysUesC6GAaSwg.J7F-OMuIdpQSzMko0wfUW7H0nJZLRbGKGOAjAXyx83LqH5S5arCny8y1OkAJNR-XnvR913a9z2HdJHnxhIrh6A accessed 13 July 2020.

²⁴² Jacobus A. Du Pisani, 'Sustainable Development – Historical Roots of the Concept' (2006) 3 *Environmental Sciences* https://www.tandfonline.com/servlet/linkout?suffix=CIT0027&dbid=20&doi=10.1080%2F23311886.2019.1653531&key=10.1080%2F15693430600688831&tollfreelink=2_18_6f2396f65a3afb20dcf52a793a0c1f7b9d74a3d4cd23f245dd101a72c645d789 accessed 2 July 2020.

²⁴³ Måns Nilsson, David Griggs and David McCollum, 'A Guide To SDG Interactions: From Science To Implementation - International Science Council' (*International Science Council*, 2020) <https://council.science/publications/a-guide-to-sdg-interactions-from-science-to-implementation/> accessed 13 July 2020.

²⁴⁴ Lorenza Campagnolo and others, 'The Ex-Ante Evaluation Of Achieving Sustainable Development Goals' (2017) 136 *Social Indicators Research* pages 73-116 https://ideas.repec.org/a/spr/soinre/v136y2018i1d10.1007_s11205-017-1572-x.html accessed 13 July 2020.

2.5 Challenges of environmental sustainability

The 2018 UN Secretary-General's Report described contradictions and shortcomings in environmental governance and instruments relating to the environment, which can be generally grouped as follows:²⁴⁵

1: The governance of the global commons

One of the most fundamental barriers to achieving environmental sustainability is that since no general rule applies to a complex matter such as sustainability, decisions are likely to be reached based on national priorities rather than global requirements.²⁴⁶ This is especially so because there are few, or there is a total absence of, incentives to do so. In the absence of a collective decision-making system that considers global priorities and can override national interests, frameworks have arisen to promote and correct decisions at the national level.²⁴⁷ In developing regions, the Reducing Emissions from Deforestation and Degradation (REDD) program incentivises forestation, but has been criticised for its market-based approach.²⁴⁸ What seems to be a reasonably simple response to climate change – paying to maintain forests – is much more nuanced than it seems at first glance. Since REDD is inseparable from today's profoundly dynamic societal, economic, and biological realities of forests, it remains contentious.²⁴⁹

2: The Efficiency of the United Nations Environment Programme (UNEP)

UNEP was established as the 'environmental life force' of the United Nations. UNEP itself is not a specialist organisation. It is linked as a subsidiary programme of the United Nations General Assembly. UNEP's detractors also argue that becoming a divisional programme limits the impact and efficiency of UNEP's mission and hinders its capacity to accomplish its objectives.²⁵⁰ UNEP reports to the Economic

²⁴⁵ UNEP, 'Putting the Environment At The Heart Of People's Lives' (UNEP 2018) https://wedocs.unep.org/bitstream/handle/20.500.11822/27689/AR2018_EN.pdf?sequence=1&isAllowed=y accessed 18 February 2021.

²⁴⁶ Ibid Maria Ivanova, 'Global Governance In The 21st Century: Rethinking The Environmental Pillar' (2011).

²⁴⁷ Ibid

²⁴⁸ 'REDD: Protecting Climate, Forests and Livelihoods' (*International Institute for Environment and Development*, 2021) <https://www.iied.org/redd-protecting-climate-forests-livelihoods> accessed 22 January 2021.

²⁴⁹ Ibid REDD.

²⁵⁰ Yale Center for Environmental Law and Policy, 'Campaign for a Global Environmental Organization: A French Perspective' (2003) <https://www.agirpourenvironnement.org/pdf/harada.pdf> accessed 22 January 2021.

and Social Council (ECOSOC),²⁵¹ meaning that only necessary communication is transmitted to the General Assembly. UNEP's mandate has been described as narrow because its core programmes are already inclusive of other UN environmental mandates.²⁵² The financial technique of 'voluntary donations' rather than 'assessed contributions' is said to make the initiative open to contributors' demands, connected to funding and linked to the financial crisis within UNEP.²⁵³

3: The efficiency of the UN Commission on Sustainable Development (UNCSD)

The UN established the Commission on Sustainable Development (CSD) with the mandate of evaluating and tracking performance towards internationally negotiated Sustainable Development Strategies and Objectives. This mandate can be seen as commendable and necessary to achieve sustainable development governance. However, the 20th and updated CSD conference's discussion would show that the major challenges the CSD face are the inability to integrate the Triple Bottom Line of sustainability into emerging issues. Speakers at the conference also referred to negotiation meetings being prolonged by the Commission, and the lack of a process for the execution and review of the application of its findings. In lieu of this shortcoming, the Commission recognised that an inclusive and successful High-Level Political Dialogue on Sustainable Change, (a forum that offered a new home for governments and all partners to work together), would promote sustainable development goals.

4: Coherence and Collaboration

The previous UNEP executive director pointed out in 2001²⁵⁴ that the growth and increased number²⁵⁵ of environmental institutions, issues, and agreements are

²⁵¹UN 'United Nations Economic and Social Council' (*Un.org*) <https://www.un.org/ecosoc/en/home> accessed 22 January 2021.

²⁵² Yale Center for Environmental Law and Policy, 'Making International Environmental Efforts Work: The Case for a Global Environmental Organization' (2001) http://scholar.google.co.uk/scholar_url?url=http://www.academia.edu/download/26455078/riopaper1_esty_ivanova.doc&hl=en&sa=X&ei=BUcKYMDOAtLKsQKJ053IBA&scisig=AAGBfm2INP6mXGXqOgftelIi1cDtaqkTIQ&nossl=1&oi=scholar accessed 22 January 2021.

²⁵³ Bharat H Desai, 'Revitalizing International Environmental Institutions: The UN Task Force Report and Beyond' (2000) 40 *Indian Journal of International Law*.

²⁵⁴ UNEP, 'International Environmental Governance, UNEP/IGM/1/2, 4' (Bonn, Germany 2001) https://unemg.org/wp-content/uploads/2018/11/report2_15_06_01.pdf accessed 22 January 2021.

²⁵⁵ To mention a few global governance initiatives, Equator Principles and the European Principles for the Environment (EPE), "Agenda 21", y, ISO 14000,17 ISO 14001, ISO 14004 and the myriad of ISO 14000.

placing stress on both nations and businesses. A critical question then arises around how businesses adapt under strict and abundant environmental laws and regulations. In light of this, corporate and environmental literature has thoroughly explored perspectives on how businesses react to external demands and perceptions to reduce harmful environmental externalities.²⁵⁶ Much as frontline²⁵⁷ compliance officers choose a variety of tactics to accomplish implementation and performance, companies often create or follow different methods to comply with regulatory risk.²⁵⁸ In reaction to regulatory demand, companies can choose methods which are consistent with their environmental guidelines, technical practices, and expertise.²⁵⁹ According to the International Environmental Agreements (IEA) Database Project,²⁶⁰ as of 2020, there were over 1300 Multilateral Environmental Agreements (MEAs), over 2200 Bilateral Environmental Agreements (BEAs), and 250 other environmental agreements, such as declarations and memoranda of understanding. Each of these structures has its own goals and mandates and may sometimes act autonomously, resulting in fragmented negotiation processes and the piecemeal regulating of international environmental problems.²⁶¹

5: Climate change governance

The United Nations Framework Conference on Climate Change (UNFCCC) is currently the most significant of all major environmental conferences. It continues to receive considerable attention from governmental and non-governmental

²⁵⁶ Annandale D Taplin, 'The Determinants of Company Response to Environmental Regulation' (2021) 6 *Journal of Environmental Policy & Planning* <https://doi.org/10.1080/1523908042000320704> accessed 22 January 2021, also see R Burby and R G Paterson, 'Improving Compliance With State Environmental Regulations' (1993) 12 *Journal of Policy Analysis and Management* <https://doi.org/10.2307/3325349> accessed 22 January 2021 and Garry D Brewer and Paul C Stern, *Decision Making For The Environment* (National Academies Press 2005).

²⁵⁷ 'At The Regulatory Front Lines: Inspectors' Enforcement Style and Regulatory Compliance' (2003) 13 *Journal of Public Administration Research and Theory* <https://doi.org/10.1093/jopart/mug014> accessed 22 January 2021.

²⁵⁸ Dror Etzion, 'Research on Organizations and the Natural Environment, 1992-Present: A Review' (2007) 33 *Journal of Management*.

²⁵⁹ Carlos Wing-Hung Lo and others, 'Unpacking The Complexity Of Environmental Regulatory Governance In A Globalizing World: A Critical Review For Research Agenda Setting' [2020] *Journal of Environmental Policy & Planning* <https://www.tandfonline.com/doi/full/10.1080/1523908X.2020.1767550> accessed 22 January 2021.

²⁶⁰ IEA 'IEA Project Contents | International Environmental Agreements (IEA) Database Project' (*Iea.uoregon.edu*, 2020) <https://iea.uoregon.edu/iea-project-contents> accessed 24 January 2021.

²⁶¹ Ibid Carlos Wing-Hung Lo and others, 'Unpacking The Complexity of Environmental Regulatory Governance in a Globalizing World.'

players alike and is concerned with rising demands for climate change adaptation and mitigation funding. The framework acknowledges²⁶² that policies need to be optimised by including capacity-building. Similarly, like most governance frameworks, finance although promised by many governments, is unavailable or inaccessible to the private sector.²⁶³

Although COP27 at Sharm el Sheik appears to have prospects in terms of the creation of a loss and damage fund for vulnerable countries, no additional efforts appear to have been made to actually limit global emissions.²⁶⁴

6: The Involvement of International Financial Institutions (IFIs)

Although global agreements on environmental sustainability are undertaken in the form of summits and conferences and through the governing councils of the related organisations (e.g. the UNEP Governing Council), the execution of these agreements, notably in developed countries, is primarily subject to the availability of sufficient levels of funding. Therefore, the function of foreign financial organisations, like the World Bank and Regional Development Banks, are important. The World Bank acts as the Trustee²⁶⁵ for both the Adaptation Fund²⁶⁶ and the Green Climate Fund,²⁶⁷ developed under the umbrella of the UNFCCC.²⁶⁸ The World Bank invests billions of dollars of funding for development, which can foster sustainable development if channelled adequately. In this capacity, the World Bank and the International Monetary Fund (IMF), are expected to act to the highest standard (accountable, transparent, and equitable) to achieve their mandates. Civil society has advocated an open merit-based system, but the

²⁶² (*Unfccc.int*) <https://unfccc.int/resource/climateaction2020/spm/chapter-ii/index.html> accessed 26 January 2021.

²⁶³ Ibid UNFCCC

²⁶⁴ "Cop 27: Climate Deal Falls Short on Ghg Cuts: Update: Argus Media" (*Commodity & Energy Price Benchmarks* November 20, 2022) <https://www.argusmedia.com/en/news/2393017-cop-27-climate-deal-falls-short-on-ghg-cuts-update#:~:text=Countries%20at%20the%20UN%20Cop,efforts%20to%20limit%20global%20emissions>. accessed November 28, 2022

²⁶⁵ 'Conference Of Parties (COP16) Draft Decision -/CP.16' (UNFCC 2010) https://unfccc.int/files/meetings/cop_16/application/pdf/cop16_lca.pdf accessed 27 January 2021. This is where the world bank was appointed interim trustee.

²⁶⁶ 'Governance - Adaptation Fund' (*Adaptation Fund*) <https://www.adaptation-fund.org/about/governance/> accessed 27 January 2021.

²⁶⁷ The 15th Meeting of the Parties of the UNFCCC in Copenhagen in December 2009, formed the Green Climate Fund.

²⁶⁸ 'Framework Convention on Climate Change: The 15th Meeting of the Parties of the UNFCCC in Copenhagen in December 2009, Formed the Green Climate Fund.' (UNFCCC 2009) <https://unfccc.int/resource/docs/2009/cop15/eng/11a01.pdf> accessed 27 January 2021.

election of a US national as the president of the World Bank in April 2019 unfortunately demonstrates a disregard for civil society opposition.²⁶⁹

The wider governance issues described in this research, combined with the specific institutional vulnerabilities, call for a reassessment of global governance in favour of environmental sustainability. Though there is a wider range of issues in this respect, the research has not been able to address all of these in the interests of brevity. The abundance and breadth of research in this field, combined with the rapidity and changing nature of the reform initiatives, implies that the research in this respect is not exhaustive.

2.6 Benefits of Environmental Sustainability

Businesses are gradually realising the value of environmental sustainability and incorporating it into their business structures. Today, CEOs prioritise sustainability because it improves their brand and reputation, strengthens stakeholder relations and boosts their bottom line.²⁷⁰ The more a firm's capacity to demonstrate to stakeholders that its operations are driven by good sustainability practices, the smaller the risks connected with that organisation. In contrast, poor environmental, social, and governance (ESG) performance can harm a company's brand, which can be an expensive mistake.²⁷¹

British Petroleum (BP) is an excellent illustration of how inadequate sustainability practices may harm a company's brand value. BP's brand value dropped by more than \$32 million a day as a result of the Gulf of Mexico oil spill. BP's market value fell by approximately 48 % in two months, from \$184 billion to \$96.5 billion.

Good environmental and social performance correlates with financial performance. Firms with good ESG performance outscored companies with weak ESG performance in accounting terms, according to a Harvard Business School research study that monitored performance over the previous 18 years.²⁷²

²⁶⁹ World Bank's Executive Directors Select David Malpass 13th President of the World Bank Group. World Bank Press Release, April 5, 2019

²⁷⁰ "The Business of Sustainability" (*McKinsey & Company* January 9, 2011) <https://www.mckinsey.com/capabilities/sustainability/our-insights/the-business-of-sustainability-mckinsey-global-survey-results> accessed November 28, 2022

²⁷¹ Ibid McKinsey

²⁷² Robert G Eccles G, Ioannis Ioannou and George Serafeim, "The Impact of a Corporate Culture of Sustainability on Corporate Behavior and Performance" [2011] Harvard Business School

The study also revealed that performance was greater in sectors that were big users of natural resources, where brand and human capital were more important, and where enterprises competed on a business-to-consumer basis.

2.7 Environmental Sustainability in the Oil and Gas Industry

Frequently, concerns have been expressed about the depletion and decline of oil and gas resources. While this downward trend is apparent, the exhaustion of oil and gas resources is still many years away.²⁷³ During the energy transition, the oil and gas industry can play a significant role in safely managing its operations and reducing emissions, discharges, and negative impact on the environment.²⁷⁴ Below are details of the impact of environmental pollution in the oil and gas industry:

i. Transboundary Pollution

The impact of oil and gas exploration, transportation and usage is not limited to the air, land and sea alone. Sometimes pollution can travel from one region to another, known as 'transboundary pollution'.²⁷⁵ Therefore, it is impossible for non-oil and gas producing countries to distance themselves from the transboundary impact of oil and gas activities.

The global nature of environmental pollution, especially in the air, has led to specific legislation, such as the 1985 *Vienna Convention for the Protection of the Ozone Layer*.²⁷⁶

Various measures are in place to tackle transboundary pollution, and these are discussed in the subsection on its environmental impacts on air, water and land pollution.²⁷⁷ International law has a very strong role to play in creating remedies in transboundary cases, but this issue has been problematic to address in and

²⁷³ 'U.S. Oil and Natural Gas Production to Fall In 2021, Then Rise In 2022' (*Eia.gov*, 2021) <https://www.eia.gov/todayinenergy/detail.php?id=46476> accessed 17 March 2021.

²⁷⁴ Ibid Arscott

²⁷⁵ Cynthia Fridgen Transboundary Pollution | Encyclopedia.Com' (*Encyclopedia.com*) <https://www.encyclopedia.com/environment/encyclopedias-almanacs-transcripts-and-maps/transboundary-pollution> accessed 29 March 2021.

²⁷⁶ Vienna Convention for the Protection of the Ozone Layer Vienna, 22 March 1985

²⁷⁷ See Appendix 2

outwith the courts.²⁷⁸ The case of the Baltic Sea pollution,²⁷⁹ where pollution from one factory affected six sovereign nations, highlights the importance of treaties and conventions in settling international disputes.²⁸⁰ In most transboundary cases, such as the Baltic Sea Pollution and the nuclear accident at Chernobyl on 26 April 1986, the environmental, social and economic damage was enormous²⁸¹ and impossible to fully overcome.²⁸²

The Chernobyl case highlights the problem of initiating legal proceedings and enforcements, especially where the polluters in transboundary cases are the national governments themselves.²⁸³ States have the burden of ensuring, through due diligence, the prevention of transboundary harm,²⁸⁴ meaning that they ought to provide legislation aimed at significantly reducing transboundary harm.²⁸⁵ Principle 11 of the Stockholm Conference reaffirms the position of the state on environmental policies in regard to transboundary pollution.²⁸⁶ Academic

²⁷⁸ Noah D Hall, 'Transboundary Pollution: Harmonizing International and Domestic Law' (2006) 40 University of Michigan Journal of Law Reform page 681

https://www.greatlakeslaw.org/blog/files/Hall_JLR_article.pdf accessed 31 March 2021.

²⁷⁹ The Baltic Sea is situated along Lithuania, Latvia, Estonia, Poland, Germany, Denmark, Sweden, and Finland; it is the largest body of polluted water that is composed of chemical waste. In this case the waste occurred from the river Rhine in Switzerland as a result of the Sandoz chemical spill see 'BBC ON THIS DAY | 1 | 1986: Chemical Spill Turns Rhine Red' (*News.bbc.co.uk*) http://news.bbc.co.uk/onthisday/hi/dates/stories/november/1/newsid_4679000/4679789.stm accessed 31 March 2021.

²⁸⁰ Ibid 'Transboundary Pollution | Encyclopedia.Com'

²⁸¹ Kate Brown, 'Chernobyl at 30: How Attempts to Contain the Radiation Failed' *TIME* (2016) <https://time.com/4305507/chernobyl-30-agriculture-disaster/> accessed 31 March 2021.

²⁸² There have been numerous publications that explain the Chernobyl accident's radiological, health, and socioeconomic consequences. See Nuclear Energy Agency, 'Chernobyl: Assessment Of Radiological And Health Impacts (2002)' (*Nuclear Energy Agency (NEA)*, 2020) https://www.oecd-nea.org/icms/pl_13598#:~:text=2002%20Update%20of%20Chernobyl%3A%20Ten%20Years%20On&text=The%20international%20radiological%20protection%20community,year%20anniversary%20of%20the%20accident. accessed 1 April 2021.

²⁸³ See the case of the enormous Chernobyl disaster in which the claimants were compensated based on politics and economic interplay in their various states. It was further reported that strategies in place to compensate the victims were often delayed see SERHII PLOKHY, 'The True Cost Of The Chernobyl Disaster Has Been Greater Than It Seems' *TIME* (2018) <https://time.com/5255663/chernobyl-disaster-book-anniversary/> accessed 31 March 2021.

²⁸⁴ John H. Knox, 'The Myth and Reality of Transboundary Environmental Impact Assessment' (2002) 96 *American Journal of International Law*. Page 291,294

²⁸⁵ United Nations, 'REPORT OF THE UNITED NATIONS CONFERENCE ON THE HUMAN ENVIRONMENT Stockholm, 5-16 June 1972' (The UN publications 1972) <http://undocs.org/en/A/CONF.48/14/Rev.1> accessed 7 April 2021.

²⁸⁶ Ibid

scholars,²⁸⁷ international initiatives,²⁸⁸ case law²⁸⁹ and the UN²⁹⁰ emphasise the need for coherence between national laws and international laws to address transboundary issues.

The earlier *Trail Smelter Case* highlights the point and the importance of treaties and agreements in transboundary pollution. The tribunal dealing with the case found it unnecessary to assess the facts on matters relating to violation of the rights of the United States under international law. Rather, it focused on interpreting the points represented in the signed convention, which was binding between the parties.²⁹¹ The Espoo Convention²⁹² is another treaty on transboundary pollution which has been signed by the United States and Canada.²⁹³ However, while Canada has ratified its membership, the USA is yet to do so.²⁹⁴

It can therefore be concluded that to achieve a global transboundary solution, there should be harmonisation of the relevant laws.²⁹⁵ Transboundary pollution can occur from both oil companies and state governments. Hence both parties can act to reduce and take responsibility for transboundary pollution.

1. Oil and Gas Pollution of the Atmosphere: UN Clean Air Initiative

Air pollution is caused by gas and particle emissions, as well as the chemical processes that occur in the atmosphere.²⁹⁶ Natural sources such as volcanic eruptions, sea spray and lightning can all cause it. However, a significant

²⁸⁷ Ibid Hall

²⁸⁸ An example includes the international Joint Commission where Canada and the USA work together to formulate local policies to support each other to prevent and resolve dispute on transboundary issues see 'Role of The IJC | International Joint Commission' (*International Joint Commission*, 2020) <https://ijc.org/en/who/role> accessed 7 April 2021.

²⁸⁹ *Trail smelter case (United States, Canada)* [1941] arbitration tribunal, III (arbitration tribunal)

²⁹⁰ Principle 21 reaffirm the position of that state in accordance with international law to avoid transboundary pollution out of its jurisdiction see Ibid

²⁹¹ Ibid *Trail Smelter Case* page 30

²⁹² The convention lays down state obligation on EIA to reduce transboundary impacts see 'Convention on Environmental Impact Assessment in A Transboundary Context' (United Nations Publication 2021) https://www.greatlakeslaw.org/blog/files/Hall_JLR_article.pdf accessed 04 April 2021.

²⁹³ 'Member States and Member States Representatives | UNECE' (*Unece.org*) <https://unece.org/member-states-and-member-states-representatives> accessed 8 April 2021.

²⁹⁴ Ibid UNECE

²⁹⁵ Ibid Fridgen

²⁹⁶ Eduardo P Olaguer, *Atmospheric Impacts of The Oil and Gas Industry* (Elsevier 2016) page 3

proportion of the contamination is created by five features of social activity: households, industry, transportation, agriculture and waste.²⁹⁷ Pollutants are released into the environment from various facilities, operations and usage of oil and gas well sites. Many gases and chemicals associated with the extraction of oil and natural gas may be found in air pollution and have been closely linked to climate change. The table in appendix 1 collates the major air pollutants from the oil and gas industry and how they are generated, as well as their impact.

The UN recognises that a sustainable climate is a fundamental right. The Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights all include explicit obligations on clean air.²⁹⁸ As a result the United Nations, World Health Organization (WHO), United Nations Environment Programme (UNEP), and Climate and Clean Air Coalition launched the "Clean Air Initiative".²⁹⁹ The Clean Air Initiative (CAI) promotes creative approaches to improve the air quality in communities by exchanging information and perspectives through collaboration in targeted areas of the world. The CAI, through the Breathe Life online platform,³⁰⁰ creates an avenue for its 63 cities, regions and countries membership base to update the world on their challenges and practices.

The Nigeria platform³⁰¹ is represented by Lagos city. In 2020 a record of 11,200 premature deaths were reportedly caused by air pollution in Lagos the largest recorded number in the West Africa area.³⁰² The World Health Organization further links the level of air pollution to mega cities like Mumbai. Best practice in place for Lagos recognises that a single action or establishment will not solve the air pollution crisis; rather, a combined effort is required. The strategy in place features the combined effort of the Lagos Management and Environment Health

²⁹⁷ Ibid see section (i,ii,iii)

²⁹⁸ 'International Day of Clean Air for Blue Skies' (*Unep.org*) <https://www.unep.org/interactive/all-you-need-to-know-air-pollution/> accessed 11 April 2021.

²⁹⁹ 'United Nations Announces 2019 Climate Action Summit 'Clean Air Initiative', Calls On Governments At All Levels To Join' (*United Nations Sustainable Development*, 2019) <https://www.un.org/sustainabledevelopment/blog/2019/07/clean-air-initiative-calls-climate-action/#:~:text=The%20%E2%80%9CClean%20Air%20Initiative%E2%80%9D%20calls,of%20which%20600%2C000%20are%20children> accessed 11 April 2021.

³⁰⁰ 'Breathe life Network - Breathelife2030' (*BreatheLife2030*) <https://breathelife2030.org/breathelife-cities/> accessed 13 April 2021.

³⁰¹ 'Air Pollution: A Silent Killer In Lagos' <https://breathelife2030.org/news/air-pollution-silent-killer-lagos/> accessed 13 April 2021.

³⁰² World Bank Group, 'The Cost of Air Pollution in Lagos.' (World Bank 2020) page 6 <https://openknowledge.worldbank.org/bitstream/handle/10986/33038/The-Cost-of-Air-Pollution-in-Lagos.pdf?sequence=5&isAllowed=y> accessed 13 April 2021.

Program /Air Quality Monitoring (PMEH/AQM),³⁰³ the World Bank and the International Finance Corporation (IFC). In 2017, the Nigerian Industrial Standards (NIS) for fuels (50 ppm), gasoline (150 ppm) and kerosene (150 ppm) were revamped.³⁰⁴ These reforms, however, are still pending clearance and adoption by the government. On the other hand, assistance from IFC³⁰⁵ has enabled the state to improve logistics through its Lagos Bus Rapid Transit (BRT). Overall, Lagos state's report on the Breathe Life platform mentions certain adoptions of the initiatives that are already practised in other developing regions.³⁰⁶ However, these initiatives³⁰⁷ are still a work in progress that rests on the cost of implementing them as well as the participation of corporate organisations and citizens.³⁰⁸

The CAI plan suggests that policymakers adopt air quality and climate change policies that will meet World Health Organization (WHO) Ambient Air Quality Guideline principles by 2030.³⁰⁹ Hence the paragraphs below will explore, respectively, how the United Nations climate change policies and WHO ambient guideline address the goals for clean air initiative and ultimately the 2030 agenda for sustainable development.

2. The Clean Air Initiative and the UNFCCC

Human actions destabilising the Earth's atmosphere cause air pollution, the single largest environmental danger to human health.³¹⁰ These same actions that cause air pollution, for example the burning of fossil fuel, which increases carbon dioxide emissions, are also the same actions that cause climate change and public health problems.³¹¹ Therefore, since air emissions and climate change are so inextricably

³⁰³ Ibid

³⁰⁴ Ibid

³⁰⁵ The funding includes World Bank-funded US\$300 million Lagos Urban Transport Project III, as well as the IFC-funded US\$50 million Lagos City Infrastructure project.

³⁰⁶ Retro-fitting pollution control equipment such as Diesel Oxidation Catalyst (DOC) and Diesel Particulate Filters (DPFs) have been in place since 2005-2011 in Chile and Mexico.

³⁰⁷ The Lagos State Government has developed the Lagos Computerized Vehicle Inspection Service (LACVIS), LACVIS performs roadworthiness checks on braking, steering, body and chassis balance, emission checking, lighting mechanism, headlights, and other components. according to comments on the website, nearly 750,000 experiments have been performed see 'Home - LACVIS' (lacvis.com.ng) <http://lacvis.com.ng/> accessed 13 April 2021.

³⁰⁸ Ibid Cost of clean air page 21

³⁰⁹ 'International Day of Clean Air for Blue Skies | United Nations' (*United Nations*, 2020) <https://www.un.org/en/observances/clean-air-day> accessed 12 April 2021.

³¹⁰ 'Climate Change and Air Pollution: Two Sides of The Same Coin' (*Who.int*) https://www.who.int/airpollution/events/conference/Climate_change_background.pdf?ua=1 accessed 12 April 2021.

³¹¹ Ibid

tied together, global attempts to address both should be driven by a coordinated³¹² policy structure;³¹³ one of the objectives of this research.

Appendix 1 most importantly captures the absence of global or sometimes national policies to control, calculate and report on black carbon emissions.³¹⁴ In the interest of capturing all the agenda of the CAI, perhaps the UNFCCC reporting³¹⁵ could also capture short-lived climate pollutants (SLCPs).³¹⁶ According to the Paris Agreement of the UNFCCC,³¹⁷ ratified countries³¹⁸ must regularly send reports on their efforts to reduce climate change. These UNFCCC reports do not, however, make provision for SLCPs. The World Health Organization recommended that it would be a significant step forward if each country submitted proposals for reducing and reporting on SLCP emissions in their nationally determined contribution (NDC) renewals in 2020.

3. The Clean air initiative and World Health Organization (WHO) Ambient Air Quality Guideline

Ambient air pollution is described by the World Health Organization (WHO) as possibly hazardous emissions generated by factories, homes and automobiles. Fine particulate matter has the largest impact on human health of all these toxins. Most fine particulate matter is generated by fuel combustion.³¹⁹ The World Health Organization Air Quality Guidelines (AQG) have

³¹² This will necessitate closer collaboration among ministries and sectors – energy, climate, health, finance, and others – that have historically been "isolated."

³¹³ Ibid

³¹⁴ Ibid page 3

³¹⁵ The report for UNFCCC includes carbon dioxide, methane, nitrous oxide, perfluorocarbons, hydrofluorocarbons, sulphur hexafluoride and nitrogen trifluoride but does not capture black carbon, particulate matter and volatile organic compounds captured in the CAI see 'Reporting Requirements' (Unfccc.int, 2021) <https://unfccc.int/process-and-meetings/transparency-and-reporting/reporting-and-review-under-the-convention/greenhouse-gas-inventories-annex-i-parties/reporting-requirements> accessed 14 April 2021.

³¹⁶ SLCP are air pollutants that are captured under the CAI, they not only slow down climate change but cause grave immediate health damage see 'Short-Lived Climate Pollutants' (worldbank.org, 2014) <https://www.worldbank.org/en/topic/climatechange/brief/short-lived-climate-pollutants#:~:text=In%20the%20fight%20to%20tackle,and%20solid%2Dfuel%20cooking%20fire> accessed 14 April 2021.

³¹⁷ United Nations, 'Report Of The Conference Of The Parties Serving As The Meeting Of The Parties To The Kyoto Protocol On Its First Session, Held At Montreal From 28 November To 10 December 2005' (United Nations 2006) page 65 <https://unfccc.int/resource/docs/2005/cmp1/eng/08a02.pdf#page=54> accessed 14 April 2021.

³¹⁸ 'United Nations Treaty Collection (UNTC)' (Treaties.un.org, 2021) https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=IND&mtdsg_no=XXVII-7&chapter=27&Temp=mtdsg3&clang=en accessed 14 April 2021.

³¹⁹ David Sherwin, 'What Is Ambient Air?' (Advancing Mining, 2021) <https://www.thermofisher.com/blog/mining/what-is-ambient-air/> accessed 14 April 2021.

been revised four times.³²⁰ The AQG are a valuable resource for government officials as they implement health-based national air quality management policies, especially in countries that lack the research infrastructure and expertise to perform their own analyses in support of public policy.³²¹ The most recent update³²² of the air quality guidelines provides for short-lived air pollutants,³²³ unlike the UNFCCC.

Currently, there appears to be no strategy in place for a rigorous, systemic assessment of the use of the AQG in policy development or their effect on national standard-setting activities, even though such an evaluation will be helpful to WHO; both in assessing the usefulness of the existing AQG and in planning possible guidance.³²⁴ Although this might be the case, there seem to be multiple applications of the WHO AQG and the WHO assessment of the health hazards of air pollution. The WHO's work on AQG has been referenced by governmental bodies,³²⁵ science and health-related organisations.³²⁶

To achieve the goals for the clean air initiative, the Secretary-General's Special Envoy for the Climate Action Summit,³²⁷ the UN Secretary-General³²⁸ and NGOs³²⁹

³²⁰ World Health Organization, 'Air Quality Guidelines for Europe' (WHO Regional Office for Europe 2021), WHO, 'Air Quality Guidelines for Europe: 2nd Ed, In European Series, No. 91' (WHO Regional Publications, Copenhagen 2000a), WHO, 'Guidelines for Air Quality. World Health Organization' (WHO (2000b) 2000), and WHO, 'Air Quality Guidelines: Global Update 2005' (WHO Regional Office for Europe 2006).

³²¹ Michal Krzyzanowski and Aaron Cohen, 'Update Of WHO Air Quality Guidelines' (2008) 1 Air Quality, Atmosphere & Health page 7-13 <https://link.springer.com/article/10.1007/s11869-008-0008-9> accessed 15 April 2021.

³²² In 2002–2004, The update was motivated by the WHO Regional Office for Europe project "Systematic analysis of health dimensions of air quality in Europe," conducted to promote the implementation of the European Commission "Clean Air for Europe" programme, concluded that advances in expertise required revision of air quality guidelines see WHO, 'Health Aspects Of Air Pollution. Results From WHO Project "Systematic Review Of Health Aspects Of Air Pollution In Europe"' (WHO Regional Office for Europe 2004) <http://www.euro.who.int/document/E83080.pdf> accessed 15 April 2021.

³²³ nitrogen dioxide (NO₂) and sulfur dioxide (SO₂) particulate matter (PM), ozone (O₃)

³²⁴ Ibid Krzyzanowski page 11

³²⁵ Ibid. See also, Commission of the European Communities, 'Proposal for A Directive Of The European Parliament And Of The Council On Ambient Air Quality And Cleaner Air For Europe. COM (2005) 447 Final' (Commission of the European Communities 2021) page 5, 'European Parliament Resolution on The Thematic Strategy on Air Pollution C 306 E/176' (European Union 2006).

³²⁶ 'Taking Steps to Improve Air Quality How the United States and France Are Working Together On Air Pollution' (*Arcgis.com*) <https://www.arcgis.com/apps/Cascade/index.html?appid=442cef04b5394d3c84c562c38411a823> accessed 17 April 2021.

³²⁷ Ibid

³²⁸ 'Take Action On Air Pollution To Save Lives, And The Planet, Urges UN Chief' (*UN News*, 2019) <https://news.un.org/en/story/2019/06/1039831> accessed 17 April 2021.

³²⁹ 'Air Pollution: Business Action For Energy Working. Working For Sustainable Solutions' (Sustainabledevelopment.un.org)

continue to call on governments, businesses and civil society at all stages to rise to the occasion, carrying strong commitments and clear proposals in regard to dealing with climate change concurrently.

4. Soil contamination in oil and gas developing countries

Soil contamination is caused mostly by human activities.³³⁰ Most industrial practices, including mining, smelting, fluid leaks during fracking and fracking operations, as well as during truck transport or by drainage systems, breakdown of well casings and machinery defects, as well as deterioration of pipes and tanks³³¹ and manufacturing, exacerbate the issue. Huge areas of soil and water sources around the world have been polluted by oil products.³³² Soil contamination from oil spills is a common environmental issue that often necessitates remediation and clean-up of the contaminated area.³³³ A minimum of one-third of the world's habitats are dealing with various pollution damages and, while the extent of soil contamination is unclear, some reports indicate that at least 22 million hectares could be polluted worldwide.³³⁴ Land contamination not only reduces productivity and causes health issues but also threatens environmental sustainability.³³⁵

The Intergovernmental Technical Panel on Soil (ITPS) World Status of Soil Resources Report³³⁶ identifies a gap between policy and implementation across

https://sustainabledevelopment.un.org/content/documents/business_1may_air.pdf accessed 17 April 2021.

³³⁰ 'Soil Pollution, A Hidden Reality | Global Soil Partnership | Food And Agriculture Organization Of The United Nations' (*Fao.org*, 2018) <http://www.fao.org/global-soil-partnership/resources/highlights/detail/en/c/1127426/> accessed 19 April 2021.

³³¹ John Pichtel, 'Oil And Gas Production Wastewater: Soil Contamination And Pollution Prevention' (2016) 2016 Applied and Environmental Soil Science <https://www.hindawi.com/journals/aess/2016/2707989/> accessed 19 April 2021.

³³² L Molina-Barahona and others, 'Ecotoxicological Evaluation Of Diesel-Contaminated Soil Before And After A Bioremediation Process' (2005) 20 Environmental Toxicology https://onlinelibrary.wiley.com/doi/pdf/10.1002/tox.20083?casa_token=F3FcYwk6BuAAAAAA%3AGB6zD7HAYJSo81wc6Hc5hA83N1f98zn8_VT7YLJOE7-TtW3GnoOUzqZkhu1wEAlcGGqXZ4ko9qn7kuN accessed 19 April 2021.

³³³ J.G. Bundy, G.I. Paton and C.D. Campbell, 'Microbial Communities in Different Soil Types Do Not Converge After Diesel Contamination' (2002) 92 Journal of Applied Microbiology page 276-288

³³⁴ Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (Organization), 'The Assessment Report On Land Degradation And Restoration : Summary For Policymakers' (IPBES secretarial 2018) <https://digitallibrary.un.org/record/1664467?ln=en> accessed 19 April 2021.

³³⁵ Christian Nellemann and Emily Corcoran, *Dead Planet, Living Planet: Biodiversity and Ecosystem Restoration For Sustainable Development. GRID-Arendal: United Nations Environment Programme (UNEP)* (Birkeland Trykkeri 2010) page 12

³³⁶ FAO, ITPS, 'Status Of The World'S Soil Resources: Main Report' (2015) <http://www.fao.org/documents/card/en/c/c6814873-efc3-41db-b7d3->

regions, particularly in low-income or developing regions. The polluter-pays principle³³⁷ is a basic legal principle that requires the person liable for polluting to compensate for the harm done to the environment. The principle is heavily relied upon in land pollution cases and is recognised by both domestic legal systems and international environmental law.³³⁸ The principles as applied to land contamination and pollution have been adopted in various forms.³³⁹ The most common trend is that some developing countries³⁴⁰ have made direct and timely payments to victims of environmental pollution. A classic example of this practice is in India, where the Supreme Court³⁴¹ incorporated the principle into its law and expanded the range of who can sue in relation to matters concerning the environment. Whilst this is a bold and forward step towards environmental sustainability and establishing the role of judicial precedents, the practice of providing timely relief to victims has been noted to defy the rationale of the 'polluter pays' principle..³⁴²

The Intergovernmental Panel on Climate Change (IPCC) recognises that land pollution can truncate the goals for climate change, hence its 2019 summary for policy makers³⁴³ draws attention to the issue of land degradation, sustainable land management and greenhouse gas fluxes in the terrestrial ecosystem.³⁴⁴ The report emphasises and addresses combating desertification and soil loss, ensuring food stability and promoting long-term development, and identifies measures that should be put in place.

[2081a10ede50/#:~:text=The%20SWSR%20is%20a%20reference,regional%20assessments%20of%20soil%20change.&text=It%20provides%20a%20description%20and,an%20in%20each%20region%20separately.](#) accessed 13 May 2021.

³³⁷ Alexander Zahar, 'Ascendancy Of The Polluter-Pays Principle In Climate Change Law' (2020) 114 National Taipei University Law Review

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3479845 accessed 14 May 2021.

³³⁸ In domestic law, polluters are civil entities, whereas in foreign law, they are governments.

³³⁹ Ibid Haller

³⁴⁰ India, Malaysia, Taiwan, Ecuador, Chile, Costa Rica, Kenya, South Africa see Ibid Haller

³⁴¹ *Indian Council for Enviro-legal Action & Ors v Union of India* [1996] India, 3 SCC 212 (India).

³⁴² Barbara Luppi, Francesco Parisi and Shruti Rajagopalan, 'The Rise and Fall Of The Polluter-Pays Principle In Developing Countries' (2012) 32 International Review of Law and Economics pages 135-144

³⁴³ IPCC, 'Climate Change And Land: An IPCC Special Report On Climate Change, Desertification, Land Degradation, Sustainable Land Management, Food Security, And Greenhouse Gas Fluxes In Terrestrial Ecosystems' (In press 2019) <https://www.ipcc.ch/site/assets/uploads/2019/11/SRCCL-Full-Report-Compiled-191128.pdf> accessed 16 May 2021 pages 15-44

³⁴⁴ Ibid

Significant research shows that soil contamination can be cleaned up,³⁴⁵ remediated³⁴⁶ and prevented. Most treatments are classified as physical therapies, with only one procedure, biodegradation, classified as a biological one. Chemical therapies include the use of agents to aid in retrieving dangerous material, while physical techniques involve eliminating the threat by physical means. The potential value of different clean-up strategies is determined by their large-scale applicability as well as their total cost.³⁴⁷ When pollution occurs, the first step, therefore, is to identify the cause and type of problem, and this would guide the kind of measure that is put in place.³⁴⁸ However, in general practice, when a spill, leak or incidence occurs in oil and gas activities, the effort to measure the extent of damage or avoid further spread or incidence usually begins immediately.³⁴⁹ In certain countries or regions of the world,³⁵⁰ state, municipal or local authorities are in charge of conducting a preliminary review to decide whether or not contamination exists or if additional intervention is required, whereas in other countries, no regulations or procedures have been identified.³⁵¹ It is in the absence of this that international bodies like the EITI have co-strategies to share best practices and outline the best procedures for rectifying oil and gas-related pollution. These organisations and guidelines are inclusive but not limited to those mentioned below.

³⁴⁵ See UNEP report on the Niger Delta oil spill on how to clean up oil spills in the Niger Delta region of Nigeria at United Nations Environment Programme, 'Environmental Assessment Of Ogoniland' (UNEP 2011) pages 12,15,85

³⁴⁶ Treatment is also a form of clean up, it includes but not limited to Class I injection wells. Class I injection wells,

³⁴⁷ 'Petroleum Contaminated Soils Remediation Technologies - Oil&Gas Portal' (*Oil&Gas Portal*, 2017) <http://www.oil-gasportal.com/environmental-issues/petroleum-contaminated-soils-remediation-technologies/> accessed 21 April 2021.

³⁴⁸ Ibid Natalie Rodríguez page 79

³⁴⁹ Ibid

³⁵⁰ Examples include but are not limited to the following: Denmark see soil remediation act now Soil Protection Act at Act on Contaminated Soil (No. 1427 of 2009) 2009, in the USA at Federal level is the Resource Conservation and Recovery Act 1976 which empowers the EPA to handle or hazardous waste issues

³⁵¹ Tianlik TEH and others, 'Risk Assessment Of Metal Contamination In Soil And Groundwater In Asia: A Review Of Recent Trends As Well As Existing Environmental Laws And Regulations' (2016) 26 *Pedosphere* page 431-450

5. The international association of oil and gas producers association (IOGP) guidelines on Soil contamination

The IOGP³⁵² was set up to guide regulatory agencies in improving industry performance and to help member countries and companies exchange health and safety expertise and best practices.³⁵³ It collects data³⁵⁴ annually from active members, which it then publishes under six³⁵⁵ categories. This data is the benchmark for identifying areas of improvement and good practice.

The sustainability guidance report aims to create transparency and bridge the gap between individuals and society. The IOGP does not interest itself in financial reporting,³⁵⁶ but rather in environmental sustainability strategy and performance. The core module³⁵⁷ and indicators³⁵⁸ necessary for reporting, if adhered to, could limit the issues of corruption through transparency of payments to the host government.³⁵⁹ The report guidance provides a step-by-step outline of how corporations should report within the oil and gas industry. The guidance specifically requests companies to use case studies, which strengthens the impact of the reporting. Although many oil and gas companies already make their reporting through the SDG framework and address issues against each goal of the IOGP guidance, the IOGP advises the use of the SDG Compass³⁶⁰ and the IPIECA SDG Atlas.³⁶¹

The IOGP guideline report acknowledges land pollution in the form of spills, and it is for this reason that, in addition to reporting on occurrences of oil spills, it

³⁵² 'Data Series | IOGP' (IOGP) <https://www.iogp.org/data-series/#2673468-safety-performance-indicators> accessed 16 May 2021.

³⁵³ 'About Us | IOGP' (IOGP.org) <https://www.iogp.org/about-us/> accessed 21 April 2021.

³⁵⁴ Data from active member organizations and their contractor staff on upstream activities worldwide, both onshore and offshore.

³⁵⁵ Occupational safety, Environmental performance, Process safety events, Health management, Land transport safety, and Aviation safety.

³⁵⁶ It does however encourage the participation in transparency initiative like EITI with more emphasis to transparency to communities see page 2.11 of the guidance report 2020

³⁵⁷ The core modules are the environmental sustainability agenda (governance and business ethics, the environment, climate change and energy, social and health and safety)

³⁵⁸ See the report 15 indicators page 1.6

³⁵⁹ This can also include information about the purpose and content of anti-bribery and anti-corruption training programs that is provided see page 2.9 of the report guidance 2020

³⁶⁰ The guide's aim is to help businesses implement SDGs and manage their commitments see 'SDG Compass – A Guide For Business Action To Advance The Sustainable Development Goals' (Sdgcompass.org, 2015) <https://sdgcompass.org/> accessed 16 May 2021.

³⁶¹ 'Mapping The Oil And Gas Industry To The Sustainable Development Goals: An Atlas' (IPIECA, 2017) <http://www.ipieca.org/resources/awareness-briefing/mapping-the-oil-and-gas-industry-to-the-sustainable-development-goals-an-atlas/> accessed 16 May 2021.

encourages oil and gas companies to report on how they intend to reduce these and eliminate recurrences as a primary indicator of their performance.

Currently, 41 member companies³⁶² update their CSR effort on the IOGP website. The link is a direct portal to the individual company's sustainability annual report. For example, the BP reports³⁶³ consider land pollution through their Carbon Mitigation Initiative (CMI) and land carbon projects. The reporting strategy is the same as that of Shell and other major companies listed. The question that arises is why its global membership is not reflected in its feedback reporting and why the 41 member companies are mainly large multinationals. Ideally, the IOGP must increase its media reach to both developing regions and smaller companies.

Finally, the issue of land pollution appears to rest heavily on environmental risk assessment,³⁶⁴ meaning that there cannot be liability for damages that are not disclosed by the risk assessment.³⁶⁵ However, in cases where there is a lack of or where insufficient risk assessment has been conducted, the court would usually place liability on the polluter for insufficient analysis.³⁶⁶ The *Jim 2 case* serves as a judicial precedent for common law areas; where an assessment has taken place before a transaction, then the party that carried out such an assessment would be liable for remediation.³⁶⁷

6. Water Pollution and crisis in the oil and gas industry and the paradox of environmental sustainability

Since the discovery of the first offshore oil well drilled in the Gulf of Mexico in 1938, technological advancements have made it easier to navigate deep water regions in search of new oil deposits, often without a contingency plan for worst-case possibilities.³⁶⁸ The very first significant environmental problem that drew

³⁶² See website link for members and their CSR strategies

³⁶³ BP, 'Reimagining Energy For People An Our Planet' (2020)

<https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-sustainability-report-2020.pdf> accessed 16 May 2021.

³⁶⁴ 'Contaminated Land—Risk Assessment' (www.lexisnexis.com)

https://www.lexisnexis.com/uk/lexispsl/environment/document/393765/55MD-4CB1-F18C-T1KG-00000-00/Contaminated_land_risk_assessment accessed 18 May 2021.

³⁶⁵ Ibid Rodgers 238

³⁶⁶ *Jim 2 Limited v Walsall Metropolitan Borough Council* [2017] APP/CL/15/3.

³⁶⁷ The appeal was granted because WMBC's risk assessment failed to demonstrate a significant possibility of significant harm, as required by EPA 1990, Pt IIA. Ibid

³⁶⁸ Justine Calma, 'Offshore Drilling Has Dug Itself A Deeper Hole Since Deepwater Horizon Ten Years After Deepwater Horizon, Offshore Drilling Creeps Farther Away From Shore' *The Verge* (2020) <https://www.theverge.com/2020/4/20/21228577/offshore-drilling-deepwater-horizon-10-year-anniversary> accessed 18 May 2021.

public attention was the possible pollution of water systems.³⁶⁹ Contamination may occur as a result of unintentional spills and runoff of drilling fluids or generated water taken from oil and gas reservoirs (flowback), wastewater disposal, well cement or casing rupture, or leaks from cracked rock.³⁷⁰

Exploration, fracking, and mining operations, both on and off the coast, are potentially invasive and harm wildlife, public health and cultural identities.³⁷¹ When oil is discovered, drilling operations are extended to allow for commercial-scale exploitation, which necessitates the installation of further wells and facilities.³⁷² Oil and gas production methods require a variety of drilling techniques, especially in the form of subsurface explosives. The use of potentially dangerous materials and activity in increasingly hostile conditions raises the risk of significant accidents in the offshore oil and gas industry.³⁷³ This challenge was illustrated by major incidents such as Piper Alpha (1988), Exxon Valdez (1989) and Deepwater Horizon (2010). Major incidents such as these inevitably lead to more legislation and guidelines to prevent such situations from happening again.³⁷⁴

In addition to water used during oil production activities being polluted, every year it has been reported that a million tonnes of radioactive barium a heavy metal used in the oil and gas industry, is being released into water bodies.³⁷⁵ Water is used at all stages of oil and gas production, extraction and refining.³⁷⁶ Water can be consumed or removed in significant amounts during operations; the water is

³⁶⁹ Stephen G Osborn and others, 'Methane Contamination Of Drinking Water Accompanying Gas-Well Drilling And Hydraulic Fracturing' (2011) 108 *Proceedings of the National Academy of Sciences* page 7

³⁷⁰ Daniel J Rozell and Sheldon J Reaven, 'Water Pollution Risk Associated With Natural Gas Extraction From The Marcellus Shale' (2011) 32 *Risk Analysis* page 1382-1393 also see Eduardo P Olaguer page 9

³⁷¹ The Center for Health and the Global Environment, Harvard Medical School, 'Oil: A Life Cycle Analysis of Its Health And Environmental Impacts' (2006) http://www.fraw.org.uk/files/toxics/epstein_2006.pdf accessed 19 May 2021.

³⁷² Erik E. Cordes and others, 'Environmental Impacts Of The Deep-Water Oil And Gas Industry: A Review To Guide Management Strategies' (2016) 4 *Frontiers in Environmental Science* page 58

³⁷³ Bruno S. Silvestre, Felipe Augusto P. Gimenes and Romeu e Silva Neto, 'A Sustainability Paradox? Sustainable Operations In The Offshore Oil And Gas Industry: The Case Of Petrobras' (2017) 142 *Journal of Cleaner Production* page 330-370

³⁷⁴ 'The Case For Safety The North Sea Piper Alpha Disaster' (*Sma.nasa.gov*, 2013) https://sma.nasa.gov/docs/default-source/safety-messages/safetymessage-2013-05-06-piperalpha.pdf?sfvrsn=3daf1ef8_6#:~:text=As%20the%20night%20crew%20turned,deadliest%20offshore%20oil%20industry%20disaster. accessed 27 May 2021.

³⁷⁵ Jack Doyle, *Crude Awakening: The Oil Mess In America: Wasting Energy, Jobs, & The Environment* (Friends of the Earth 1996).

³⁷⁶ The United Nations World Water Development, 'Valuing Water' (United Nations Educational, Scientific and Cultural Organization (UNESCO) 2021) page 119

then used for digging, cleaning and refining.³⁷⁷ Over-abstraction of groundwater, specifically non-renewable rainwater, is a key problem. Although the increasing awareness of this problem has led companies³⁷⁸ to seek alternative remedies, the problem of water pollution persists, as well as water scarcity.³⁷⁹

The impact of oil and gas activities not only devastates the area of exploration, production and usage, but also devastates and jeopardises the survival of the host communities.³⁸⁰ The conflict between oil and gas producers and host communities often leads to both resource and infrastructure crises. While global best practice moves inexorably towards environmental sustainability, the oil and gas industry is projected to conduct exploratory activities in deeper waters.

Private regulations, initiatives and policies have helped to promote water-related issues in environmental sustainability; these include but are not limited to hydrological data reporting.³⁸¹ Despite the increased necessity for water and the potential impact threat of climate change, which further emphasises the value of hydrological data, data volumes recorded publicly are far below identified station coverage thresholds.³⁸² The available data in three of the most publicly accessible and internationally comprehensive public water databases reveal an increasing discrepancy,³⁸³ with developing countries in Africa, Asia and South America underperforming.³⁸⁴ The situation is much worse when it comes to water-related socioeconomic and environmental statistics. Data on consumer water use and demand, including environmental water uses and restrictions, as well as their

³⁷⁷ Ibid

³⁷⁸ Understanding the importance of groundwater water protection and correcting the pattern of dwindling groundwater levels, many GCC countries, including Qatar and Saudi Arabia, have recently invested in controlled aquifer recharge schemes, with the vast majority relying on treated wastewater as a recharge source see Ibid 119

³⁷⁹ 'The International Convention Of 3 May 1996 On Liability And Compensation For Damage In Connection With The Carriage Of Hazardous And Noxious Substances By Sea (2021) page 31

³⁸⁰ Dara O'Rourke and Sarah Connolly, 'Just Oil? The Distribution Of Environmental And Social Impacts Of Oil Production and Consumption' (2003) 28 Annual Review of Environment and Resources page 587-617

³⁸¹ Hydrologic observations have enabled water resources in meeting societal needs. through the creation of multipurpose water control schemes, the collection, preparation, and dissemination of flood predictions, manage transboundary water challenges, water quality protection and most importantly regulating pollutant discharge see Ibid page UNESCO 2021 report 145

³⁸² Ibid 145

³⁸³ By 2010 notable decline in number in stations by 41%as well as reporting by 31%. By 2010 only 16 ountries have been producing their report see UNESCO 2021 report 145

³⁸⁴ Albert Cho and others, 'The Value Of Water Information: Overcoming The Global Data Drought, White Paper' (Xylem Inc 2021) <https://www.xylem.com/siteassets/about-xylem/xylem-value-of-water-information-2017-sept.pdf> accessed 26 May 2021 page14

relative values, are detached, incomplete or even completely inaccessible.³⁸⁵ These data are essential for exposing the various water principles and shaping or guiding decision-making in the areas of strategy, regulation and management. Other initiatives like Water, Sanitation and Hygiene (WASH)³⁸⁶ and the World Water Assessment Programme (WWAP) are not centred around the oil and gas industry, but focus rather on sanitation and water policy dialogues through their ad-hoc gender-responsive indicators and sex-disaggregated water data.³⁸⁷

Major multinational oil companies have yearly reports in which they portray their operations as sustainable and provide yearly reports to reflect good practice.³⁸⁸ The question then arises; can operations truly be sustainable within the oil and gas industry? Sustainable operations within the industry would entail:

the collection of skills and concepts that enable a firm to build and manage its business processes to earn competitive returns on its capital assets, without neglecting the legitimate requirements of internal and external stakeholders and with proper respect for the impact of its operations on people and the environment.³⁸⁹

The implementation strategy for the United Nations 2030 agenda is heavily reliant on a multistakeholder partnership to achieve the goals for environmental sustainability.³⁹⁰ Empirical research conducted within manufacturing companies in 19 countries³⁹¹ showed that collaboration could strengthen the goal to achieve the Triple Bottom Line. Other research, however, showed that oil and gas companies focused more on financial incentives. For collaboration and stakeholder engagement to be truly successful it has to be fully implemented at all stages.³⁹²

³⁸⁵ Ibid UNESCO 2021 report 146

³⁸⁶ UN 'Water, Sanitation And Hygiene (WASH) For All Initiative - United Nations Partnerships For Sdgs Platform' (*Sustainabledevelopment.un.org*) <https://sustainabledevelopment.un.org/partnership/?p=1665#:~:text=The%20core%20activity%20of%20WASH,water%20and%20sanitation%20infrastructure%20projects.> accessed 27 May 2021.

³⁸⁷ UNESCO 'About Us' (UNESCO, 2000) <https://en.unesco.org/wwap/about-us> accessed 27 May 2021.

³⁸⁸ Ibid

³⁸⁹ Paul R Kleindorfer, Kalyan Singhal and Luk N Wassenhove, 'Sustainable Operations Management' (2009) 14 *Production and Operations Management* pages 482-492

³⁹⁰ Ibid UN

³⁹¹ Cristina Gimenez, Vicenta Sierra and Juan Rodon, 'Sustainable Operations: Their Impact on The Triple Bottom Line' (2012) 140 *International Journal of Production Economics* 149-159

³⁹² Jude Talbot and Ray Venkataraman, 'Integration of Sustainability Principles Into Project Baselines Using A Comprehensive Indicator Set' (2011) 10 *International Business & Economics Research Journal (IBER)* page 29-40

Sustainability must incorporate not only industrial factors but also external stakeholders (governments, NGOs, media, host communities, universities). True sustainability gains are unlikely to be realised if individual components attempt to be more sustainable without regard for the entire system.³⁹³

Evidently, government regulations are not enough to guide oil and gas operations. Therefore, the role of a variety of actors might increase the overall output for sustainability within the oil and gas industry.³⁹⁴ This will be discussed in Ch.5 of this work on Corporate Social Responsibility. It has been argued that rules set by private firms need to supplement those established by the government, and in return these rules need to be truly part of the day-to-day choices in business operations within corporations.³⁹⁵ Indeed, private regulations could help promote the goal of environmental sustainability with the oil and gas companies and they have helped with and been crucial to operations within modern economies.³⁹⁶

Most importantly, it is necessary to establish that without a major cultural shift, the paradox of environmental sustainability will not be resolved. A behavioural shift has to occur that is similar to obtaining a social license to operate,³⁹⁷ and is a genuine change in corporate culture.³⁹⁸ The underlying assumptions of the organisation constitute the foundation of its culture and serve as the logic and explanation for the company's views.³⁹⁹

However, owing to the non-renewable nature of the oil and gas sector, which poses a direct threat to the environment, it may be argued that environmental sustainability is impossible. The growth of the coal, oil and gas industries pose numerous hazards to our ecosystems, atmosphere, streams and groundwater.⁴⁰⁰

³⁹³ Bruno S. Silvestre, 'Sustainable Supply Chain Management in Emerging Economies: Environmental Turbulence, Institutional Voids and Sustainability Trajectories' (2015) 167 *International Journal of Production Economics* page 156-159

³⁹⁴ *Ibid*

³⁹⁵ Richard M Locke, *The Promise and Limits Of Private Power: Promoting Labor Standards In A Global Economy* (Cambridge University Press 2013).

³⁹⁶ The research specifies circumstances for enhancing environmental regulation and taking some hints from the economic governance see D Vogel, 'Environmental Regulation and Economic Integration' (2000) 3 *Journal of International Economic Law* page 265-279

³⁹⁷ See chapter on social license to operate which recognises the power of host communities for effective oil and gas activities

³⁹⁸ Bob Doppelt, *Leading Change Toward Sustainability: A Change-Management Guide For Business, Government And Civil Society* (2nd edn, Greenleaf 2017) part II

³⁹⁹ Frank W. Guldenmund, 'The Nature of Safety Culture: A Review Of Theory And Research' (2000) 34 *Safety Science* pages 215-257

⁴⁰⁰ Melissa Denchak, 'Fossil Fuels: The Dirty Facts' (NRDC, 2018) <https://www.nrdc.org/stories/fossil-fuels-dirty-facts> accessed 1 July 2021.

Coal mining activities discharge acidic runoff in the water ways.⁴⁰¹ Conversely, all drilling, fracking and mining operations produce massive amounts of wastewater that can contain heavy metals, radioactive elements and other pollutants. Although there are practical steps in place to transition to renewable energy, such as wind and solar energy,⁴⁰² the ultimate shift to an oil-free civilisation will take a long time to achieve.⁴⁰³ Whilst this is happening, sustainable business strategies in the oil and gas sector are valuable, particularly when they are connected and designed to safeguard our society and our natural environment with stricter regulations, legal uniformity and enforcement.⁴⁰⁴ Oil and gas production is not sustainable, and is in no way friendly to the environment, but that doesn't necessarily mean that companies, governments and society together cannot contribute collaboratively in a positive way to pave the way towards increased environmental sustainability.⁴⁰⁵

2.7.1 Perspectives on Environmental Sustainability in the Oil and Gas Industry

In the oil and gas industry the linked term 'environmental sustainability' does not mean the ability to continue production indefinitely. It means dealing with global energy demand responsibly and at an affordable cost, while protecting the environment until technologically speaking a more eco-friendly product becomes commonly accessible.⁴⁰⁶ Certain companies within the oil and gas industry have

⁴⁰¹ Naomi Klein, 'Time For Big Green To Go Fossil Free' *The Nation* (2013)

<https://www.thenation.com/article/archive/time-big-green-go-fossil-free/> accessed 28 June 2021.

⁴⁰² 'UN Chief Calls For 'Urgent Transition' From Fossil Fuels To Renewable Energy' (*UN News*, 2021) <https://news.un.org/en/story/2021/01/1081802> accessed 1 July 2021.

⁴⁰³ Armon Rezai and Frederick Van Der Ploeg, 'Abandoning Fossil Fuel: How Fast And How Much' (2017) 85 *The Manchester School* page e16-e44

⁴⁰⁴ *Ibid*

⁴⁰⁵ The paper looks at big brands in the retail environment such as Amazon, rather than targeting the oil and gas industry but it does establish how these contributions are making contributions towards sustainability; see Lucas Bergman, 'Ways The Oil & Gas Industry Is Trying To Become More Sustainable And Green - Biofriendly Planet | For A Cooler Environment' (*Biofriendly Planet | For a Cooler Environment*, 2021) <https://biofriendlyplanet.com/eco-awareness/air-quality/emissions/ways-the-oil-gas-industry-is-trying-to-become-more-sustainable-and-green/> accessed 27 March 2021.

Also see Armon Rezai and Frederick Van Der Ploeg, 'Abandoning Fossil Fuel: How Fast And How Much' (2017) 85 *The Manchester School*

<https://onlinelibrary.wiley.com/doi/full/10.1111/manc.12189> accessed 28 June 2021.

⁴⁰⁶ Lyn Arcsott, 'Sustainable Development In The Oil And Gas Industry', *Paper presented at the SPE/EPA/DOE Exploration and Production Environmental Conference* (SPE/EPA/DOE 2003)

<https://onpetro.org/SPEHSSE/proceedings-abstract/03EPEC/All-03EPEC/SPE-83062-MS/137378> accessed 17 March 2021

coined definitions to express what it means to them. To Shell Petroleum, for example, environmental sustainability means the ability to provide more and cleaner energy solutions in a responsible manner – that is, in a way that checks short and long-term interests, at the same time incorporating economic, environmental and social concerns.⁴⁰⁷ To achieve its goals for environmental sustainability, Shell has designed the Power Progress strategy; a strategy that is meant to generate value for shareholders, customers and society through zero-emissions by the year 2050.⁴⁰⁸

In the table below key definitions and strategies to achieve environmental sustainability for a representative range of O&G companies are presented.

Table 2:7 What Environmental Sustainability (ES) means to the top 10 oil and gas companies in the world⁴⁰⁹

1	Corporate HQ	Oil and gas Company	Commitments for environmental sustainability
1	China	China Petroleum & Chemical Corporation (Sinopec)	Sets out a clear action plan for agenda 2030. ⁴¹⁰ Sinopec plans to provide cleaner energy solutions in a responsible manner, embracing long and short-term environmental implications.
2	The Hague, Netherlands	Royal Dutch Shell	Its strategy is informed by the UN strategy to ensure cleaner energy production in a responsible manner, balancing short and long-term interests. ⁴¹¹
3	China	PetroChina	To promote sustainability, the company adopts the UN strategy and invests in environmental protection and treatment, and monitors and controls waste emissions, among other initiatives. ⁴¹²

⁴⁰⁷ 'What Sustainability Means at Shell' (Shell.com, 2021)

<https://www.shell.com/sustainability/our-approach/sustainability-at-shell.html> accessed 21 March 2021.

⁴⁰⁸ Shell, 'Powering Progress' (Shell.com, 2021) <https://www.shell.com/powering-progress.html#iframe=L2FjaGlldmluZy1uZXQtemVyby1lbWlzc2lvdnM> accessed 27 March 2021.

⁴⁰⁹ Compiled by the researcher, also Ibid Data from offshore technology was last updated October 1st, 2020 15:11

⁴¹⁰ Sinopec 2019 mentions its sustainability strategy to include reacting to climate change, management of carbon emissions, reducing escapes and leakage, recycling of resources, management of natural resources, biodiversity protection, see '2019 Sinopec Corp. Communication On Progress For Sustainable Development' (China Petroleum & Chemical Corporation 2019) <http://www.sinopecgroup.com/group/en/Resource/pdf/2020032945.pdf> accessed 21 March 2021.

⁴¹¹ Ibid Shell website

⁴¹² PetroChina's 2019 report sets out what they have done to improve the goals for environmental sustainability, it is also deeply involved with the oil and gas climate initiative (OGCI) see PetroChina, '2019 ENVIRONMENTAL, SOCIAL AND GOVERNANCE REPORT' (PetroChina 2019) <http://www.petrochina.com.cn/ptr/xhtml/images/2019kcxfzbgcn.pdf> accessed 27 March 2021.

1	Corporate HQ	Oil and gas Company	Commitments for environmental sustainability
4	UK	BP Plc	Working to create value for society, shareholders and employees to ensure long-term resilience and value. ⁴¹³
5	USA	ExxonMobil	Committed to producing energy and chemicals that help sustain modern life, people, the environment and communities. This means minimising the risks posed by climate change. ⁴¹⁴ Environmental initiatives include collaboration with society, academia, governments and society. ⁴¹⁵
6	France	Total	Total intends to gradually reduce the carbon intensity of its energy generation. ⁴¹⁶ Its sustainability performance report clearly outlines its commitments ⁴¹⁷ and milestones achieved. ⁴¹⁸
7	California, USA	Chevron	Focuses its sustainability initiative on climate change through the assessment and management of risk associated with climate change ⁴¹⁹
8	Berlin, Germany	Rosneft	The company is committed to the UN Global Compact, ⁴²⁰ through its environmental protection task to reduce the impact of its production activity on the environment, to preserve the environment for today and future generations ⁴²¹

The important feature that cuts across this table is that these major oil producers now see the need to adopt the UN strategies, initiatives and frameworks for environmental sustainability. Sinopec, Royal Dutch, Shell, PetroChina, BP Plc and

⁴¹³ BP sets out its strategy in its 2020 report which is similar to that of Shell for net zero emission see BP, 'Reimagining Energy For People And Our Planet' (London 2020) <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-sustainability-report-2020.pdf> accessed 27 March 2021.

⁴¹⁴ Exxon Mobil, 'Exxon Mobil 2019 Summary Annual Report' (Exxon Mobil Corporation 2019) <https://corporate.exxonmobil.com/-/media/Global/Files/investor-relations/annual-meeting-materials/annual-report-summaries/2019-Summary-Annual-Report.pdf?la=en&hash=DDF3CE6E95A3463C9F2878E0A2335FE1C04BD664> accessed 27 March 2021.

⁴¹⁵ Ibid page 8

⁴¹⁶ Sustainable Performance, 'Environment' (*Sustainable Performance*, 2018) <https://www.sustainable-performance.total.com/en/environment> accessed 27 March 2021.

⁴¹⁷ Such commitments are inclusive but not limited to, reducing particulate emission, encourage fuel economy, and biodegradable oils.

⁴¹⁸ Ibid

⁴¹⁹ Chevron, 'Climate Change Resilience Advancing A Lower-Carbon Future' (Chevron 2021) <https://www.chevron.com/-/media/chevron/sustainability/documents/climate-change-resilience-report.pdf> accessed 27 March 2021.

⁴²⁰ Rosneft 'Health, Safety and Environment' (*Rosneft.com*, 2021) https://www.rosneft.com/Development/Ecology_labor_protection_and_industrial/#rosneft-2022 accessed 27 March 2021.

⁴²¹ 'Rosneft: Contributing to Implementation of UN Sustainable Development Goals' (*Rosneft.com*, 2021) https://www.rosneft.com/Investors/Rosneft_contributing_to_implementation_of_UN/ accessed 27 March 2021.

ExxonMobil are seen to unreservedly embrace the core stakeholders (society, shareholders, academia, policy makers, and of course the environment which has no voice) in their commitment to achieving ES.⁴²² It is based on its accepted and key importance within the oil and gas industry. This research defines environmental sustainability within the oil and gas industry as the responsible use of oil and gas resources to reduce its negative impacts on the environment. At the same time it is also important to note that although there currently exists no clear-cut and acceptable definition of ES found in any of the websites or public and media statements of major players in oil and gas industry in the world, they are committed to the 2030 agenda, through their professed, stated level of commitment. Their annual or quarterly voluntary reports, as cited in table 2.7, detail how they achieve these commitments and what areas of the agenda they seek to achieve.⁴²³ These commitments and agendas for environmental sustainability cut across all phases of exploration, production, usage and decommissioning, mainly because the oil and gas industry now clearly grasps the extent of the impacts of their activities on the environment.⁴²⁴

2.8 Conclusion

The concept of environmental sustainability is thus very important to oil and gas companies. Environmental sustainability is increasingly relevant due to a growing awareness and scrutiny of the impact of oil and gas activities on the environment. As noted earlier, the impact of oil and gas exploration, transportation and usage is not limited to the air, land and sea. Pollution can travel between countries (transboundary pollution), which makes it a global problem.

The approach to identifying environmental sustainability has been to examine the Annual Reports or Sustainability Reports of oil and gas companies. The salient features in the definition of environmental sustainability is that big oil producers increasingly recognise the importance of adopting UN environmental sustainability plans, initiatives, and frameworks. In their commitment to attaining

⁴²² This partnership is mentioned in the UN 2030 Agenda see UN, 'Transforming Our World: The 2030 Agenda For Sustainable Development Sustainabledevelopment.Un.Org A/RES/70/1' (UN 2021) <https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf> accessed 27 March 2021.

⁴²³ Sami Alnuaim, 'Energy, Environment, And Social Development: What Does Sustainability Mean for Oil and Gas?' (2018) 70 Journal of Petroleum Technology <https://jpt.spe.org/what-does-sustainability-mean-oil-and-gas> accessed 28 March 2021.

⁴²⁴ Ibid

ES, Sinopec, Royal Dutch Shell, PetroChina, BP Plc, and ExxonMobil embrace the main stakeholders (society, shareholders, academics, policymakers, and the environment) in their definitions.

This chapter has laid the groundwork for the next chapter, which identifies and analyses global and regional environmental sustainability efforts. Looking further ahead, among the 6 identified environmental sustainability challenges, the issue of coherence and collaboration is a key area that the research will address in chapter 8.

3 CHAPTER THREE: GLOBAL AND REGIONAL INITIATIVES FOR ENVIRONMENTAL SUSTAINABILITY

3.1 Introduction

The pursuit of environmental sustainability at local, regional, and global dimensions has been a major theme in environmental policy and strategy for the past half-century. The rapid degradation of the natural global environment and the resultant biodiversity loss ignited these efforts, as people became increasingly aware of the links between the exponential growth of the human population and rising resource demands.

These concerns resulted in global soft law initiatives in the 1980s and 1990s, such as the Brundtland Report and Agenda 21. This expansion of sustainability strategies produced both positive and negative results. Successful outcomes were more likely to result from efforts specifically designed for particular socio-ecological situations. Conversely, a number of failed initiatives emerged with the explosion of new available models and precedents.

To critically appraise these initiatives, this chapter attempts to identify those optimal trends by analysing environmental sustainability initiatives at international and regional levels. It achieves this objective by analysing both the theoretical and the practical application of key strategies available for the implementation of environmental sustainability.

The fundamental drive of this analysis is to promote successful sustainability efforts by illuminating the wide range of practical approaches worthy of consideration when utilising effective strategies for environmental sustainability.

Due to the numerous agencies and initiatives at the international level the thesis analyses the core initiatives that includes the thesis's impact areas; such as environmental sustainability governance, the oil and gas industry, corporate social responsibility and host community engagement.

3.2 Global Initiatives for Environmental Sustainability

Since the United Nations Conference on the Human Environment in 1972, environmental protection has been a major topic of international politics and governance. Over 900 international environmental treaties are currently in existence. Regrettably, these initiatives have failed to impact the general patterns of human-induced environmental degradation over past decades.⁴²⁵

In the following sections 3.2.1-3.2.6 the researcher analyses a range of major strategies and approaches adopted by several notable international institutions.

3.2.1 The United Nations Right of Indigenous peoples declaration (UNDRIP) A/RES/61/295 2007

This declaration,⁴²⁶ highly relevant to later sections of this thesis,⁴²⁷ was accepted by a majority of 144 nations in the 2006 United Nations General Assembly.⁴²⁸ Australia, Canada, the US and New Zealand voted against it. Since 2009, Australia and New Zealand have switched their stances and now endorse the declaration, while the United States and Canada have stated that they will change their positions.⁴²⁹ It is worth noting that Canada did not join the treaty because they already respected the rights of their indigenous peoples, as set out in their Charter of Rights and Freedoms and the Canadian Constitution,⁴³⁰ which reflects a much more tangible commitment than the "aspirational" UNDRIP.

Free, Prior and Informed Consent (FPIC) is a term used by the UN in its declaration on the Rights of Indigenous Peoples. In essence the FPIC concept provides the

⁴²⁵ United Nations Conference on the Human Environment, Stockholm 5-16 June 1972

⁴²⁶ United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)

⁴²⁷ The chapter is a foundation for discussing Chapter 8.2 on the Social License To Operate

⁴²⁸ "United Nations Digital Library System" (*United Nations*) <https://digitallibrary.un.org/?ln=en> accessed February 25, 2022

⁴²⁹ "UN Declaration on the Rights of Indigenous Peoples" (*indigenousfoundations*) https://indigenousfoundations.arts.ubc.ca/un_declaration_on_the_rights_of_indigenous_peoples/ accessed February 25, 2022

⁴³⁰ Canadian Constitution Act, 1982 Section 35

basis for the social license to operate.⁴³¹ According to the UN high commissioner for human rights, "The declaration at the national level has inspired several new laws and procedures for communication with indigenous people". Despite these encouraging developments, promises made in the declaration are not uniformly fulfilled.⁴³²

Indigenous peoples' rights are commonly referred to as development actions in indigenous communities. They are the first victims in the pursuit of land, done frequently without regard to guarantees such as the right to freely provide permission after receiving all relevant information, which is the key tenet of the declaration.⁴³³

The FPIC guidance provides a context for business adoption of the FPIC.⁴³⁴ For businesses, it means securing the agreement of local communities and indigenous peoples before engaging in any action that would damage their rights to land and resources or their ability to live comfortably and eat and drink safely. "This is done via the representatives and institutions chosen by these peoples and communities in a culturally acceptable way, in line with their customs, norms, and values".⁴³⁵

Various international treaties which are also part of international law, support this principle.⁴³⁶ Numerous additional efforts and voluntary standards for ethical supply chains are also compatible.⁴³⁷ New laws and institutions for communication with indigenous peoples have been influenced by this highly important declaration at national and international levels. Despite these encouraging signals, the Declaration relating to the Rights of Indigenous Peoples is still very far from being realised on a global scale.⁴³⁸

⁴³¹ "Free, Prior and Informed Consent of Indigenous Peoples - OHCHR"
<https://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf> accessed February 6, 2022

⁴³² Ibid OHCHR

⁴³³ Ibid OHCHR

⁴³⁴ United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)

⁴³⁵ Ibid OHCHR

⁴³⁶ "Legal Companion to the UN-REDD Programme Guidelines on FPIC"
<https://www.unredd.net/documents/un-redd-partner-countries-181/templates-forms-and-guidance-89/un-redd-fpic-guidelines-2648/legal-companion-to-fpic-guidelines-2655/8792-legal-companion-to-the-un-redd-programme-guidelines-on-fpic-8792.html> accessed February 7, 2022 , International Human Rights Covenants, Article 1, and the International Covenant on Civil and Political Rights (ICCPR) article 27

⁴³⁷ Not limited to the follow, examples include: *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector* (OECD 2017) (United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295)

⁴³⁸ Navi Pillay, United Nations High Commissioner for Human Rights, August 2013.

3.2.2 The United Nations Global Compact Environmental Stewardship Strategy Report 2010

The United Nations' Global Compact is the world's largest sustainability initiative. In accordance with the initiative, firms are urged to link their strategies and operations to universal principles on human rights, labour, the environment and anti-corruption. Based on their environmental mandate, the UN Global Compact Office collaborated with Duke University to develop a new Environmental Stewardship Strategy (ESS). This is designed to assist companies to prepare for an increasingly challenging environmental landscape, and to further express the UN Global Compact's three core environmental principles.⁴³⁹ For its time, its approach was novel, and came in the form of a CD-ROM and a website.⁴⁴⁰

For organisations at the top of the corporate ladder, the ESS is a valuable tool for establishing an all-encompassing environmental approach. In line with a strategic guidance document for corporate leaders published by the United Nations Global Compact,⁴⁴¹ an ESS is defined as;

the comprehensive understanding and effective management of critical environmental risks and opportunities related to climate change, emissions, waste management, resource consumption, water conservation, biodiversity protection, and ecosystem services.

Again, for its time, the definition expresses ambitious environmental credentials.

The core model of the ESS translates into the core elements of environmental sustainability. The four pillars of environmental stewardship management include:⁴⁴²

- a) **Embed** - All aspects of the business should be integrated with environmental stewardship.
- b) **Balance** - Short-term aims and long-term goals should be balanced to ensure the firm's long-term success.

⁴³⁹ Principle 7: Taking a Precautionary Approach to Environmental Challenges, Principle 8: Promoting Greater Environmental Responsibility, Principle 9: Development and Diffusion of Environmentally Friendly Technologies.

⁴⁴⁰ UN Global Compact and Duke University, 'Environmental Stewardship Strategy Overview and Resource for Corporate Leaders' (United Nations 2010).

⁴⁴¹ Ibid UN Environmental Stewardship

⁴⁴² Ibid UN Environmental Stewardship

- c) **Diffuse** - By working with and engaging stakeholders, they diffuse best practices across value chains and business networks.
- d) **Translate** - Translation of best practices into processes and procedures that may be used across a wide range of locations.

As part of the overall strategy, companies were expected to upload current information relating to how they have adapted in order to embed, balance, diffuse and translate approaches on to the website, as well clarifying all information about this process. This is similar to the approach of the international oil and gas producers' association (IOGP),⁴⁴³ where members are expected to produce a report on their practices to resolve environmental issues.⁴⁴⁴

3.2.3 International Standards Organization (ISO) 26000:2010 Guidance on the compatibility of social responsibility with environmental sustainability

The social responsibility standard, applicable to all companies, is ISO 26000,⁴⁴⁵ released in 2010 by the International Standards Organization (ISO). It provides guidelines on social responsibility, including what social responsibility entails, what type of concern a business should address, and the best practices for putting social responsibility into effect with regard to the environment.

Special agreements have been made between the ISO and organisations such as the International Labour Organization (ILO), the Global Compact and the Global Reporting Initiative (GRI), to assure uniformity in this regard.⁴⁴⁶ However, no advice has been given by the ISO 26000 on how to report social responsibility performance on the environment. Instead, it simply covers a range of subjects virtually the same as those of the GRI Reporting Guidelines. In order to measure and display the company's actions in a GRI-compliant manner, ISO guidelines offer a framework for enterprises to organise their activities.

Within the ISO 26000 text, there is a disclaimer that reads thus:

⁴⁴³ Ibid UN Environmental Stewardship, p.?

⁴⁴⁴ IOGP, *Environmental management in oil and gas exploration and production, Report 254* . <https://www.iogp.org/bookstore/product/environmental-management-in-oil-and-gas-exploration-and-production/> accessed 6th December 2022

⁴⁴⁵ International Standard Organisation ISO 26000, 'Guidance on Social Responsibility (ISO 2010).

⁴⁴⁶ ICF International, 'Corporate Social Responsibility National Public Policies in The European Union Compendium 2014' (European Union 2014) Page 19

This International Standard is not a management system standard. It is not intended or appropriate for certification purposes or regulatory or contractual use.

Any offer to certify, or claims to be certified, to the ISO 26000 would be a misrepresentation of the intent and purpose, and a misuse of the International Standard. This means that it cannot be used in the same way as are ISO 9001:2008⁴⁴⁷ and ISO 14001:2004.

As a result, ISO 26000's ability to be used as a means of indicating a company's CSR pledges and performance may be hindered.⁴⁴⁸ However, it aids in the transformation of good intentions into positive outcomes for companies. Companies wishing to comply with ISO 26000 might find the aid of national guidelines established by, for example, Germany and Italy useful.⁴⁴⁹ State-owned firms are also being made ISO 26000-compliant in various Nordic nations, and the Nordic area is working assiduously to promote these concepts.⁴⁵⁰

To buttress the McKinsey Global Survey previously discussed regarding the importance of CSR to organisations,⁴⁵¹ the ISO 26000 agrees and states that measuring an organisation's overall performance and its capacity to continue functioning successfully now includes looking at how well it performs in relation to the society in which it works and how it impacts the environment.⁴⁵² Hence it could be inferred that a company needs to consider its impact on the environment to be ISO compliant. In addition to affecting a company's ability to attract and retain employees, customers, clients and users, it may also impact the perception of investors, owners, donors and sponsors and the financial community's perception of a company's social responsibility performance.

In the same way that ISO 14004 covers environmental elements, their consequences and importance, ISO 26000 addresses the relevance and significance of the social responsibility's "core themes" and "problems". Further, ISO 26000, like ISO 14004, examines legal and other requirements, such as, international standards of conduct, possible abuses of human rights, behaviours

⁴⁴⁷ Quality management, Environmental management

⁴⁴⁸ Lars Moratis, 'Signalling Strategies For ISO 26000: A Firm-Level Approach' (2016) 36 International Journal of Operations & Production Management Page 512–531

⁴⁴⁹ Ibid Moratis 523-531

⁴⁵⁰ Ibid Moratis

⁴⁵¹ Chapter 2.6

⁴⁵² Ibid Moratis

that might risk life or health, and actions that could gravely harm the environment. ISO 26000 requires companies to do "due diligence"—the process of determining the social, environmental and economic consequences of an organisation's actions and operations, and to prevent and mitigate such consequences.⁴⁵³

An increasing number of standards and certifications intersect and, in certain aspects, overlap with ISO 26000. However, it should not be considered a redundant replication of earlier standards or a distinct alternative to UNGC, GRI or other standards. These tools complement one another since they serve diverse purposes and are valuable in different sections of a company's CSR policy in the areas of environmental sustainability.⁴⁵⁴ These sustainability standards have been designed for three purposes: to raise a company's transparency to its stakeholders, strengthen internal governance, and involve its stakeholders. ISO 26000 seems to be more focused on encouraging corporate executive leadership to conduct a thematic reflection on its management and associated outcomes.⁴⁵⁵

3.2.4 Global Reporting Standards (GRI), 2020

Corporations are under growing scrutiny to demonstrate their ethical practices and decision-making credentials. When choosing a company for investment, potential investors are increasingly taking environmental, social, and governance factors into account.⁴⁵⁶ Through the GRI standards, corporations may improve strategic decision-making, risk mitigation, opportunity recognition, and stakeholder interactions by better understanding, managing, and providing transparency on the effects of their activities. Sustainability reporting, variously known as non-financial reporting, corporate social responsibility (CSR) reporting, or environmental, social, and governance (ESG) reporting, is a growing discipline; the GRI Standards provide the most frequently used and accepted framework in this area. The largest companies in the world have embraced it, and it has been cited in international policy documents and stock markets.⁴⁵⁷

⁴⁵³ Robert B. Pojasek, 'ISO 26000 Guidance on Social Responsibility' (2011) 20 *Environmental Quality Management*.

⁴⁵⁴ Lars Moratis, 'Out of The Ordinary? Appraising ISO 26000 ' S CSR Definition' (2016) 58 *International Journal of Law and Management* pp. 26-47

⁴⁵⁵ Samuel O Idowu, Catalina Sitnikov and Lars Moratis, *ISO 26000 - A Standardized View on Corporate Social Responsibility* (Springer International Publishing AG 2018) pp. 199-120

⁴⁵⁶ GRI, 'The GRI Standards: the global standards for sustainability reporting' (GRI, 2020)

⁴⁵⁷ This is further demonstrated in the corporate case studies in Ch. 4 of this research. All major oil and gas companies attempt to align their CSR or ESG reporting to GRI. See also KPMG 'The road ahead, KPMG survey of corporate responsibility reporting'(KPMG 2020)

The GRI guidelines framework defines well-structured and detailed guidelines for the construction of a social and environmental report,⁴⁵⁸ the issues to be considered, the elements and Key Performance Indicators (KPIs) necessary for proper disclosure, the involvement of stakeholders, and the correct and broad application of the principle of materiality; however, their actual impact still remains unclear.⁴⁵⁹

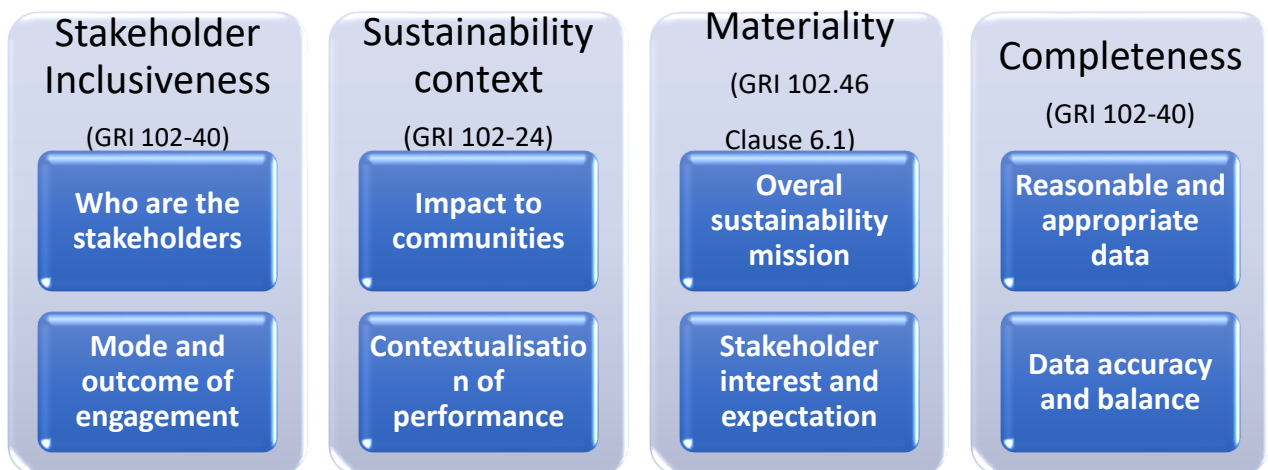


Figure 3.1: Summative Guidelines for Sustainability Reporting

Given the significance of these guidelines and the fact that previous studies have failed to clarify the actual effect they have on the quality of disclosure and the efficient application of several key reporting principles and stakeholder engagement for environmental sustainability, the research plan is to conduct a more in-depth investigation into this matter.⁴⁶⁰ A number of researchers have called for the GRI Standards to be made mandatory and for the use of external assurance to expand their role.⁴⁶¹ The requirement for governments to enforce

⁴⁵⁸ See figure 3.1

⁴⁵⁹ Moratis L and Brandt S, "Corporate Stakeholder Responsiveness? Exploring the State and Quality of GRI-Based Stakeholder Engagement Disclosures of European Firms" (2017) 24 Corporate Social Responsibility and Environmental Management 312, Carol A Adams, and others, "The development and implementation of GRI Standards: practice and policy issues" in Carol Adams *Handbook of Accounting and Sustainability* (Edward Elgar 2021)

⁴⁶⁰ See Ch.6: Corporate Social Responsibility Objectives – a Review of the Oil and Gas Industry.

⁴⁶¹ Carol Adams, Accountancy Europe "Interconnected Standard Setting for Corporate Reporting" (Accountancy Europe February 4, 2019)

<https://www.accountancyeurope.eu/publications/interconnected-standard-setting-for-corporate-reporting/> accessed December 6, 2022; also see IFAC "Enhancing Corporate Reporting: The Way Forward" (IFAC January 6, 2020) <https://www.ifac.org/knowledge-gateway/contributing-global-economy/publications/enhancing-corporate-reporting-way-forward> accessed December 6, 2022

compliance on companies to adequately adhere to GRI guidelines is essentially driving the necessity for a multistakeholder strategy.

3.2.5 IOGP and IPIECA: Report 254 on Environmental Management in the Upstream Oil and Gas Industry, 2020

The Guide to Best Practices for Environmental Management Throughout the Lifecycle of Upstream Oil and Gas Projects was initially released in 1997 by the E&P Forum (IOGP's predecessor) and UNEP.⁴⁶² Staff from the secretariats of the IOGP, IPIECA, and UNEP, as well as volunteers from oil and gas firms (representing IPIECA and IOGP membership), worked together to create this new version, known as the 254 report.⁴⁶³

The 254 report⁴⁶⁴ analysed the existing and potential role of the oil and gas industry in meeting global energy demand, factoring in the Sustainable Development Goals (SDG). The 254 report was aligned with the IOGP's Operating Management System (OMS) framework and the ISO14001:2015 EMS standard.⁴⁶⁵ Another notable major change was the incorporation of the SDGs into the 254 report.

In the 254 report a review of over fifty environmental components of offshore and onshore oil and gas operations, as well as their environmental implications, are analysed. The report can justifiably be regarded as a guide to providing a GRI type sustainability report; very comprehensive and with a range of implications for stakeholders. A range of the O and G industry's environmental impacts are

⁴⁶²E&P Forum UNEP, *Environmental Management in Oil and Gas Exploration and Production: An Overview of Issues and Management Approaches* (E & P Forum 1997)

⁴⁶³ Wendy Brown, Artemis Kostareli and Ian Sealy, "Environmental Management in the Oil & Gas Industry, a Guide to Environmental Management Good Practices in the Upstream Oil & Gas Industry – Second Edition" [2020] SPE International Conference and Exhibition on Health, Safety, Environment, and Sustainability <https://onepetro.org/SPEHSE/proceedings/20HSE/5-20HSE/D051S026R003/447219> accessed 6th December 2022

⁴⁶⁴ IOGP, *Environmental management in oil and gas exploration and production, Report 254* . <https://www.iogp.org/bookstore/product/environmental-management-in-oil-and-gas-exploration-and-production/> accessed 6th December 2022

⁴⁶⁵ The ISO 14001 framework is a part of international standards that provides guidelines on environmental management. See "ISO 14001 Environmental: ISO Specialists" (*IMSM GB* October 11, 2022) https://www.imsms.com/gb/iso-14001/?keyword=iso+14001+2015&matchtype=e&network=g&device=c&utm_term=iso+14001+2015&utm_campaign=LOL%2B-%2BSearch%2B-%2B%2B%2B14001&utm_source=google&utm_medium=cpc&hsa_acc=4883803773&hsa_cam=11756592169&hsa_grp=109296228890&hsa_ad=483485187749&hsa_src=q&hsa_tgt=kwd-62755001391&hsa_kw=iso+14001+2015&hsa_mt=e&hsa_net=adwords&hsa_ver=3&gclid=Cj0KCQIAkMGcBhCSARIsAIW6d0DRMATB-4Ds8FQ_oAmnSOj1HkDNrj6bexG_9_q2oyHMOgPq96jCUBIaAhPvEALw_wcB accessed December 7, 2022

supplemented by environmental mitigation and management strategies, as well as a 'callout box' containing supplementary information, such as relevant frameworks, guidance papers, and/or technical information connected to that particular aspect.⁴⁶⁶

One salient issue the report identifies is that many nations have a wide range of relevant authorities at various levels (e.g., federal, state, provincial, and municipal), and frequently, many of these agencies have overlapping jurisdiction. Consequently, oil and gas companies have to integrate meticulous preparation and organisation to meet sometimes complex national legislation in host countries.

It is abundantly clear therefore that oil and gas companies must have a very good grasp of the national regulatory regimes and requirements of their host nations. It is also critical that their activities are carried out in accordance with national, regional and international law. This necessitates in-depth due diligence and organisation, both in the field and within their corporate structures.

3.2.6 The Human Right to a Clean, Healthy and Sustainable Environment A/HRC/RES/48/13 and A/RES/76/300

A clean, healthy, and sustainable environment is widely regarded as a necessary precondition for the enjoyment of many long-established and universally recognised human rights, such as the right to life and the right to the highest standard of living.⁴⁶⁷ Despite this international agreement on the close relationship between human rights and a healthy environment, up until 2022, no global agreement on the precise legal status of the environment has emerged. However, on the final day of the United Nations 48th session, the Council on Human Rights passed a resolution on the human right to a clean, healthy, and sustainable environment.⁴⁶⁸ Subsequently, the General Assembly in 2022 duly passed the Resolution.⁴⁶⁹

⁴⁶⁶ Ibid 254 Report Ch. 4

⁴⁶⁷ James McClymond, "The Human Right to a Healthy Environment: An International Legal Perspective" (1992) 37 The New York Law School Law Review 583–634; Brennan Van Dyke, "A Proposal to Introduce the Right to A Healthy Environment into the European Convention Regime" (1994) 13 Virginia Environmental Law Journal pp.323-373

⁴⁶⁸ Human Rights Council Resolution A/HRC/RES/48/13 of 8 October 2021: The Human Right to A Clean, Healthy, and Sustainable Environment

⁴⁶⁹ UN General Assembly Resolution A/RES/76/300 of 28 July 2022 The Human Right to A Clean, Healthy, and Sustainable Environment

An important part of the resolution is the reaffirmation of the duties of states and businesses in achieving environmental sustainability.⁴⁷⁰

States have a duty to respect, protect, and promote human rights in all efforts, to address environmental challenges, and to take measures to protect the human rights of all; as recognised by various international instruments. Additionally, special attention should be paid to the rights of those who are most at risk from environmental degradation.⁴⁷¹ On the other hand, businesses and other relevant stakeholders are required to adopt policies, strengthen international cooperation, build capacity, and continue to share best practices in order to scale up efforts to ensure a clean, healthy and sustainable environment for all.⁴⁷²

Subsequent to the UN Council and General Assembly resolution, many countries have started to integrate the right into their constitutional and national legislation and regional agreements.⁴⁷³ The general implication is that the right to a clean and healthy environment is now a universally recognised right. More than eighty % (156 out of 193) of UN Member States (including those bound by a treaty) recognise this right to a safe, clean, healthy, and sustainable environment.⁴⁷⁴ In addition, 19 of the 27 EU member states have explicitly (or at least tacitly) guaranteed this right in their constitutions, while another 17 have done so at the national level.⁴⁷⁵ More specifically, where these rights are relevant to the research is the call for vulnerable regions to take additional measures to combat degradation in order to achieve environmental sustainability.⁴⁷⁶

⁴⁷⁰ UN General Assembly A/HRC/37/59 of 23rd March 2018: Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment and the UN Special Rapporteur on Human Rights and the Environment, "Framework Principles on Human Rights and The Environment" (2018).

⁴⁷¹ Ibid, A/HRC/37/59

⁴⁷² UN General Assembly "Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises; John Ruggie - Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy Framework" A/HRC/17/31 (2011).

⁴⁷³ IISD's SDG Knowledge, "UNGA Recognizes Human Right to Clean, Healthy, and Sustainable Environment: News: SDG Knowledge Hub: IISD" (*SDG Knowledge Hub*) <https://sdg.iisd.org/news/unga-recognizes-human-right-to-clean-healthy-and-sustainable-environment/> accessed 7 August 2022 see my earlier comments about this.

⁴⁷⁴ UN General Assembly A/HRC/43/53 of 20th March 2020 Right to a healthy environment: good practices Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

⁴⁷⁵ Ibid A/HRC/43/53

⁴⁷⁶ Ibid A/RES/76/300

3.3 Regional Initiatives for Environmental Sustainability

It is possible that many of the complex social, economic, and environmental issues plaguing municipal areas may be resolved by adopting a regional approach to sustainability. When regions engage with and actively promote environmental technology-related sectors such as renewable energy, they not only benefit the environment but also address poverty and inequality and can gain economic advantages.⁴⁷⁷ Efforts to promote environmental sustainability at the national level can face two criticisms. Firstly, political ideologies and interest groups may not necessarily prioritise environmental sustainability in governments, be they centralised or federal.⁴⁷⁸ Secondly, and this is a crucial point, state governments are frequently too massive and introverted to grasp regional issues and concerns.⁴⁷⁹ On a more practical note, international initiatives for the enhancement of environmental sustainability might need to consider grassroots applications and adaptations of their policies to fit into the regional context. This applies particularly to developing countries and vulnerable groups.

There are numerous methodologies to assess regional environmental sustainability policies and their outcomes, and regional indicators are becoming a growing concern in academia.⁴⁸⁰ However, an objective of this thesis is to analyse existing and potential strategies used to achieve environmental sustainability, and assess their performance through the available sustainability index indicators available in UN reports as well as through national indicators. Moreover, it is worth noting that there is no optimal or recognised strategy for developing an indicator or a consensus on which design/approach is the best.⁴⁸¹

The regions assessed below are the major oil and gas producing areas in the five regions of the world. Understudying the major oil and gas producing areas exposes

⁴⁷⁷ Shahidur Talukdar, "Pursuing Sustainability: A Case for Regional Approach" (2018) 2 Community Change

⁴⁷⁸ Aaron M McCright and Riley E Dunlap, "Cool Dudes: The Denial of Climate Change among Conservative White Males in the United States" (2011) 21 Global Environmental Change 1163

⁴⁷⁹ Philip K Howard, "The U.S. Government Is Too Big to Succeed" (*The Atlantic* March 6, 2012) <https://www.theatlantic.com/politics/archive/2012/03/the-us-government-is-too-big-to-succeed/253920/> accessed December 8, 2022 See literature on regionalism for more details.

⁴⁸⁰ Tomás B Ramos, "Development of Regional Sustainability Indicators and the Role of Academia in This Process: The Portuguese Practice" (2009) 17 Journal of Cleaner Production 1101.

⁴⁸¹ Jeffrey Wilson, Tyedmers P and Pelot R, "Contrasting and Comparing Sustainable Development Indicator Metrics" (2007) 7 Ecological Indicators 299).

Neil Carter and Rudolf Klein, *How Organizations Measure Success: The Use of Performance Indicators in Government* (Routledge 1992).

the research to comprehensive data on the activities and operation in oil and gas producing areas.

3.3.1 Environmental Sustainability initiatives and strategies in Asia: People's Republic of China (PRC)

Asia is undergoing more rapid industrial development than any other part of the globe. The International Energy Agency (IEA) predicts that China and India will account for a sizeable share of the global increase in oil demand, accounting for around 20% of total global consumption by 2023.⁴⁸² Currently, Asia's energy reliance on fossil fuels is the biggest danger to global net-zero aspirations. Oil and gas consumption has skyrocketed during the past four decades.⁴⁸³ Fossil fuels constitute a substantial proportion of their overall energy mix and supply⁴⁸⁴

By a wide margin, China is the region's largest oil producer. It accounts for an estimated 50% of Asia's total production. It is further projected that by 2025 China will produce between 5⁴⁸⁵ and 6⁴⁸⁶ million barrels per day, taking into account that the country imports over 13 million barrels per day to fulfil its domestic consumption. In 2016, the Asian Development Bank (ADB) approved a technical assistance project entitled Supporting Implementation of Environment-Related Sustainable Development Goals in Asia and the Pacific, which reflected a similar perspective⁴⁸⁷

Although dated, this is a good strategy for facilitating environmental sustainability and an example of institutional partnership. From a global perspective, Asia's statistics from the ADB brief demonstrate that various factors, ranging from poor governance to a lack of incentives and funding to take action, are negatively

⁴⁸² Congressional Research Service, 'The World Oil Market And U.S. Policy: Background And Select Issues For Congress' (Congressional Research Service 2019)

<https://crsreports.congress.gov/product/pdf/R/R45493/3> accessed 7 July 2021.

⁴⁸³ Viktor Tachev, "Oil and Gas in Asia - Current State and What Lies Ahead for the Industry" (*Energy Tracker Asia* June 22, 2022) <https://energytracker.asia/the-oil-and-gas-industry-in-asia-current-state-and-what-lies-ahead/> accessed December 8, 2022

⁴⁸⁴ Ibid, Tachev

⁴⁸⁵ 'Frequently Asked Questions (Faqs) - U.S. Energy Information Administration (EIA)' (*Eia.gov*, 2021) <https://www.eia.gov/tools/faqs/faq.php?id=709&t=6> accessed 7 July 2021.

⁴⁸⁶ Ed Hirs, 'China Is Betting Big On Increasing Oil Production' (*Forbes*, 2021) <https://www.forbes.com/sites/edhirs/2019/06/06/china-is-betting-big-on-increasing-oil-production/?sh=5a2a5aa6371e> accessed 7 July 2021.

⁴⁸⁷ Asia Development Bank (ADB), 'Supporting Implementation Of Environment-Related Sustainable Development Goals In Asia And The Pacific' (2016) <https://www.adb.org/sites/default/files/project-document/215401/50158-001-tar.pdf> accessed 9 July 2021.

impacting environmental sustainability.⁴⁸⁸ For example, many developing member countries (DMCs) in the region suffer from degraded marine and terrestrial ecosystems, and resource-intensive consumption and production patterns.⁴⁸⁹

In recent times environmental sustainability efforts have gone beyond climate change mitigation, and companies are now intensely engaged in initiatives⁴⁹⁰ to reduce the environmental impacts of their E&P operations by national governments or third-party organisations. Almost 60% of certified ISO 14001⁴⁹¹ facilities were present in Asia in 2016,⁴⁹² however, reports show that due to the cost⁴⁹³ of securing this certification for smaller companies in developing regions, challenges exist in achieving it. In the PRC for example, findings indicate that companies which do not comply with ISO requirements are certified. Consequently, the reliability of ISO standard's adoption varies between companies.⁴⁹⁴ Further studies also advocate caution in utilising the number of ISO certificates in a nation as a proxy for the quality of ISO implementation.⁴⁹⁵ Government control of the certification centres can reduce the process to simply another bureaucratic obligation applicable to export-oriented businesses.⁴⁹⁶ Ideally, governments in these areas could take a supportive role in adopting an international environmental sustainability framework, rather than perceiving it as an administrative or managerial function. For example, local governments in the PRC have now begun to provide training and to reimburse a portion of the ISO certification costs.

⁴⁸⁸ Ibid ADB

⁴⁸⁹ Ibid ADB

⁴⁹⁰ These includes certifications such as Leadership in Energy and Environmental Design (LEED), GRI, Ceres and Global carbon disclosure projects to mention a few of the most common.

⁴⁹¹ ISO 14001 is the worldwide environmental management system standard see 'ISO 14000 Family – Environmental Management' (ISO, 2015) <https://www.iso.org/iso-14001-environmental-management.html> accessed 9 July 2021.

⁴⁹² Madhu Khanna, 'Growing Green Business Investments in Asia and The Pacific' (Asian Development Bank 2021) p. 16

⁴⁹³ Costs include educating personnel, collection of data on historical operations and current environmental related regulations and payment of certification and consultancy fees.

⁴⁹⁴ Kanittha Tambunlertchai, Andreas Kontoleon and Madhu Khanna, 'Assessing Participation In Voluntary Environmental Programmes In The Developing World: The Role Of FDI And Export Orientation On ISO14001 Adoption In Thailand' (2013) 45 Applied Economics pp. 2039-2048

⁴⁹⁵ Petra Christmann and Glen Taylor, 'Firm Self-Regulation Through International Certifiable Standards: Determinants Of Symbolic Versus Substantive Implementation' (2006) 37 Journal of International Business Studies pp. 863-878

⁴⁹⁶ S Shin, 'The Role of The Government In Voluntary Environmental Protection Schemes: The Case Of ISO 14001 In China' (2005) 41 Issues & Studies pp. 141-173

Governments alone cannot overcome the effects of the connection between growth, resource usage and pollution.⁴⁹⁷ As a result of the severity of environmental deterioration, demands have been made for the private sector as well to supply the technology and finance required to counteract these effects.

In 2003 India passed the Companies Act which mandates companies to spend a portion of their profit on corporate social responsibility. Although it neither sanctions nor makes provision specifically for environmental sustainability, this represents a good example of how government can work with firms to achieve the goal of environmental sustainability. A further instance of a nation utilising commercial processes to tighten environmental rules on companies is the Environmental Label, created by the PRC in 1993 as a signalling tool for firms seeking public procurement contracts.⁴⁹⁸ Additionally, the Singapore Stock Exchange has required that all listed firms must account for their environmental, social and governance practices, and has created new indices for assessing sustainability that investors may utilise.⁴⁹⁹ Although these initiatives are promising, more initiatives to address significant regional problems are to be encouraged.

In line with these initiatives, the Carbon Disclosure Project (CDP), despite a growing number of participating firms, has revealed that many companies are neither reporting their emission levels nor establishing aggressive objectives within the 2030 timeframe.⁵⁰⁰ The CDP data reflect that businesses are using internal carbon pricing to manage climate risks and make investment decisions, but only a handful of these have set objectives for growing renewable energy output or utilisation.⁵⁰¹ The project further disclosed that 68 % of respondents identified underlying physical, regulatory and/or other climate change-related potential which were required to modify company operations, income or expenditures.⁵⁰²

⁴⁹⁷ Ibid Shin

⁴⁹⁸ Ibid Vogel

⁴⁹⁹ Ibid Vogel

⁵⁰⁰ Paul Simpson, 'Picking Up The Pace: Tracking Corporate Climate Action On The Road From Paris - CDP' (*Cdp.net*, 2017) <https://www.cdp.net/en/articles/climate/picking-up-the-pace-tracking-corporate-climate-action-on-the-road-from-paris> accessed 9 July 2021.

⁵⁰¹ Ibid Simpson

⁵⁰² Ibid Simpson

However, a far lower number of companies identified strategies to improve water efficiency or reduce water usage, as well as ways to minimise energy use by improving water efficiency.⁵⁰³ Compulsory reporting is more likely to encourage companies to participate. This approach further allows companies and stakeholders to monitor the progress of businesses, therefore promoting environmental sustainability gradually over time.

3.3.2 Environmental Sustainability initiatives and strategies in Africa: The African Union (AU)

Africa contains 30% of the world's mineral reserves, 8% of its natural gas, and 12% of its oil.⁵⁰⁴ In comparison with other areas, Africa's nations do not consume a large amount of fossil fuels on a per capita basis.⁵⁰⁵ The region's primary contributions to global carbon emissions come from natural gas flaring resulting from oil and gas production in several African nations, primarily Nigeria, combined with the large-scale and widespread burning of grasslands and forests.⁵⁰⁶ According to some researchers, Africa may be the region most sensitive to climate change.⁵⁰⁷ This view is endorsed by the GEO-6 Regional Assessment for Africa, which notes that the environment is deteriorating faster in the African continent than in other regions.⁵⁰⁸

The first-ever comprehensive assessment of air pollution and climate change for the continent, titled the Integrated Assessment of Air Pollution and Climate Change for Sustainable Development in Africa (IAAPCCSDA),⁵⁰⁹ represents a solid scientific foundation for guaranteeing clean air in Africa. The Assessment's recommendations are closely aligned with Agenda 2063's top priorities⁵¹⁰ and the

⁵⁰³ Carbon Trust and BSR, 'Missing Link: Harnessing the Power Of Purchasing for a Sustainable Future' (2017) <https://www.bsr.org/reports/Report-Supply-Chain-Climate-Change-2017.pdf>

⁵⁰⁴ UNEP "Our Work in Africa" (UNEP) <https://www.unep.org/regions/africa/our-work-africa> accessed 10 December 2022

⁵⁰⁵ The World Bank (WB) 'Building a Sustainable Future: The Africa Region Environment Strategy (2002)

⁵⁰⁶ Ibid WB 2002

⁵⁰⁷ Ibid WB 2002 See also Michiel Schaeffer and Ors "Africa's Adaptation Gap: Climate-change impacts, adaptation challenges and costs for Africa" (UNEP, 2013)

⁵⁰⁸ UNEP, "GEO-6 Regional Assessment for Africa" (UNEP, 2016)

⁵⁰⁹ UNEP, CCAC and AU "Integrated Assessment of Air Pollution and Climate Change for Sustainable Development in Africa Summary For Decision Makers" (UNEP, 2022)

⁵¹⁰ African Union (AU), "Goals & Priority Areas of Agenda 2063" (*Goals & Priority Areas of Agenda 2063 | African Union* February 10, 2022) <https://au.int/en/agenda2063/goals> accessed 10 December 2022

SDGs' objectives and ambitions.⁵¹¹ Nearly all of the proposals are presently acknowledged as contributing significantly to at least one African Nationally Determined Contribution (NDC),⁵¹² as articulated in Article 4, paragraph 2 of the 2015 Paris Agreement.⁵¹³ The recommendations for implementing sustainability are based on the concept of partnerships between international institutions, local governments and rural communities. There is no specific strategy delineated, per se, in the IAAPCCSDA to achieve environmental sustainability. It is the researcher's considered view, however, that to make the IAAPCCSDA more impactful vis-a-vis the attainment of environmental sustainability, it would be crucial to provide more detailed guidelines on the actual implementation and enforcement strategies, along the lines of the EU Commission's Environmental Implementation Review (EIR).

Another notable strategy, indeed a missed opportunity, for implementing environmental sustainability, has been identified in the Report on The Implementation of Agenda 2063.⁵¹⁴ The major highlight of the report is that it states explicitly that the implementation of environmental sustainability is linked to the social economy in Africa, and that funding plays a major role in achieving environmental sustainability.⁵¹⁵ Financial support can be leveraged by key actors, such as the African Development Bank.⁵¹⁶ Disappointingly, the report focuses largely on the progress of social and economic flagship projects. Regarding the objectives of achieving an environmentally sustainable climate, there is no mention of advancing environmental sustainability, for example, in the context of the oil and gas industries and their undoubted links to climate change.

Notwithstanding this, the AU Climate Change and Resilient Development Strategy and Action Plan for 2022-23,⁵¹⁷ which is aligned to the implementation of Agenda 2063, acknowledges the crucial requirement for financial mobilisation. Again, however, while it acknowledges the need for the energy transition to enhance the generation of renewable energy, there are no discernible strategies proposed.

⁵¹¹ Ibid SDG

⁵¹² Ibid UNEP, CCAC and AU

⁵¹³ UN, "Paris Agreement" (Climate Change Conference, Paris, November 2015)2015

⁵¹⁴ AU and Africa Union Development Agency (AUDA), "Second Continental Report on the Implementation of Agenda 2063" (AU and AUDA, 2022)

⁵¹⁵ Ibid AU and AUDA

⁵¹⁶ Ibid AU and AUDA

⁵¹⁷ AU "African Union Climate Change and Resilient Development Strategy and Action Plan" (AU 2022)

It would appear though that, at a national level, African countries are making individual efforts to achieve environmental sustainability in their oil and gas producing regions.⁵¹⁸ For example, in Egypt, there are real estate incentives for companies that are set up with the goal of achieving sustainable development.⁵¹⁹ The requisite legislation contains modalities for the design and specifications for such projects, and is subject to annual reviews.⁵²⁰

In Ghana, for example, there is also a procurement strategy to ensure a market-competitive price for renewable energy-generated power.⁵²¹ In its Renewable Energy Master Plan,⁵²² the government has provided substantial tax reliefs and proposes exemptions on import duties and VAT on materials for manufacturing or assembling renewable energy equipment, such as solar panels or wind turbines. The Sustainable Use of Natural Resources and Energy Financing (SUNREF) Programme,⁵²³ an initiative of the country's Energy Commission, provides financing for sustainable energy projects and technical support to both industry and individuals.

Nigeria has also demonstrated its commitment to achieving environmental sustainability by recently empowering the NNPC LTD to engage in renewable energy businesses.⁵²⁴ It has further enacted a Climate Change Act to provide an enabling framework to achieve low greenhouse emissions and has submitted its Nationally Determined Contribution (NDC) under the Paris Agreement in 2021.⁵²⁵

Additionally, the Draft Kenya Energy Sector White Paper 2022⁵²⁶ states that renewable energy sources make up over 75% of Kenya's installed power generating capacity, with geothermal (863 MW), hydro (838 MW), wind (436 MW),

⁵¹⁸ Baker McKenzie, "Africa: Energy Transition Policies and Regulatory Developments Light up across the Continent" (*bakermckenzie* October 4, 2022) <https://www.bakermckenzie.com/en/newsroom/2022/10/energy-transition-policies> accessed December 10, 2022

⁵¹⁹ Investment Law No. 72 of 2017 - Egypt Article 11

⁵²⁰ Cabinet Decree no. 56 of 2022

⁵²¹ The Renewable Energy (Amendment) Act, 2020- Ghana (Act 1045)

⁵²² The Energy Commission "Ghana Renewable Energy Master Plan 2019", (2019) and see also SUNREF Ghana, "SUNREF Ghana" (*Energy Commission*) <https://www.energycom.gov.gh/renewables/sunref-ghana-programme> accessed 10 December 2022

⁵²³ [SUNREF](#), 2022

⁵²⁴ Petroleum Industry Act 2021 – Nigeria

⁵²⁵ Climate Change Act 2021 – Nigeria

⁵²⁶ Columnist, "Energy White Paper Provides the Spark for Revitalising Power Sector" *Business Daily* (August 19, 2022) <https://www.businessdailyafrica.com/bd/opinion-analysis/columnists/energy-white-paper-provides-the-spark-for-revitalising-sector-3919204> accessed December 10, 2022

and solar (173 MW) leading the way. These and other initiatives have resulted in Kenya having one of the cleanest electrical networks in the world.⁵²⁷

From this brief survey of initiatives relating to the attainment of genuine environmental sustainability in the AU, it is apparent that there currently exists a lot of room for fairly radical changes in the mindsets of many African nations, and more joined-up regional approaches.

3.3.3 Environmental Sustainability initiatives and strategies in South America: Brazil

A range of South American nations have signed numerous bilateral and multilateral treaties related to environmental issues.⁵²⁸ In the interests of word economy and for research impact, the research in this thesis will focus on sustainability initiatives and strategies adopted by another major oil-producing region, Brazil.

It is also worth noting that environmental protection laws and regulations are subject to wide institutional and regional variations throughout South America.⁵²⁹ Some countries have relatively complex procedures, with a central environmental agency in charge of all regulations. In others, there is no central authority in charge, and the infrastructure of institutions is more malleable.⁵³⁰

Over half of South America's total population lives in Brazil, making it the continent's most populated country. Also, Brazil has emerged in the last few decades as the major regional power, producing half of the continent's GDP.⁵³¹ Oil and gas production in Brazil hit a new record high of 4 million barrels of oil equivalent per day at the start of 2020.⁵³² Extraction rates for oil and natural gas

⁵²⁷ Industrial Trade Administration (ITA), "Kenya - Energy-Electrical Power Systems" (*International Trade Administration | Trade.gov*) <https://www.trade.gov/country-commercial-guides/kenya-energy-electrical-power-systems> accessed December 10, 2022

⁵²⁸ Estebancio Castro Díaz and Kuna Yala "Environmental Issues in the Latin American Region" (UN, 2007).

⁵²⁹ See *Ibid* Castro p.158

⁵³⁰ Jay Paul Wagner, "Oil and Gas Operations and Environmental Law in Latin America" (1998) 16 *Journal of Energy & Natural Resources Law* 153

⁵³¹ Luis L Schenoni, "Unveiling the South American Balance' in *Estudos Internacionais*" (2015) <https://www.academia.edu/12944490> accessed 11 December 2022

⁵³² ANP, "MENU Oil and Gas Production in Brazil Exceeds 4 Million Boe/d for the First Time" (ANP2020); <https://web.archive.org/web/20200220091405/http://www.anp.gov.br/noticias/5628-producao-de-petroleo-e-gas-no-brasil-ultrapassa-4-milhoes-de-boe-d-pela-primeira-vez> accessed 11 December 2022

in January 2021 were, respectively, 3.168 million barrels per day and 138.753 million m³.

Furthermore, apart from Petrobras,⁵³³ the Brazilian state oil company, 47 local and 50 foreign companies hold oil exploration and appraisal areas in Brazil.⁵³⁴ The Organisation of American States Charter⁵³⁵ states that all foreign transnational enterprises and foreign private investments shall be subject to the legislation of the host countries, to the jurisdiction of their competent courts, and to the international treaties and agreements to which the said countries are parties, and should conform to the recipient countries' development policies.

The current major legislation for the Brazil oil and gas industry is the new Gas Law⁵³⁶ and the Gas Decree of 2021⁵³⁷ These new regulations are expected to boost the deliverability of LNG and natural gas, perceived as an appealing transition fuel, to complement the expanding market for renewable energy sources and encourage the use of intermittent renewable energy output which is becoming increasingly important in Brazil.⁵³⁸

In environmental terms, Brazil is focused on bringing its policies and practices in line with the Organisation for Economic Co-operation and Development (OECD) established norms.⁵³⁹ In 2017, it sought to implement 37 of the OECD's 46 environmental and waste instruments.⁵⁴⁰

The notion of "polluter-pays" is codified in Brazilian law.⁵⁴¹ Brazil has a strict civil liability regime that makes proof of blame or negligence unnecessary in imposing a legal duty for remediating environmental harm. To be held liable, however, the

⁵³³ Petrobras "Home: Petrobras" (*Página Inicial*) <https://petrobras.com.br/en/> accessed December 15, 2022

⁵³⁴ U.S. Commercial Service - Brazil, "Agreements Signed between Brazil and USA - 2018" (*export.gov*) https://2016.export.gov/brazil/build/groups/public/@eg_br/documents/webcontent/eg_br_110571.pdf accessed 11 December 2022

⁵³⁵ Charter of The Organization of American States 1952 Article 36. See also *Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador II* [2009] PCA 2009-23

⁵³⁶ The New Gas Law nº 14.134, 2021 - Brazil

⁵³⁷ The Gas Decree 10,712/2021 - Brazil

⁵³⁸ Clyde & Co. LLP, "The New Brazilian Gas Law: Opportunities for International Investors" (Clyde & Co June 9, 2021) <https://www.clydeco.com/en/insights/2021/06/the-new-brazilian-gas-law-opportunities-to-interna> accessed December 11, 2022

⁵³⁹ OECD, "Evaluating Brazil's progress in implementing Environmental Performance Review recommendations and promoting its alignment with OECD core acquis on the environment" (OECD, 2021)

⁵⁴⁰ *Ibid* OECD 2021

⁵⁴¹ National Policy on the Environment (Federal Law 6938/1981) – Brazil Article 14, paragraph 1

operator's conduct must be shown to be a substantial factor in bringing about the undesirable outcome.⁵⁴²

OECD recommendations on environmental impact assessment (EIA) and strategic environmental assessment (SEA) advocate that environmental considerations must be factored into a proposed project, its development plan and any future changes, and lays out guidelines for how these should be achieved.

Regarding the recommendation of the Council on Improving the Environmental Performance of Government⁵⁴³ and in accordance with Recommendation OECD/LEGAL/0283, Brazil has implemented a number of programmes to encourage public institutions to adopt more effective and environmentally friendly policies. This includes initiatives such as the 2011 Environmental Agenda in the Public Administration (A3P) programme,⁵⁴⁴ aimed at disseminating effective policies and procedures in areas such as water protection and energy efficiency, as well as separate solid waste collection and recycling, throughout the various tiers of government.

A nationwide forum, an award for exemplary practices, labelling, and pilot projects are all also key components of this initiative. An "agreement on terms of adherence" is signed between the Ministry of the Environment and each participating institution.⁵⁴⁵ Since its inception in 2010, the number of participating government agencies has increased to over 1,000.⁵⁴⁶ Importantly, according to OECD, there is a positive correlation between participation in the programme and the adoption of sustainability measures.⁵⁴⁷ Furthermore, as part of the national energy efficiency initiative, PROCEL,⁵⁴⁸ there is a specific component aimed at improving public sector energy efficiency via the creation of guidelines and training for service providers.

⁵⁴² Ibid OECD 2021

⁵⁴³ OECD, Recommendation of the Council on Improving the Environmental Performance of Government Legal/0283 [1996]

⁵⁴⁴ Ministry of Environment, "Action Plan for Sustainable Production and Consumption" (2014)

⁵⁴⁵ A3P "Aderir ao Programa Agenda Ambiental na Administração Pública - A3p" (*Aderir ao Programa Agenda Ambiental na Administração Pública - A3P - Português (Brasil)*) <https://www.gov.br/pt-br/servicos/agenda-ambiental-na-administracao-publica-a3p> accessed December 11, 2022

⁵⁴⁶ Ibid A3p

⁵⁴⁷ Ibid OECD 2016

⁵⁴⁸ "Procel - Programa Nacional De Conservação De Energia Elétrica" (*Ministério de Minas e Energia*) <https://www.gov.br/mme/pt-br/assuntos/secretarias/spe/procel-programa-nacional-de-conservacao-de-energia-eletrica-1> accessed December 11, 2022

All public procurement must take into account the products' and services' long-term viability, as mandated by the 2021 Public Bidding and Administrative Contracts Law.⁵⁴⁹ Public bids are required to promote innovation, and mandate that the selection process takes the product's lifetime cycle into account.

The Federal Government must also adhere to sustainability standards as set out in Decree 7746/2012.⁵⁵⁰ This Decree also established a federal government advisory organisation named the Commission for Sustainability in Public Administration (Comisso Interministerial de Sustentabilidade na Administraço Publica (CISAP), to coordinate sustainability efforts across departments. But according to the OECD implementation report, the CISAP Commission has been dormant since its inception, with its most recent meeting occurring in 2018.

Overall, the CISAP framework represents an innovative approach to enhance the role of the Brazilian Government's policy towards environmental sustainability. However, in line with the OECD 2021 recommendations, it needs, in order to achieve more purpose and coherence in its approach to achieving environmental sustainability, to establish clearer requirements and objectives, and an effective monitoring system to promote better performance.⁵⁵¹

3.3.4 Environmental Sustainability initiatives and strategies in Europe: European Union

In 2020, according to Eurostat,⁵⁵² the EU imported 58% of its energy. This rate was lower than that of 2019 (60%), due largely to the economic crisis caused by the Covid 19 pandemic, although it remains somewhat higher than in 2000 (56%). The energy import reliance rate in the EU ranges from over 90% in Malta, Cyprus, and Luxembourg to 10% in Estonia.

In 2020, the EU relied mostly on Russia for crude oil, natural gas, and solid fossil fuel imports, followed by Norway for crude oil and natural gas.⁵⁵³

⁵⁴⁹ Public Procurement Act 14133/2021- Brazil

⁵⁵⁰ Criteria, practices and general guidelines of sustainability in federal government contracts Decree 7746/2012 Brazil

⁵⁵¹ Ibid Decree 7746/2012

⁵⁵² Eurostat "From Where Do We Import Energy ?" (*Shedding light on energy in the EU2020*) <https://ec.europa.eu/eurostat/cache/infographs/energy/bloc-2c.html> accessed 8 December 2022

⁵⁵³ Ibid Eurostat

The Treaty of Maastricht (1993)⁵⁵⁴ established the environment as an official EU policy area, established the co-decision mechanism, and established qualified majority voting as the basic rule in the Council. The Amsterdam Treaty (1999)⁵⁵⁵ established the need to incorporate environmental protection into all EU sectoral policies to promote sustainable development. With the Treaty of Lisbon (2009),⁵⁵⁶ 'climate change mitigation' became a particular aim, as did sustainable development in ties with third nations. The EU's legal identity now allows it to enter into international treaties. The Treaty on the Functioning of the European Union (TFEU), in Article 191, consolidated its framework for all areas of the environment.⁵⁵⁷

EU environmental policy is based on the principles of precaution, prevention, rectifying pollution⁵⁵⁸ at source and on the 'polluter pays' principles.⁵⁵⁹ This mandate has been expanded several times⁵⁶⁰ to encompass issues such as the care for geological storage facilities, the security of offshore oil and gas activities, and the disposal of waste from the extraction process.

In late 2020 the Commission proposed the 8th Environment Action Programmes (EAPs)⁵⁶¹ for 2021–2030. To implement EU climate and environment policy, the EAP urges stakeholder participation at all levels. It is underpinned by the EU's 2030 Agenda and SDGs. The 8th Environment Action Programme's headline indicators were agreed by the Commission on July 26, 2022, to track EU environment and climate targets (EAP). This monitoring system will inform European citizens about EU climate and environmental policies and allow policymakers to discuss where more efforts are needed to stay within the safe and just limitations of our planet's physical capabilities. Mid-term and comprehensive evaluations will be issued by 31 March 2024 and 2029, respectively. If necessary,

⁵⁵⁴ Treaty on European Union (TEU) [1993] OJ C191/13

⁵⁵⁵ European Union, Treaty of Amsterdam Amending the Treaty on European Union, The Treaties Establishing the European Communities and Related Acts [1999]

⁵⁵⁶ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C 306/01

⁵⁵⁷ Treaty on the Functioning of the European Union (TFEU)

⁵⁵⁸ Council Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage (2004)

⁵⁵⁹ Christian Kurrer for European Parliament, "Fact Sheets on the European Union | European Parliament" (*europarl*2021) <https://www.europarl.europa.eu/factsheets/en/home> accessed 8 December 2022

⁵⁶⁰ Ministero dell'Ambiente e della Tutela del Territorio e del Mare and Others v Fipa Group Srl, Tws Automation Srl, Ivan Srl Case OJ C 138/12 [2015]CJEU. See also Naturschutzbund Deutschland — Landesverband Schleswig-Holstein eV v Kreis Nordfriesland C-297/19 [2020]

⁵⁶¹ Decision (EU) 2022/591 on a General Union Environment Action Programme to 2030 [2022]

the next environmental action programme will be proposed by 31 December 2029.⁵⁶²

EU environmental law comprises literally of hundreds of directives, regulations rules, and decisions. However, it is national, regional, and local implementation of EU environmental policy that determines its success. Environmental monitoring and EU environmental legislation compliance are thorough and crucial. In 2001, the European Parliament and the Council set (nonbinding) basic requirements for environmental inspections to address the considerable gap in implementation across member states.⁵⁶³ Effective, appropriate, and dissuasive criminal punishments⁵⁶⁴ for the most serious environmental offences were to be applied to member states in order to strengthen the implementation of EU environmental law. This strategy ensures enforcement by providing a forum for policymakers, environmental inspectors and enforcement officers to exchange ideas and best practices. Named the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL),⁵⁶⁵ it comprises an international network of environmental authorities of EU Member States, accession and candidate countries, as well as Norway.

The European Commission further facilitates the monitoring and reporting of environmental regulations and obligations through a strategic, comprehensive approach known as the Environmental Implementation Review (EIR).⁵⁶⁶ The EIR is inclusive and participative of major stakeholders. Its aim is to be flexible enough to consider a member state's challenges, and then allow it to adopt the relevant environmental policy in a timely and appropriate manner. The EIR is conducted by a dedicated commission which designs support for member states. This research emphatically endorses this approach, because it improves the

⁵⁶² Recommendation of the European Parliament and of the Council providing for minimum criteria for environmental inspections in the Member States [2001] OJ L 118 P. 0041 - 0046

⁵⁶³ Recommendation of the European Parliament and of the Council providing for minimum criteria for environmental inspections in the Member States [2001] OJ L 118 P. 0041 - 0046

⁵⁶⁴ Council Directive (EC)2008/99 on the protection of the environment through criminal law [2008] OJ L 328, P. 28–37

⁵⁶⁵ IMPEL "Welcome to the New IMPEL Website" (*IMPEL Website*)

<https://www.impel.eu/en#:~:text=The%20European%20Union%20Network%20for,candidates%20to%20join%20the%20European> accessed December 10, 2022

⁵⁶⁶ The 2022 report of EIR establishes which countries have absorbed successful practices, i.e. Estonia's steady phase-out of oil-shale-based energy by 2040, Italy being on track with reporting environmental impacts. See Commission, 'Environmental Implementation: Turning the tide through environmental compliance' COM (2022) 438 final

effectiveness and efficiency of delivering environmental policy and legislation and its direct links with environmental sustainability.⁵⁶⁷

In this regard, the EIR strategy for enforcement is another good practice worth highlighting and emulating. For example, if a member state fails to comply with EU legislation, the Commission may initiate a formal infringement case against the state concerned. Before initiating a formal procedure, the Commission may initially consult with the member state to conduct an investigation.⁵⁶⁸

3.3.5 Environmental Sustainability initiatives and strategies in North America: US

Energy resource debates are at the heart of both policies and election campaigns across North America.⁵⁶⁹ All North American countries have federal systems of government, yet the authority to make energy policy differs in each federalist system.⁵⁷⁰ At the extreme, Canadian provinces have nearly complete sovereignty over Canadian energy policy, with energy matters allocated to these provinces under the Canadian constitution.⁵⁷¹ Federal efforts to design and harmonise Canadian energy policy necessitate provincial negotiations and coordination.

The federal government of the United States has a greater degree of authority over energy planning than the central government of Canada. Nonetheless, US states still retain significant energy sovereignty compared to other countries, and indeed to some governments worldwide.⁵⁷² As a result, energy policy in the United States is a synthesis of federal and state legislative and regulatory activities.⁵⁷³ As an example, the Obama administration's proposed Clean Power Plan⁵⁷⁴ intended

⁵⁶⁷ The Treaty on the Functioning of the EU [2012] OJ C 326/47

⁵⁶⁸ EU Commission "Legal Enforcement" (*Environment*) https://environment.ec.europa.eu/law-and-governance/legal-enforcement_en accessed 10 December 2022

⁵⁶⁹ Merrill Rippy, *Oil and the Mexican Revolution* (Brill 1972), Stephen Clarkson and Matto Mildenberger, *Dependent America?: How Canada and Mexico Construct US Power* (University of Toronto Press 2011), Leah C Stokes, "Electoral Backlash against Climate Policy: A Natural Experiment on Retrospective Voting and Local Resistance to Public Policy" (2015) 60 *American Journal of Political Science* p.958

⁵⁷⁰ Matto Mildenberger and Leah C, "The Energy Politics of North America" in Stokes Kathleen J Hancock and Juliann Allison, *The Oxford Handbook of Energy Politics* (Oxford University Press 2019)

⁵⁷¹ Kathryn Harrison, *Passing the Buck: Federalism and Canadian Environmental Policy* (UBC Press 1997)

⁵⁷² *Ibid* Mildenberger

⁵⁷³ John Byrne and others, "American Policy Conflict in the Greenhouse: Divergent Trends in Federal, Regional, State, and Local Green Energy and Climate Change Policy" (2007) 35 *Energy Policy* 4555

⁵⁷⁴ *Ibid* Byrne

to use its powers under the 1990 amended federal Clean Air Act to establish requirements for carbon intensity at state-level energy outputs. However, the proposal required individual states to submit plans to the federal government outlining how they planned to implement the new federal standards. This power dichotomy reflects many energy policies in the United States, enabling individual states to have significant subnational flexibility. Typically, US energy policy is an amalgam based on a collaboration between state and federal initiatives.⁵⁷⁵

In terms of the enhancement of environmental sustainability in federal systems, it seems apparent that such collaboration is more likely to be a positive factor. On the ground, state voices and stakeholders are acknowledged, listened to, and their views factored in and acted upon by federal authorities. This consultative approach, the researcher believes, would significantly advance the cause of environmental sustainability in Nigeria; something which will be critically appraised in chapters eight and nine of this thesis.

Examining more closely the offshore oil and gas industry in the US, the federal government's role in regulating exploration and production is concerned, among other matters, with environmental protection and sustainability.

On May 19, 2010, in a post Deepwater Horizon Disaster context,⁵⁷⁶ the Secretary of the Interior, Ken Salazar, signed a secretarial order dividing the Minerals Management Service (MMS) into three independent entities, to better carry out its three missions:

1. ensuring the balanced and responsible development of energy resources on the Outer Continental Shelf (OCS).
2. ensuring safe and environmentally responsible exploration and production and enforcing applicable rules and regulations.
3. ensuring a fair return to the taxpayer from offshore royalty and revenue collection and disbursement activities.

⁵⁷⁵ Nicholas Lutsey and Daniel Sperling, "America's Bottom-up Climate Change Mitigation Policy" (2008) 36 Energy Policy 673

⁵⁷⁶ U.S. Government, "Minerals Management Service Reorganization" (- *Minerals Management Service Reorganization*) <https://www.govinfo.gov/content/pkg/CHRG-111shrg57214/html/CHRG-111shrg57214.htm> accessed December 15, 2022

Under Salazar's direction, the previous MMS (Mineral and Mining Service) was renamed the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE) to more accurately describe the scope of the organization's oversight. The creation of BOEMRE was essentially a comprehensive reform of the federal government's regulation of offshore energy development and the institutions responsible for it.

Following on from this, in October 1, 2011, the new Bureau of Safety and Environmental Enforcement (BSEE) was created to enforce safety and environmental regulations. Its functions include: supervision of all field operations including Permitting and Research, Inspections, Offshore Regulatory Programs, Oil Spill Response, and newly formed Training and Environmental Compliance functions.⁵⁷⁷

In broader terms, under the authority of the Clean Air Act,⁵⁷⁸ the Clean Water Act,⁵⁷⁹ the Safe Drinking Water Act,⁵⁸⁰ and the Environmental Protection Agency (EPA),⁵⁸¹ strict drinking water and air quality standards have already been enforced.⁵⁸² Here again, obvious forward links to environmental sustainability can be discerned.

In addition, a range of regulatory schemes have been initiated. These have directly reduced growth in GHG emissions from automobiles, appliances and equipment, and buildings. These have had, and will continue to have, a growing impact on lowering GHG emissions, as rules have tightened over time.⁵⁸³ For example, the National Highway Traffic Safety Administration's (NHTSA)⁵⁸⁴ Corporate Average Fuel Efficiency (CAFE) standards⁵⁸⁵ establish fuel economy targets in miles per gallon for newly produced passenger automobiles and light

⁵⁷⁷ Bureau of Safety and Environmental Enforcement, "Organizational History" (*History | Bureau of Safety and Environmental Enforcement*) <https://www.bsee.gov/about-bsee/our-organization/organizational-history> accessed December 15, 2022

⁵⁷⁸ Clean Air Act 1970

⁵⁷⁹ Clean Water Act 1972

⁵⁸⁰ Safe Drinking Water Act 1974

⁵⁸¹ Environmental Protection Agency "U.S. Environmental Protection Agency | US EPA" (*EPA*) <https://www.epa.gov/> accessed December 13, 2022

⁵⁸² Environmental Protection Agency "Reviewing National Ambient Air Quality Standards (NAAQS): Scientific and Technical Information" (*EPA*) <https://www.epa.gov/naaqs> accessed December 13, 2022

⁵⁸³ Congress Research Service "U.S Climate Change Policy" 2021 p. 7

⁵⁸⁴ NHTSA "National Highway Traffic Safety Administration" (*NHTSA*) <https://www.nhtsa.gov/> accessed December 13, 2022

⁵⁸⁵ NHTSA, "Corporate Average Fuel Economy" (*NHTSA*) <https://www.nhtsa.gov/laws-regulations/corporate-average-fuel-economy> accessed December 13, 2022

trucks marketed in the United States. These rules also have the obvious additional benefits of lowering GHG emissions from automobiles.

It is also worth noting that since the 1970s, the US Congress has passed a vast range of energy-related policy measures, including support for energy conservation and efficiency; the most recent being the Energy Act of 2020.⁵⁸⁶ Again, the Energy Policy and Conservation Act (EPCA),⁵⁸⁷ among other provisions, authorises the federal programme to create minimum energy conservation requirements for consumer products and industrial equipment.

The modified EPCA empowers the U.S. Department of Energy (DOE's) Appliance and Equipment Criteria Programme to establish efficiency standards for roughly 60 product categories.⁵⁸⁸ Importantly, and of high significance in enhancing environmental sustainability, the Energy Conservation and Production Act,⁵⁸⁹ among other features, established federal performance standards for new residential and commercial buildings and encouraged state and local governments to adopt and enforce standards through building codes.⁵⁹⁰

However, somewhat disappointingly, and in contrast to Europe, North America has not built strong international institutions to handle continental energy and environmental policies. While oil, natural gas and electricity are traded throughout the region, energy policies remain the responsibility of national and subnational governments in Canada, Mexico, and the United States.⁵⁹¹ Thus, integration and independence are two competing forces that drive regional energy strategy. It is contended that a more holistic approach would be desirable, to enhance the cause of environmental sustainability.

3.4 Findings and Conclusion

As critically appraised in this chapter, the foundations of effective governance for environmental sustainability include efficient administrative entities, institutions, and supportive legislative and regulatory frameworks which allow governments, at federal, state or municipal levels, to undertake and implement crucial

⁵⁸⁶ Energy Act of 2020 Division Z see 116-260

⁵⁸⁷ Energy Policy and Conservation Act (EPCA) 2021

⁵⁸⁸ Corrie E Clark, "Department of Energy Appliance and Equipment Standards Program" (CRS 2019)

⁵⁸⁹ Ibid ECPA P 94-385

⁵⁹⁰ Ibid CRS report

⁵⁹¹ Ibid Mildenberge

environmental protection actions to enhance sustainability. In order to achieve environmental sustainability, it is now generally accepted that both economic growth and environmental stewardship are necessary.⁵⁹²

National level institutions play a critical role in the formulation and implementation of government strategies, policies, and programmes. Their role in achieving environmental sustainability is becoming increasingly important, as it entails translating a new and uncharted approach to development planning and policy, as well as reorienting existing institutional paradigms and relationships. This will achieve that vital paradigm: the integration of environmental concerns into development processes which must embrace the concept of environmental sustainability.

The big picture of the global and regional entities critically surveyed in this chapter undoubtedly shows a modest but steady improvement in institutional capacity, as the prominence of environmental issues in the overall development policies of many regions, governments, cities and in the commercial sector continues to grow.

The chapter concludes with asserting that institutional structures must be capable of sending clear, unambiguous, and directional signals and incentives to the range of actors responsible for carrying out the underlying aims and objectives required to make environmental sustainability a reality. In essence, the advances which have evolved in the regional institutional framework can be summarised as follows; the establishment of apex multi-stakeholder agencies focused on setting goals, rules, and regulations; the provision of firm and unambiguous direction to the executive branches of government; adequate analytical machinery to assess performance; and the provision of far-reaching policy inputs. At the very top, these must be supplemented by establishing environment ministries and the delegation of executive and constitutional powers to execute those vital environmental protection measures to achieve true environmental sustainability.

The next chapter thus proceeds with a case study of the regulatory framework for environmental sustainability in Nigeria.

⁵⁹² ESCAP "Regional Institutions" (ESCAP) <https://www.unescap.org/about/regional-institutions> accessed December 13, 2022

4 CHAPTER FOUR: REGULATORY FRAMEWORK FOR ENVIRONMENTAL SUSTAINABILITY IN NIGERIA

4.1 Introduction

As previously stated, Nigeria is Africa's 2nd largest oil producer.⁵⁹³ It has the continent's biggest natural gas reserves and was the world's fifth-largest liquefied natural gas (LNG) exporter in 2021.⁵⁹⁴ The Nigerian government relies significantly on revenues from crude oil and gas; out of a total revenue of 13,766 Billion Naira in 2021, oil revenues accounted for 5,406 Naira, or 39%.⁵⁹⁵ According to OPEC in 2022, Nigeria's oil production averaged 1,323 million bbl/day, while it marketed a total of 48.572 cubic metres of natural gas.⁵⁹⁶

Most of the country's main deposits are located near the Niger River delta, although its offshore production is increasing quite rapidly. Thus, Nigeria is one of the few big oil-producing countries that is in a position to increase its oil output.⁵⁹⁷

Turning to issues related to environmental sustainability in Nigeria, one of the commitments reached at the Earth Summit (1992)⁵⁹⁸ in the Rio Declaration on Environment and Development was to "not carry out any activity on indigenous peoples' territories that would cause environmental damage or be culturally inappropriate".⁵⁹⁹ Zambia, Kenya, and Nigeria have signed this agreement. As a signatory, Nigeria is required to develop laws and regulations to protect the rights of indigenous peoples to ensure the protection and sustainability of their natural environment.

⁵⁹³ Lars Kamer, "Leading Oil Producing Countries in Africa 2021" (*Statista* August 3, 2022) <https://www.statista.com/statistics/1178514/main-oil-producing-countries-in-africa/> accessed 18 Dec.18, 2022

⁵⁹⁴ 'Statistical Review Of World Energy' (*BP*, 2022) <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2022-full-report.pdf> accessed 18 Dec.2022 .

⁵⁹⁵ International Monetary Fund, Nigeria : 2022. Article IV Consultation <https://www.imf.org/en/Publications/CR/Issues/2022/02/09/Nigeria-2021-Article-IV-Consultation-Press-Release-Staff-Report-Staff-Statement-and-512944> accessed 18 Dec.2022.

⁵⁹⁶ OPEC, Nigeria Facts and Figures, 2022. https://www.opec.org/opec_web/en/about_us/167.htm. Accessed 18 Dec, 2022

⁵⁹⁷ Mordor Intelligence' 'Nigeria Oil And Gas Industry Outlook | Overview, Trends 2021 To 2026 With COVID Impact' (*Mordorintelligence.com*, 2021) <https://www.mordorintelligence.com/industry-reports/nigeria-oil-and-gas-market> accessed 21 August 2021.

⁵⁹⁸ UN, "Report Of The United Nations Conference On Environment And Development" (Rio De Janeiro, 3-14 June 1992) https://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_CONF.151_26_Vol.I_Declaration.pdf accessed 18 Dec,2022 1

⁵⁹⁹ Ibid CON.151

Based on this premise, the research will now narrow its focus to legislative and judicial milestones which have been put in place to guarantee environmental protection and sustainability in Nigeria. Thus, the researcher will commence with the identification and critical appraisal of Nigerian government institutions and key legislation for addressing issues related to environmental sustainability. The primary focus of this appraisal is essentially to grasp and delineate the governance strategy vis-a-vis the environmental sustainability of the Nigerian Oil and gas industry.

To proceed, this critical analysis of major legislation governing the oil and gas industry will attempt to capture the level of adaptation and coherence of the Nigerian Government's initiatives in aligning itself to international treaties relating to environmental sustainability.

Finally, the chapter will critically assess the role of the Nigerian government and its effectiveness, through legislation, in actualising the positive impacts of its legal enactments towards achieving environmental sustainability in Nigeria.

4.2 Regulatory Framework and the Central Government's Interventions in Nigeria

The three actors in Nigeria's environmental governance are national, state, and local institutions. The main participants in the three tiers of government are the Executive, Legislative, and Judicial bodies. Thus, legal, policy, and institutional frameworks underpin Nigeria's environmental governance structure.⁶⁰⁰ A critical and thorough evaluation of the relevant framework for environmental sustainability in place in Nigeria will highlight the achievements and weaknesses of Nigeria's existing environmental governance.⁶⁰¹

4.2.1 National Environmental Standards and Regulations Enforcement Agency (NESREA)

NESREA is empowered with the authority to incorporate all of Nigeria's domestic environmental rules, protocols, procedures, requirements, and legislation, in order to enforce conformity with all the international legal instruments, protocols,

⁶⁰⁰ David V Ogunkan, "Achieving Sustainable Environmental Governance in Nigeria: A Review for Policy Consideration" (2022) 2 Urban Governance p.212

⁶⁰¹ See Annex 1 for the list of regulatory commissions in Nigeria and research analysis of their function and gaps in enhancing environmental sustainability

conventions, and treaties to which Nigeria is a party. However, Nigeria has signed up to several treaties which it has yet to ratify and, in some cases, domesticate; meaning that it is not yet legally bound to the terms of said treaties.⁶⁰² The Vienna Convention on the Law of Treaties⁶⁰³ establishes the necessity for ratification, which means that the state's application of the treaty at a domestic level has gained the necessary vetting. A UN Report from 2012⁶⁰⁴ demonstrates that it is not enough to sign a treaty; hence it can be said that the function of NESREA in enforcing treaties is currently rather vague. This does not necessarily mean it has failed in its other roles. The table below highlights the significant functions of NESREA and its role in environmental sustainability.

Table 4: NESREA's Role in environmental sustainability⁶⁰⁵

Role of NESRA	Applicable Environmental Sustainability Governance Principle	Applicable Environmental Sustainability framework	Application to the Niger Delta and research
<ul style="list-style-type: none"> • Inspection. • Compliance monitoring. • Negotiation. 	<ul style="list-style-type: none"> • Precautionary principle 	<ul style="list-style-type: none"> • UNFCCC⁶⁰⁶ • The Espoo (EIA) Convention ⁶⁰⁷ • UNEP⁶⁰⁸ • The World Bank Environmental 	<ul style="list-style-type: none"> • Signed and ratified membership.⁶¹¹ • 42 % of CDM⁶¹² (Clean Development Mechanism) is based in the Niger Delta.⁶¹³

⁶⁰² Party to: Biodiversity, Climate Change, Climate Change-Kyoto Protocol, Desertification, Endangered Species, Hazardous Wastes, Law of the Sea, Marine Dumping, Marine Life Conservation, Ozone Layer Protection, Ship Pollution, Wetlands signed, but not ratified: none of these selected agreements

⁶⁰³ Vienna Convention on the Law of Treaties 1969 Article 2 (1) (b), 14 (1) and 16.

⁶⁰⁴ John Vidal, 'Many Treaties to Save the Earth, But Where's the Will to Implement Them?' *The Guardian* (2012) <https://www.theguardian.com/environment/blog/2012/jun/07/earth-treaties-environmental-agreements> accessed 22 February 2021.

⁶⁰⁵ Compiled by the researcher

⁶⁰⁶ Ibid Vidal

⁶⁰⁷ No African country is inclusive in its membership, but Nigeria has taken guidance from the UNEP.

⁶⁰⁸ 'Environmental Assessment of Ogoniland Report' (UNEP - UN Environment Programme, 2011) <https://www.unep.org/explore-topics/disasters-conflicts/where-we-work/nigeria/environmental-assessment-ogoniland-report> accessed 22 February 2021.

⁶¹¹ Date of signature 22 September 2016, Date of ratification 16 May 2017 see 'Nigeria' (Unfccc.int, 2021) <https://unfccc.int/node/61130> accessed 22 February 2021.

⁶¹² The aim of this project is to increase consciousness among project managers and other stakeholders regarding the implications of climate change and the advantages of renewable technology in their ventures and processes.

⁶¹³ Surendran Pillay, 'An Assessment of Clean Development Mechanism Project Contribution to Sustainable Development in Nigeria' (2016) 15 International Business & Economics Research Journal (IBER).

Role of NESRA	Applicable Environmental Sustainability Governance Principle	Applicable Environmental Sustainability framework	Application to the Niger Delta and research
		Assessment Directive ⁶⁰⁹ <ul style="list-style-type: none"> UN's Goals and Principles of Environmental Impact Assessment⁶¹⁰ 	<ul style="list-style-type: none"> Not fully compliant⁶¹⁴ NESRA in its power to enforce treaties can ensure better compliance Environmental impact assessment
<ul style="list-style-type: none"> To engage in partnership in the protection of the environment⁶¹⁵ 	<ul style="list-style-type: none"> Principle of legitimacy 	<ul style="list-style-type: none"> UNECE⁶¹⁶ 	<ul style="list-style-type: none"> NESREA invites stakeholders from diverse industries to provide feedback on assessing and formulating regulations. NESREA could gain more points with defined levels of participation at initial points of decision-making. Current literature on NESREA indicates the need for improved awareness.⁶¹⁷

⁶⁰⁹ The World Bank, 'Strategic Environmental Assessment in the World Bank: Learning From Recent Experience And Challenges' (2012)RN 72895 <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/729811468331017746/strategic-environmental-assessment-in-the-world-bank-learning-from-recent-experience-and-challenges> accessed 22 February 2021.

⁶¹⁰ 'UNEP - UNITED NATIONS ENVIRONMENTAL PROGRAMME Goals And Principles Of Environmental Impact Assessment' (1987) <https://www.soas.ac.uk/cedep-demos/000_P514_IEL_K3736-Demo/treaties/media/1987%20UNEP%20Goals%20and%20Principles%20of%20Environmental%20Impact%20Assessment.pdf > accessed 22 February 2021.

⁶¹⁴ The timeline between the 2nd and 3rd communication is 2014 and 2020.

⁶¹⁵ Ngeri, B. 'Using Enforcement Cooperation to Promote Environmental Governance: The Case of the National Environmental Standards and Regulations Enforcement Agency of Nigeria' (Director General/Chief Executive Officer, National Environmental Standards And Regulations Enforcement Agency 2014).

⁶¹⁶ Nigeria is not a signatory.

⁶¹⁷ John Ishaku Mantu, 'NESREA and the Challenge of Enforcing the Provisions of Environmental Impact Assessment Act in Nigeria' [2019] SSRN Electronic Journal.

4.2.2 National Oil Spill Detection and Response Agency (NOSDRA)

NOSDRA is empowered by the Federal Ministry of Environment to coordinate and implement the National Oil Spill Contingency Plan (NOSCP),⁶¹⁸ which incorporates the National Oil Spill Contingency System (NOSCS)⁶¹⁹ for Nigeria, in accordance with the International Convention on Oil Pollution Preparedness, Response, and Cooperation (OPRC 1990),⁶²⁰ to which Nigeria is a signatory. The National Oil Spill Contingency System is a harmonisation of all applicable regulations, organisations, persons, procedures, facilities, equipment, and logistical support in order to respond to a spill, mitigate its negative impacts, and handle related concerns.⁶²¹

By implication, when a spill occurs, cost and funds are recovered from the party responsible for the spill. In the case of *Shell Nigeria Exploration and Production Company Limited (Shell) v National Oil Spill Detection and Response Agency*,⁶²² the court upheld the powers of NOSDRA to impose sanctions without recourse to the court in accordance with the 'polluter pays' principle. However, this decision was reached by the Nigerian Federal High Court without regard for a precedent created by the Court of Appeal in the case of *Nosdra V. Exxonmobil*⁶²³ where the court, whilst considering the powers conferred on NOSDRA by the NOSDRA Act,⁶²⁴ held that it had no power to impose fines without recourse to the courts. The implication of the Court of Appeal decision means that NOSDRA can no longer impose fines, penalties or violations in environmental offences. As a government regulatory organisation, NOSDRA must now appeal the Court of Appeal's decision at the Supreme Court for a final ruling in line with the judgment from the case of

⁶¹⁸ EnvironReview, "National Oil Spill Contingency Plan (NOSCP) for Nigeria (Revised 2013)" (May 2020) <https://environreview.com.ng/national-oil-spill-contingency-plan-noscp-for-nigeria-revised-2013/> accessed December 15, 2022

⁶¹⁹ Ibid NOSCP

⁶²⁰ International Maritime Organisation(IMO), *International Convention on Oil Pollution Preparedness, Response and Co-operation (OPRC)* (1995)

⁶²¹NOSDRA "National Oil Spill Detection and Response Agency" (NOSDRA August 19, 2022) <https://nosdra.gov.ng/> accessed December 15, 2022

⁶²² *Nigeria Exploration and Production Company Limited (Shell) v National Oil Spill Detection and Response Agency* [2018]FHC /L/CS/576 (2018)

⁶²³ *National Oil Spill Detection And Response Agency (NOSDRA) V Mobil Producing Nigeria Unlimited (EXXONMOBIL)* [2018] CA LPELR-44210

⁶²⁴ NOSDRA Act S 6(2) and (3)

Shell and NODSRA. Currently, at the point of this research, there is no update on this case.⁶²⁵

Another highlight of the Shell and NODSRA case is the lamentable lack of collaboration and partnership between IOCs (International Oil Companies) and governmental institutions in Nigeria.⁶²⁶ The current solution of going to court every time a spill occurs worsens the case. A more pragmatic approach would suggest that, when there is an oil spill, IOCs should work with NOSDRA to manage the issue holistically, in the interests of both the communities affected, and environmental sustainability.

4.2.3 Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and Midstream and Downstream Petroleum Regulatory Authority (NMDPRA)

The Petroleum Industry Act (PIA)⁶²⁷ established two industry regulators for Nigeria's oil and gas sector: the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) and the Nigerian Midstream and Downstream Petroleum Regulatory Authority (NMDPRA).⁶²⁸ The NUPRC is the former Department of Petroleum Resources (DPR),⁶²⁹ which now controls upstream sector operations. Similarly, the NMDPRA replaces the now-defunct Department of Petroleum Resources (DPR) Petroleum Product Pricing Regulatory Agency (PPPRA), and the Petroleum Equalization Fund (PEF), and now controls midstream and downstream industry operations.⁶³⁰ Jointly, they are responsible for the technical and commercial control of petroleum operations in their respective sectors and have the right to acquire, retain and dispose of the property, be it; tangible, intangible, real or personal property, rights and obligations.⁶³¹ Although these commissions are new,⁶³² there have been some recent developments regarding their implementation strategies, exemplified by a recent consultation between

⁶²⁵ 21st January 2023

⁶²⁶ Christian Chukwuma Obeagu and Ikenga K.E. Oraegbunam, "Shell Exploration And Production Company Limited vs National Oil Detection And Response Agency (NOSDRA): Case Comment" (2020) 2 International Review of Law and Jurisprudence(IRJL)

⁶²⁷ The Petroleum Industry Act (PIA) 2021 - Nigeria

⁶²⁸ Ibid PIA S.4(1), 29(1)

⁶²⁹ Ibid PIA S.10(a)(ii)

⁶³⁰ Ibid PIA 28(1)

⁶³¹ Ibid PIA 26(1)

⁶³² Oil Review Africa, "Africa Oil Week to Witness Insightful Exchanges on Nigeria's PIA" *oil review africa* (August 18, 2022) <https://www.oilreviewafrica.com/events/africa-oil-week/africa-oil-week-to-witness-insightful-exchanges-on-nigeria-s-pia> accessed December 16, 2022

stakeholders⁶³³ towards implementing the legislative framework governing these agencies.⁶³⁴

It was determined in the consultation that tampering with metering systems or their auxiliary equipment without permission would now result in a \$2 million fine per metre.⁶³⁵ Stakeholders expressed the opinion that the suggested penalties for future breaches could potentially bankrupt the oil and gas corporations. Mr Farouk Ahmed, Chief Executive Officer of the NMDPRA, stated that it was apparent that the Commission undervalued the importance of stakeholders' opinions on the proposed new rules.⁶³⁶

The researcher's view is that, in the interests of enhancing implementation, it will be advantageous to both of these new agencies to work proactively to involve stakeholders in the decision-making process, thus ultimately achieving environmental sustainability goals in oil and gas production.⁶³⁷

4.2.4 Environmental Guidelines and Standards for the Petroleum Industry (EGASPIN) 2002

EGASPIN⁶³⁸ is the primary document that sets environmental and safety criteria that must be adhered to by oil operators in Nigeria to avoid, limit, and regulate pollution from the many components of petroleum operations. Given the importance of the EGASPIN in enhancing environmental sustainability and good governance in the Nigerian oil sector, the researcher feels it is crucially important to review and assess key aspects of the 2018 iteration, in light of current knowledge and advancements in international best practices, current laws and regulations, and emergent governance methodologies.

⁶³³ Includes Chevron, the Independent Petroleum Producers Group (IPPG), Nigeria LNG, World Bank, Shell, and the upstream commission, among others.

⁶³⁴ Ibid PIA

⁶³⁵ Emmanuel Addeh, "Stakeholders Kick against Heavy Fines as NMDPRA Ends Consultations on PIA Regulations" *This Day Live* (October 16, 2022)

<https://www.thisdaylive.com/index.php/2022/10/07/stakeholders-kick-against-heavy-fines-as-nmdpra-ends-consultations-on-pia-regulations/> accessed December 16, 2022

⁶³⁶ Ibid Addeh

⁶³⁷ Ibid A/HRC/17/31

⁶³⁸ DPR EGASPIN 2018 , EGASPIN 1991 and Revised Edition 2002 and see Damilola S. Olawuyi and Zibima Tubodenyefa Review of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN), "Review of the Environmental Guidelines and Standards for the Petroleum Industry in Nigeria (EGASPIN)"(OGESS Institute, 2018)

https://www.iucn.org/sites/default/files/content/documents/2019/review_of_the_environmental_guidelines_and_standards_for_the_petroleum_industry_in_nigeria.pdf accessed December 16, 2022

EGASPIN highlights three major causes of contamination in the oil industry: oil spills, wastewater discharge, and gas flaring.⁶³⁹ It establishes explicit restrictions and limitations aimed at reducing and eliminating the harmful environmental impact of certain types of pollutants. The limitations and standards set by EGASPIN attempt to mirror international best practices⁶⁴⁰ and key environmental principles such as the 'polluter pays' principle. Unfortunately, interpretation and implementation continue to be critical issues.⁶⁴¹

EGASPIN allowed a substantial amount of discretion to the DPR⁶⁴² to intervene and enable discharge when limitation requirements are exceeded.⁶⁴³ EGASPIN contains the term 'unless otherwise allowed by the Director of Petroleum Resources' in many critical areas. While this is not a clear danger to environmental protection, it does raise serious concerns about how the DPR was given such licence.⁶⁴⁴ Lack of clarity in these areas can have an impact on both the regulator and the operator in a variety of ways; including transparency, predictability, timeliness, cost effectiveness, potential duplication of roles between DPR⁶⁴⁵ and NOSDRA, and the (non)availability of information on how many such applications were made and then granted or denied.⁶⁴⁶

In terms of compliance, the United Nations empirical research conducted in Nigeria reflects that a conflict of interest exists when a ministry has two competing priorities: protecting the environment and earning money.⁶⁴⁷ Furthermore, the role of EGASPIN appears to overlap the role of NOSDRA. For instance, EGASPIN specifies that all spills must be notified to the Director of Petroleum Resources, NOSDRA specifies that operators must report oil spills to them. Thus, stakeholder

⁶³⁹ Carlo Cottarelli, "Fiscal Transparency, Accountability, and Risk - International Monetary Fund" (*IMF*2012) <https://www.imf.org/external/np/pp/eng/2012/080712.pdf> accessed December 16, 2022

⁶⁴⁰ Comparator countries: The US, UK, Norway, Alberta (Canada), and Oman see Ibid Olawuyi p.11 and Appendix 1

⁶⁴¹ Council Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage (2004)

⁶⁴² Now NPURC

⁶⁴³ EGASPIN s 6.5

⁶⁴⁴ Ibid Olawuyi 11

⁶⁴⁵ Same exception for gas flaring are found in the PIA 2021 s. 104(1)

⁶⁴⁶ Ibid Olawuyi 11

⁶⁴⁷ United Nations Environment Programme (UNEP), 'Environmental Assessment of Ogoniland' (UNEP,2011) 139

involvement with these rules and regulations suffers, resulting in regulatory redundancy and overlap.⁶⁴⁸

The lack of distinct and comprehensive possibilities for stakeholders to offer feedback and/or intervene in project proposals is a major shortcoming of EGASPIN. As previously discussed, free, prior, and informed consent (FPIC) of local populations potentially affected by resource development initiatives, is increasingly required under international law.⁶⁴⁹ Although EGASPIN requires operators to "identify and discuss the management and/or implementation of environmental impacts with stakeholders,"⁶⁵⁰ it does not specify who is a stakeholder or how interveners might give feedback. FPIC goes beyond stakeholder discussions. It is a rigorous and participatory procedure that allows impacted public members to influence project approval decisions based on accessible facts.⁶⁵¹

Based on the analysis above, increased transparency and accountability in interpretation and execution are significant considerations necessary for a revamping of EGASPIN.⁶⁵² EGASPIN must be reformed to meet international environmental requirements and contextualised to meet the local context of the Nigerian oil and gas industry.

It is also important to note, of course, that this revamping should bring EGASPIN in line with its current mandate, as per the PIA, in which these guidelines and standards now fall under the NUPRC, rather than the DPR.⁶⁵³

⁶⁴⁸ Ibid EGASPIN 2018 Section 5.6.2 and 5.6.3

⁶⁴⁹ OHCHR "Free, Prior and Informed Consent of Indigenous Peoples - OHCHR" <https://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf> accessed February 6, 2022 also see UNHRC, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework A/HRC/17/31 [2011] paras 8-12

⁶⁵⁰ EGASPIN s. 5.8 (a)(i)

⁶⁵¹ J Ruggie, 'United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' (2011) UN Document A/HRC/17/31 [2011] paras 8-12. See also Damilola Olawuyi, *The Human Rights Based Approach to Carbon Finance* (Cambridge University Press, 2016) p 1-15 accessed Dec 16 2022.

⁶⁵² Ibid Olawuyi p.21

⁶⁵³ Ibid PIA S.10 (a)(ii)

4.3 Legislative Framework for Environmental Sustainability

In Nigeria, the criminal law process, civil remedies, and the operation of administrative law have all been used to address issues related to adverse environmental exploitation.⁶⁵⁴ The civil remedy is enforced through tort law to regulate actions that harm the environment and, if harm is done, to guarantee that proper compensation is provided.⁶⁵⁵ Nigeria generally has a common law and legislative structure for environmental protection.⁶⁵⁶ In this section key statute and legislative instruments are critically appraised to establish why the law has failed to tackle key issues associated with environmental sustainability.

4.3.1 Environmental Impact Assessment Act 1992

Since the first global conference on the environment in 1972,⁶⁵⁷ a wide range of different approaches have been taken to address environmental issues. The implementation of Environmental Impact Assessments (EIA) is one notable example. An EIA ensures that sustainability and the environment are closely considered during the planning, implementation and future monitoring of a project.

The Environmental Impact Assessment Act of 1992 is Nigeria's primary law regulating approaches to identifying and mitigating adverse environmental impacts.⁶⁵⁸ Any project that might have a major negative impact on the environment must undergo an Environmental Impact Assessment under this Act.

At a minimum, an EIA report includes not only a description of the activity, potentially affected environmental areas, practical alternatives, and assessment of likely or potential environmental impacts, but also sections on identifying and describing mitigation measures. In addition, an indication of knowledge gaps, notification of trans-boundary adverse environmental effects (if any), and a brief non-technical summary of all of the above information for the layman should be provided.⁶⁵⁹ These provisions are replicated in the PIA.⁶⁶⁰ While the EIA under the

⁶⁵⁴ Mercy O Erhun, "A Legal Framework of Sustainable Environmental Governance in Nigeria" (2015) *Frontiers of Legal Research* 3(4) p. 24-39.

⁶⁵⁵ Ese Malemi, *The law of torts* (Princeton Publishing, Lagos 2013)

⁶⁵⁶ Ibid Erhun p. 24-39

⁶⁵⁷ United Nations, "Conference on the Human Environment" (Stockholm, June 1972)

⁶⁵⁸ Nigeria: Environmental Impact Act 1992

⁶⁵⁹ Ibid EIA S.4

⁶⁶⁰ Ibid PIA 102

EIA Act is conducted by the Nigerian Environmental Protection Agency, the EIA in the PIA is conducted by the NUPRC.⁶⁶¹ It should also be noted that in addition to federal EIA, State Environmental Protection Agencies have enabling instruments which permit them to conduct EIAs without limitation.⁶⁶²

Globally, some researchers have identified that there is a tendency for financial and other benefits to undermine EIA procedures; affecting major parties engaged in performing EIAs, including project proponents, government officials, and the people who actually carry out EIAs ("experts"). There is also the potential for either project backers or government officials to exert undue influence on decisions about whether or not an EIA is necessary.⁶⁶³ It has been reported that corruption within the Nigeria environmental ministry has led to flagrant violations of the Nigeria's EIA requirements.⁶⁶⁴ The independent assessment conducted by United Nations Environmental Programme (UNEP)⁶⁶⁵ demonstrates that government agencies have yet to fulfil their environmental sustainability mandate in Nigeria. There should be transparency in the EIA process and the empowerment of requisite agencies to ensure they are not susceptible to corruption.

4.3.2 The Constitution of the Federal Republic of Nigeria (CFRN) 1999

The Nigerian constitution, as the apex national legal order, acknowledges and establishes provisions for environmental improvement and protection. Relevant sections assert that:⁶⁶⁶

- a) It is the objective of the Nigerian government to enhance and safeguard the country's air, land, water, forest, and wildlife.⁶⁶⁷
- b) Foreign treaties signed by the National Assembly shall be applied as law in Nigeria.⁶⁶⁸

⁶⁶¹ EIA S. 61 on interpretation of Agency and also see s. 6-7

⁶⁶² Nerry Echefu and E Akpofure, "Environmental Impact Assessment in Nigeria: Regulatory Background and Procedural Framework" [2022] The International Association for Impact Assessment <https://www.iaia.org/pdf/case-studies/EIANigeria.pdf> accessed December 17, 2022

⁶⁶³ Ibid Echefu for Nigeria, For global instance, see Aled Williams and Kendra Dupuy, "Deciding over Nature: Corruption and Environmental Impact Assessments" (2017) 65 Environmental Impact Assessment Review 118

⁶⁶⁴ John Kakonge, "EIA and Good Governance: Issues and Lessons from Africa" (1998) 18 Environmental Impact Assessment Review 289

⁶⁶⁵ UNEP, "Environmental Assessment of Ogoniland" (UNEP, 2011) p. 224 also see UNEP, "Feedback Report: No Progress" (UNEP, 2014)

⁶⁶⁶ The Constitution of the Federal Republic of Nigeria (CFRN) 1999

⁶⁶⁷ Ibid CFRN S.20

⁶⁶⁸ Ibid CFRN S.12

c) It protects the fundamental human rights to life and human dignity.⁶⁶⁹

It has been argued that the provisions in S. 33 and 34 are inherently linked to the need for a healthy and secure environment in order to give these rights effect.⁶⁷⁰

4.3.3 Niger-Delta Development Commission (NDDC) Act 2000

The NDDC Act⁶⁷¹ establishes the NDDC;⁶⁷² its core aim being to enable it to be statutorily responsible for developing strategies and guidelines for the Niger Delta region's growth and restoration. This very significant legal intervention oversees the activities of oil and gas corporations operating in the Niger Delta region, to guarantee compliance with applicable laws and regulations, pollution prevention and to address the regional socio-economic impacts of the O and G industry.

The underlying motive behind the Commission was to teach and educate the younger generation of the oil-rich Niger Delta areas in order to reduce hostility and militancy, while improving vital infrastructure to boost diversification and production.⁶⁷³ However, since the inception of the act and commission, it has faced a lot of criticism, particularly in relation to its funding and initiatives. The NDDC receives funding from many sources for its operations.⁶⁷⁴ It appears, however, that actual compliance with its operational aspects has not been ideal, with the tendency of noncompliance compounded by the NDDC's lack of legislative authority to enforce the prompt release of payments due to it or to apply sanctions for infringement.⁶⁷⁵

Following the Court of Appeal's ruling in *Niger Delta Development Commission v. Nigeria Liquefied National Gas Limited*,⁶⁷⁶ advocates for amendment of the NDDC Act saw a surge in support for their cause.

⁶⁶⁹ Ibid CFRN S. 33 and 34

⁶⁷⁰ Environmental Law Research Institute, "A Synopsis of Laws and Regulations on The Environment in Nigeria" (*ELRI*) <https://elri-ng.org/environmental-law-policies-in-nigeria/> accessed December 16, 2022

⁶⁷¹ Niger-Delta Development Commission (NDDC) Act 2000 Part II

⁶⁷² NDDC (*NDDC*) <https://www.nddc.gov.ng/> accessed December 17, 2022

⁶⁷³ Juliana Taiwo, "Nigeria: Yar'Adua Creates Ministry of Niger Delta" *allafrica.com* (September 11, 2008) <https://allafrica.com/stories/200809110015.html> accessed December 17, 2022

⁶⁷⁴ Ibid NDDC 2)(b) and (c)

⁶⁷⁵ Premium Times, "Nigerian Govt Owes NDDC N1.8 Trillion – Official" (*Premium Times Nigeria*) August 29, 2017) <https://www.premiumtimesng.com/regional/south-south-regional/241888-nigerian-govt-owes-nddc-n1-8-trillion-official.html> accessed December 17, 2022

⁶⁷⁶ *Niger Delta Development Commission v. Nigeria Liquefied National Gas Limited* [2010] CA/LPELR 4596

Without finances, the Act cannot fulfil its environmental sustainability mandate and meet its objectives or obligations to a range of stakeholders. Disappointingly, the Commission is seen by many experts as the nerve centre for 'graft' in the Niger Delta.⁶⁷⁷ As a result, most of the funds for the contracts have been corruptly embezzled and misused, leading to many incidents of abandoned projects in the communities.⁶⁷⁸ Should the Act be amended,⁶⁷⁹ there is also the danger of its potential conflict with the provision for the Host Communities Development Trust (HCDDT) under the PIA.⁶⁸⁰

4.3.4 National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007

The National Environmental Standards and Regulations Enforcement Agency (NESREA) Act⁶⁸¹ replaced the Federal Environmental Protection Act (FEPA) of 1988.⁶⁸² The Act initially identifies the functions of the NESREA discussed in section 4.2.1 of this research. The Act empowers the agencies to enforce its mandates. However it is important to reiterate that this agency has no jurisdiction or authority over environmental concerns related to the oil and gas industry.⁶⁸³ However, it does provide for the enforcement of compliance with international agreements, protocols, conventions and treaties on the environment in the oil and gas sector.⁶⁸⁴

4.3.5 Petroleum Industry Act (PIA) 2021

The PIA is an attempt by the Nigerian Government to adapt to the constant evolution of the global, and by implication the Nigerian, oil and gas industry. The PIA as long awaited major legislation and tackles a very comprehensive range of issues. However, the researcher will limit the critical appraisal of the PIA, in line with the focus of this thesis, to its implications for host community relations, the

⁶⁷⁷ Isidiho and Sabran (2015)

⁶⁷⁸ Alphonsus Isidiho, "The Role of People's Participation, Monitoring and Evaluation in the Successful Implementation of Niger Delta Development Commission (NDDC) Projects in Selected Communities in Imo State" *Scottish Journal of Arts, Social Sciences and Scientific Studies* 2047; also see Kaniye Samuel Adheledhini Ebeku, "Assessing the Performance of the Niger Delta Development Commission (NDDC) 2001-2020: Another Failed Dream" (2020) 3 *International Journal of Law and Society* 78

⁶⁷⁹ NDDC Amendment Act 2004 LFN Cap N86

⁶⁸⁰ Such conflict could arise from the provision of the PIA mandating companies to pay 3% for all CSR activity and asking them to make another commitment to the NDDC pocket.

⁶⁸¹ National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007 - Nigeria

⁶⁸² Federal Environmental Protection Act (FEPA) 1998 - Nigeria

⁶⁸³ *Ibid* NESREA Act s.7 (h)

⁶⁸⁴ *Ibid* NESREA Act s.7 (c)

crucial importance of the environment, and issues related to environmental sustainability.

As touched on earlier, and at the project cycle level, the potential consequences of oil and gas activities may be analysed using a formal technique known as an Environmental Impact Assessment (EIA).⁶⁸⁵ The PIA grants the NUPRC such rights when approving or rejecting Environmental Management Plans (EMPs) submitted by oil and gas companies, subject to the payment of a prescribed sum to the Environmental Remediation Fund.⁶⁸⁶ However, in terms of the financial contributions, similar to the EGASPIN guidelines,⁶⁸⁷ there are no separate guidelines for dealing with issues related to stakeholder involvement. The amount is fixed, based on no fixed criteria by the NUPRC.

With respect to corporate social responsibility and host community relations, the PIA delegates all CSR initiatives and engagement to the Host Communities Development Trust (HCDDT).⁶⁸⁸ The implication of this delegation essentially makes CSR a comprehensive mandatory initiative in Nigeria.⁶⁸⁹ In contrast to other regions, such as India and China, although CSR is a mandatory initiative, it is not as comprehensive as in its function and roles as provided for in the HCDDT.⁶⁹⁰ For example, in India, stakeholders, although mandated to remit funds into an account for CSR, do not regulate the fund's usage, thus leaving room for innovation and creativity on the company's part.⁶⁹¹ While, the transitional command and control approach adopted by the PIA with respect to host community relations and stakeholder engagement plays an important role in solving problems, the decentralised, participative and problem-solving method adopted by India and other regions of the world represents, in the researcher's view, a more appropriate alternative approach for the Nigerian oil and gas industry.⁶⁹²

⁶⁸⁵ See OECD recommendation discussed in 3.3.4 also see OECD, Recommendation of the Council on Improving the Environmental Performance of Government Legal/0283 [1996]

⁶⁸⁶ PIA 102 (1-7)

⁶⁸⁷ EGASPIN s. 5.8 (a)(i)

⁶⁸⁸ PIA 316

⁶⁸⁹ Joy A Debski and Elimma C Ezeani, "Corporate Social Responsibility under the Petroleum Industry Act 2021: Achieving Environmental Sustainability through Multi-Stakeholder Partnership" (2022) 3 African Journal of Engineering and Environment Research

⁶⁹⁰ Ibid Debski and Eziani, p.?

⁶⁹¹ The Companies Act 2014- India S.135

⁶⁹² Ibid Debski and Eziani, p.?

4.4 Environmental Sustainability: Key Jurisprudence

While the availability of proper enforcement tools under the law is a crucial starting point, as well as demonstrating the ability and willingness of government institutions to apply these legal instruments, the courts serve as the final resort.⁶⁹³ In environmental cases, the court interprets and applies the laws, and through their comprehension and insight, they may disclose regulatory inadequacies through such judicial review.⁶⁹⁴ Environmental justice is an important concept in environmental law.⁶⁹⁵

In this regard, this section focuses on access to justice⁶⁹⁶ by investigating the role of the courts in interpreting environmental legislation and through the use of common law mechanisms to improve access to environmental justice in Nigeria.

Several factors can challenge access to justice. The conventional expectation is that access to justice will exist in all legal systems; the reality is, however, that cost/inadequate financing, locus standi, typical 36-day delays, non-expert court personnel, and many other factors together have the potential to create encumbrances to justice.⁶⁹⁷

In Nigeria, cost remains a hindrance to access to environmental justice, particularly given the delays in environmental justice administration.⁶⁹⁸ Delay can be a hindrance since it takes more time, costs more money, and frequently discourages plaintiffs.⁶⁹⁹ It takes 5-10 years on average for a matter filed in the High Court to be resolved.⁷⁰⁰ The courts are crowded, not computerised, and have few facilities. A judge may have 60-70 cases every day to rule on.⁷⁰¹

⁶⁹³ Marcia Mulkey, 'Judges and Other Lawmakers: Critical Contributions to Environmental Law Enforcement' (2004) *Sustainable Development Law and Policy* 4 (1) p 2-16

⁶⁹⁴ Eloamaka Carol Okonkwo, "Assessing the Role of the Courts in Enhancing Access to Environmental Justice in Oil Pollution Matters in Nigeria" (2020) 28 *African Journal of International and Comparative Law* 195

⁶⁹⁵ Mónica Ramirez-Andreotta, "Environmental Justice" [2019] *Environmental and Pollution Science* 573

⁶⁹⁶ UN, "Report Of The United Nations Conference On Environment And Development" (Rio De Janeiro, 3-14 June 1992) Principle 10

⁶⁹⁷ Deborah L Rhode, 'Access to Justice', 69 *Fordham Law Review* (2001) 1785, and Deborah Rhode, 'Whatever Happened to Access to Justice', 42 *Loyola Law Review LA* (2009)p. 869

⁶⁹⁸ *SPDC v. Ambah* [1997] 66 *LRCN* 390 and *Elf v. Silo & Etsemi* [1994] 6 *NWLR* (pt 350) 258.

⁶⁹⁹ *Ibid* Ambah

⁷⁰⁰ F Morka, 'Social Justice and Litigation Strategies', in Malcolm Langford, *Litigating Economic, Social and Cultural Rights: Achievements, Challenges and Strategies* (Centre on Housing Rights and Evictions Report 2003) 115-116

⁷⁰¹ *Ibid* Morka

Furthermore, an empirical study of Nigerian cases has demonstrated that cases sometimes take up to 29 years in the Nigerian High Court due to congestion and the delayed nature of justice delivery.⁷⁰²

Regarding standing issues, decisions had been typically restrictive⁷⁰³ until the 1989 Supreme Court judgement of *Akilu v. Fawehinmi*,⁷⁰⁴ which enlarged the scope of Nigeria's locus standi doctrines. Despite the *Akilu* case, there have been inconsistent judgements on environmental standing, with some subsequent court statements being restrictive⁷⁰⁵ while others appear to be liberal.⁷⁰⁶

In light of these obstacles, there has been a recent shift toward plaintiffs taking their cases outside of the country, either to a regional court like the Economic Community of West African States (ECOWAS) Court, the African Court of Human and People's Rights, or even to an international court, and in some instances directly to the countries where polluters reside whenever this is possible.⁷⁰⁷

Reforms in the Nigerian legal system might take decades to achieve. Hence it is imperative that the Nigerian government, host communities and oil and gas companies speedily adopt governance strategies that can enhance the goal of environmental sustainability, pending a potential total overhaul of the Nigerian judicial system.

Presented below is a summary illustration of milestone case laws relating to the Nigerian oil and gas industry and its environmental impacts, intended to provide more perspective on issues discussed earlier.

⁷⁰² E Onyema, 'The Multi-Door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC', (2013) 2 Apogee Journal of Business, Property and Constitutional Law p.96

⁷⁰³ *Olawoyin v. AG Northern Region* [1961] 1 NSCC 165 and *Amos v. SPDC* [1974] 4 ECSLR 48, [1977] SC 109

⁷⁰⁴ *Akilu v. Fawehinmi* [1989] 2 NWLR 122

⁷⁰⁵ Restrictive meaning only the AG can institute such proceeding see *Gbemre v. SPDC and Ors* [2005]FHC/B/CS/53/05, *SPDC v. Chief Otoko and others* [1990] 6 NWLR 693, *N.N.P.C. v. SELE* [2004] All FWLR 1859

⁷⁰⁶ Librerel meaning the person affected has a standing see *Adeniran and Anor v. Interland Transport Limited* [1991] 9 NWLR,155, *SPDC v. Nwauka* [2001] 10 NWLR 64, *SPDC v. Elder Banigo I. Firibeb & anor* [2011] LPELR9783.

⁷⁰⁷ *SERAC v. Nigeria* 60 [ACHPR 2001], *Ogale and others v. Chevron* [1997] 1 NWLR148., *Bodo v. Shell, Nigerian*

4.4.1 Shell V. Abel Isaiah [2001]6 NWLR 236

The case of *Isaiah*⁷⁰⁸ concerns the ever-present issue of accessibility to justice in environmental law.

The relevant facts of the case involve the respondent, whose swampland was polluted by the activities of the appellant. In the first court the respondents (as Plaintiffs) were awarded Twenty-two million Naira. The appellant was dissatisfied with the High Court's ruling and filed an unsuccessful appeal with the Court of Appeal. The Appellate Court's decision was then appealed by the appellant. The Supreme Court was asked to rule on whether or not the Court of Appeal erred in its determination that the trial court had jurisdiction over the matter.

The matter was settled in favour of the appellant by a unanimous Supreme Court, which allowed the appeal and reversed the judgments of the Court of Appeal and the High Court.

At the very minimum it is worthy of note that the appellant never contested that there was "damage and loss" due to its oil prospecting efforts. In the *Isaiah case*, the Supreme Court had to weigh not only the merits of its ruling, but also the consistency of its reasoning in light of the court's solemn promise to prioritise justice over formalities at all times.⁷⁰⁹

Clearly, still, in light of the aforementioned circumstances, a ruling like the one made by the highest court in the nation, in the case under review, might only encourage more people to resort to self-help rather than legal remedies.

4.4.2 SPDC V. Jonah Gbemere [2005]

It is not uncommon for host communities in oil-rich regions of Nigeria to sue oil companies for financial compensation, but the case of *Jonah Gbemere v. Shell Petroleum Development Company of Nigeria Limited*⁷¹⁰ marked a significant

⁷⁰⁸ *Shell V. Abel Isaiah* [2001]6 NWLR 236. Accessed December 18, 2022

⁷⁰⁹ *Abacha vs. Fawehinmi* [2000] FWLR (pt. 4) pg. 533 at 622 paragraphs G – H

⁷¹⁰ *Jonah Gbemre v Shell Petroleum Development Company of Nigeria Limited* [2005] FHC/CS/B/153

departure from this tendency. Instead, it should have fixed regulatory inadequacies upheld by the court, but these were never executed.⁷¹¹

The relevant facts of the case involve *Gbemere*, who instituted a proceeding under the Fundamental Rights Enforcement Procedures Act,⁷¹² representing himself and the members of the Iwherekan Community in Delta State. The applicant, *Gbemere*, claimed that Shell did not consider the negative and potentially fatal impacts of climate change caused by the gas flaring and the negative impact on the communities' means of livelihood and collective existence.

The Federal High Court ruled that these constitutionally protected rights necessarily include the right to a clean, poison-free environment. The federal judge held that the respondents' acts of allowing and continuing to flare gas in the applicant's community violated their basic rights to a clean and healthy environment. The judge further decided that Shell's refusal to conduct an EIA was an obvious infringement of the EIA Act and a violation of the aforementioned rights. The judge ordered them to take immediate action to prevent gas flaring.⁷¹³

The judgement marked a dramatic shift in environmental protection in Nigeria, where the applicant was not demanding financial compensation, but rather procedural changes. Nonetheless, the first and second respondent⁷¹⁴ refused to comply with the judgement and the applicant initiated a Contempt of Court action against them, which was also disregarded. On April 10, 2006, the Federal High Court of Nigeria issued a conditional stay of implementation of the order to prohibit gas flaring. Three conditions were attached to the stay of execution order. These were not followed. This was exacerbated further by the judge's abrupt relocation to another court division and the mysterious loss of the case file. SPDC was then given another stay of execution order with no known conditions attached.⁷¹⁵

⁷¹¹ Bukola Faturoti, Godswill Agbaitoro and Obinna Onya, "Environmental protection in the Nigerian oil and gas industry and *Jonah Gbemre v Shell PDC Nigeria Limited: let the plunder continue?*" (2019) 27 *African journal of international and comparative law* p.225-245 <https://doi.org/10.3366/ajicl.2019.0270>

⁷¹² Fundamental Rights (Enforcement Procedure) Rules (1979) replaced by the 2009 Rules

⁷¹³ Climate Case Chat, "Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. and Others" (*Climate Change Litigation* January 27, 2022) <http://climatecasechart.com/non-us-case/gbemre-v-shell-petroleum-development-company-of-nigeria-ltd-et-al/>. Accessed December 18, 2022

⁷¹⁴ NNPC and Shell

⁷¹⁵ Amnesty International, "Nigeria: Petroleum, Pollution and Poverty in the Niger Delta", (Amnesty International Publications, 2009) 77

More than ten years after *Gbemere*, no coherent action has been taken by either the administrative or legislative arms of the government to enforce this ruling.⁷¹⁶ Clearly the aftermath of the case demonstrates an intolerable amount of meddling and, potentially corruption, in the judicial system in Nigeria.⁷¹⁷

4.4.3 Dooh et al V. Royal Dutch Shell PLC and Shell Petroleum Development Company of Nigeria LTD [2021]

The *Dooh*⁷¹⁸ case is a landmark judicial precedent for Nigeria that sought redress for environmental harms done by international oil companies at their headquarters. It represents a classic case of environmental liability that spans borders, and perhaps illustrates a way out of the impasse identified in the cases of *Gbemere* and *Isaiah*. The case also has huge potential in assessing the impact of host communities' relations in oil and gas producing areas based on the current appeal of the case.

The plaintiffs (four Nigerian farmers) sued Shell in The Netherlands, where Royal Dutch Shell (the parent company) is located, in 2008. The plaintiffs filed three distinct claims, each relating to the consequences of oil spills in the three communities of Oruma, Goi, and Ikot Ada Udo. The Dutch Court of Appeal declared Shell Nigeria responsible for the harm caused by the oil leaks in January 2021. Royal Dutch Shell was found to have a duty of care to the affected people as well as liability for failing to avoid future oil leaks.

Shell, in response, did not object regarding the competency of the court, nor to the order for financial compensation. However, Shell is appealing to the Dutch Supreme Court on the grounds that it owes a duty of care to the respondent (*Dooh*), because it blamed the oil spills on sabotage rather than its own culpability for deterioration, as argued by the plaintiff. The plaintiff also argued that Shell had a duty to avoid sabotage through adequate security. This matter is yet to be decided by the Supreme Court.⁷¹⁹ Without pre-empting its decision, it is worth

⁷¹⁶ Ibid Fatureoti p. 22

⁷¹⁷ Ibrahim Abdullahi, 'Independence of the Judiciary in Nigeria: A Myth or a Reality?' (2014) 2 International Journal of Public Administration and Management Research p. 55, 56

⁷¹⁸ *Dooh et al v Royal Dutch Shell PLC and Shell Petroleum Development Company of Nigeria LTD*, The Hague Court of Appeal [2021] ECLI:NL:GHDHA:2021:133 (*'Dooh'*)

⁷¹⁹ Uche Ewelukwa Ofodile, "Africa, International Courts/Tribunals and Dispute Settlement: Year in Review 2015" [2018] Nigerian Yearbook of International Law 365

contemplating potential outcomes which might be counterproductive. Should the Supreme Court uphold Shell's appeal, this will have a huge impact on the future role of host communities in violent and ongoing hostile actions and will increasingly impact environmental sustainability.

4.4.4 Gbaramatu – Egbema and Ogulagha Coastal Communities Front (GEOCCE) V. Attorney General of the Federation and the National Assembly [2022]

The GEOCCE⁷²⁰ case can also be described as a landmark one, reflecting the impact of stakeholder engagement in the PIA. Academics and legal practitioners⁷²¹ have earlier identified that 257 (2) & (3) of the PIA could cause unrest and rob host communities of their entitlements. The Section provides that where vandalism, sabotage or other civil unrest occurs, the payments would be deducted from the Host Community Development Trust Fund.

To that end, the plaintiffs in the case had urged the court, among other things, to declare that the relevant sections of PIA⁷²² are unconstitutional, null and invalid, and of no effect whatsoever under subsections (1) and (2) of Section 36 of the Constitution.⁷²³ It is worth bearing in mind that the relevant sections of the constitution refer to the rights to fair hearing.

According to Justice Taiwo's opinion:

The plaintiffs' ability to challenge legislation under Section 257(2) and (3) of the PIA has not expired. The Act does not exclude the plaintiffs from going to court if they believe the decision to withhold a portion of the funds owed to the host community was arbitrary or capricious.

While the issues here are likely to continue with the contesting of the financial amount that might be withdrawn from the HCDTF, additional issues are likely to arise, such as due diligence; are the host communities responsible for the security of oil and gas facilities? Is it the host communities who are committing the

⁷²⁰ Gbaramatu – Egbema and Ogulagha Coastal Communities Front (GEOCCE) V. Attorney General of the Federation and the National Assembly [2022] FHC/ABJ/CS/9

⁷²¹ Ibid Debski and Ezeani 2021, for the list of Nigerian senior advocates calling for amendment see Taiwo Oyedele, "The PIA and Its Imperfections: Was Niger Delta Shortchanged?" *ThisDay* (December 2021) <https://www.thisdaylive.com/index.php/2021/08/24/the-pia-and-its-imperfections-was-niger-delta-shortchanged/> accessed December 18, 2022

⁷²² Ibid PIA S.257(2)(3)

⁷²³ Ibid CFRN S.36

sabotage? Rather than this punitive approach, as well as constantly seeking redress in the courts, perhaps such matters could be more equitably addressed by the arbitration panel under the PIA or be completely expunged from the guidelines.

4.5 Arbitration in the Nigerian Oil and Gas Industry

As articulated in the introduction to this chapter, the oil and gas sector is without doubt the backbone of the Nigerian economy and contributes massively to its growth. Disputes are unavoidable in the petroleum business due to the wide range of industry contractual agreements and the potentially unpredictable nature of the operations that take place. Disagreements can develop between investors or between operators and oil-producing communities, and between individual contractors and contracting state governments.⁷²⁴

Some national legal instruments allow for parties' voluntary arbitration, while others require mandatory arbitration.⁷²⁵ These include the Petroleum Industry Act, the Oil Pipelines Act,⁷²⁶ the Nigerian Investment Promotion Commission Act,⁷²⁷ and the Nigeria LNG Act.⁷²⁸

Under the PIA, the Midstream and Downstream Petroleum Regulatory Authority is tasked with developing regulations for dispute settlement.⁷²⁹ The rules for the settlement of disputes, such as arbitration, mediation, conciliation, or expert decision, must be included in the model licence or model lease for each bidding round.⁷³⁰ The PIA makes provisions for sanctions such as revocation of licenses, where the licensee or lessee fails to abide by the arbitration award.⁷³¹

⁷²⁴ Temitayo Bello, 'Dispute Mechanism in Petroleum Industry: An Overview of Arbitration Frontiers' (2017) Babcock University: School of Law and Security Studies 26

⁷²⁵ Peter Olaoye Olalere and Maryam Abdulsalam, "Dispute Resolution By Arbitration In The Nigerian Oil And Gas Industry Under The Nigeria Petroleum Industry Act 2021" *mondaq* (Nigeria, 17 october 2022) <https://www.mondaq.com/nigeria/oil-gas-electricity/1240900/dispute-resolution-by-arbitration-in-the-nigerian-oil-and-gas-industry-under-the-nigeria-petroleum-industry-act-2021> accessed December 17, 2022

⁷²⁶ Oil Pipeline Act, Cap 07 LFN 2004

⁷²⁷ Nigerian Investment Promotion Commission Act, Cap N117 LFN, 2004

⁷²⁸ The Nigeria LNG (Fiscal Incentives, Guarantees and Assurance Act

⁷²⁹ *Ibid* PIA 33 (t)

⁷³⁰ *Ibid* PIA 76(1)(f)

⁷³¹ *Ibid* PIA 96(1) (l) and 120 (1) (j)

In terms of host community relations, the PIA provides that grievances should be referred to the National Oil and Gas Excellence Centre (NOGEC)⁷³² The rationale for this is the timely resolution of disputes among oil and gas project partners/operators. This is critical to project stability, commercial cohesiveness, maintaining oil and gas fields operationally, untimely delays in securing rents, royalties, and taxes to the government while assisting asset holders in meeting the conditions of their licences.⁷³³ All of these factors can negatively impact the objectives of sustainable development, and if addressed, would improve the prospects for the enhancement of environmental sustainability. However, it is noteworthy that the arbitration routes established by the mandate of the PIA are still relatively new; hence the ultimate impact on environmental sustainability is yet to be determined by precedent.

4.6 Conclusion

This chapter has critically examined the problems and opportunities for environmental governance as a viable tool for managing Nigeria's environment in a more sustainable manner. Throughout the chapter it is clear that Nigeria's environmental governance frameworks are characterised as being incapable of coping with the scale of the country's environmental problems. The institutional and legal frameworks for environmental governance were judged to be extensive and, up to a point, relatively clear. But it needs to be stressed that the importance of governance systems, in which the legal, policy, and institutional needs of environmental management are considered, should be seen as the joint duty of, not just shareholders, but also of a diverse range of stakeholders. Many observers believe that if such an approach to good governance is promoted, Nigeria's environmental management system will be effective, productive, and long-lasting.⁷³⁴

The GEOCCE case highlights the issues earlier raised regarding access to justice. Host communities are virtually incapable of seeking redress due to challenges like cost, external interference and delays. Asking them to seek redress though the

⁷³² the Alternative Dispute Resolution Centre (ADRC) established for the resolution of disputes through mediation, reconciliation, and arbitration by the Department of Petroleum Resources (DPR) now (the Nigerian Upstream Regulatory Commission) see PIA s. 235 PIA and Ibid Olalere

⁷³³ Ibid Olalere

⁷³⁴ Ibid Ogunkan p.220

courts as a remedy to injustice is tantamount to creating a repeated loop of contrived action involving constant ineffectual pursuits, a lack of enforcement, and endless frustration.

Therefore, it is suggested that to enhance the strategy for environmental sustainability in Nigeria, a multistakeholder framework that helps to facilitate and incentivise implementation is needed, rather than the command-and-control approach that features in all layers of the Nigeria environmental governance system. This will be addressed comprehensively in Chapter 8 of this work.

5 CHAPTER FIVE: CORPORATE SOCIAL RESPONSIBILITY(CSR) AND ENVIRONMENTAL SUSTAINABILITY

5.1 Introduction

The International Standard for Corporate Social Responsibility (CSR) describes CSR in the following words: ⁷³⁵

The responsibility of an organisation for the impacts of its decisions and activities on society and the environment, resulting in ethical behaviour and transparency which contributes to sustainable development, including the health and well-being of society; takes into account the expectations of stakeholders; complies with current laws and is consistent with international standards of behaviour; and is integrated throughout the organisation and implemented in its relations.

The above description also aligns with how the concept of CSR is designated by the European Union (EU).⁷³⁶ Meanwhile, the concept has attracted the attention of many corporate organisations and has been interpreted to mean different things to different organisations. Thus, to bring certainty to the use of the concept within the corporate world, the research critically appraises the fundamental concepts and theories of CSR to clarify its meaning.

To achieve this, the research examines different meanings that have been ascribed to CSR, in both global and industrial contexts. By doing so, the research will also explain CSR's core meaning in the corporate world. The research outcome will convincingly demonstrate that a strategic approach to CSR is becoming increasingly vital for corporate competitiveness. This is because it can benefit a range of corporate issues related to, for example, risk management, cost savings, access to financing, customer interactions, human resource management, and innovation capabilities.⁷³⁷

To achieve the primary research aim; that of structuring a multi-stakeholder strategy through CSR, the research will also critically examine the implications of

⁷³⁵ ISO 26000:2010 Guidance on social responsibility.

⁷³⁶ Commission of the European Communities, 'Green Paper Promoting a European Framework For Corporate Social Responsibility COM (2001) 366 Final' (2001).

⁷³⁷ Commission of the European Communities, 'European Competitiveness Report 2008 (COM (2008)774)'.

the Social License to Operate (SLO) and will establish the link between the SLO, CSR, and environmental sustainability.

However, for CSR to be relevant to environmental sustainability, it has to be successfully implemented. This is why the research will explore CSR's fundamental principles, in order to test these. These principles will then be applied through a critical analysis of current strategies in oil and gas companies, host communities, the government and other stakeholders, in Chapters 6 and 7 of this work.

5.2 The Evolution of Corporate Social Responsibility

The evolution of the concept of corporate social responsibility has a long and diverse history.⁷³⁸ It became popular and gained prominence in the corporate world mainly in the twentieth century. It can, therefore, be regarded as a twentieth-century phenomenon, with significant milestones present from the 1900s up to the present day.

It was widely known as 'paternalism' in the early period of its evolution. An example of this was the community development of South Chicago by George M. Pullman of the Pullman Palace Car Company.⁷³⁹ In this community, parks and playgrounds were created, as well as recreational facilities and a hotel. An acquaintance of Pullman, who knew Chicago well, stated that Pullman genuinely cared for improving living circumstances for his employees and their families, as well as attracting and maintaining staff.⁷⁴⁰ These humanitarian actions by George Pullman were referred to as 'paternalism'.

Paternalism could also be viewed as philanthropy; gestures that emerged in the late 1800s, though it was often difficult to distinguish between personal and corporate philanthropy, as in the cases of Cornelius Vanderbilt and John D. Rockefeller.⁷⁴¹ According to one management historian, Daniel A. Wren,⁷⁴² many of these early corporate executives were extremely generous; in fact, such

⁷³⁸ Mauricio Andrés Latapí Agudelo, Lára Jóhannsdóttir and Brynhildur Davídsdóttir, 'A Literature Review of The History and Evolution of Corporate Social Responsibility' (2019) 4 *International Journal of Corporate Social Responsibility*.

⁷³⁹ Morrell Heald, *The Social Responsibilities of Business: Company and Community 1900-1960* (1970) p. 7

⁷⁴⁰ *Ibid* Davídsdóttir

⁷⁴¹ Andrew Crane and others, *The Oxford Handbook of Corporate Social Responsibility* (Oxford University Press 2008) pp. 19-46

⁷⁴² *Ibid*, OHB p.21

generosity by business people had centuries-old roots, including patrons of the arts, church-builders, endowers of educational institutions, and funders of other community initiatives.

This awareness of business organisations concerning the communities where they operated can also be seen throughout history, but has grown and increased in prominence in recent years;⁷⁴³ in 1971, the Committee for Economic Development (CED)⁷⁴⁴ made a key contribution to the concept of CSR.

The CED stated that “business operates by public agreement, and its fundamental goal is to serve the requirements of society constructively—to the benefit of society”. The CED also observed that the social contract between business and society was shifting drastically.

On the other hand, a major Nobel Prize-winning economist, Milton Friedman, held the view that businesses do not need to look beyond making profit. The views of Friedman⁷⁴⁵ were based on the fact that corporations are artificial entities, whose obligations should be impersonal, i.e. profit-making. In the same vein businesses cannot be expected to have a social conscience.⁷⁴⁶

On the other hand, other writers have pointed out that Friedman’s shareholder theory did not factor in a wider range of variables required to ensure business success. Examples include a company’s public image, its relationship with host communities, its employees, its suppliers, government policies and of course one crucial stakeholder which does not have a voice - the environment.⁷⁴⁷

Whether incorporated or not, every company operates as a part of society: the entire fabric of people’s lives is complex and interwoven and cannot function properly unless the needs of those engaged in or affected by a business are considered.⁷⁴⁸ The Elizabethan poet, John Donne, expressed this idea when he said, “no man is an island”.⁷⁴⁹ Donne believed that in human society, all are in this

⁷⁴³ Ibid, OHB p. 22

⁷⁴⁴ *Social Responsibilities of Business Corporations* (Committee for Economic Development (CED) 1971).

⁷⁴⁵ Sternberg E, “Corporate Social Responsibility and Corporate Governance” (2009) 29 *Economic Affairs* 5

⁷⁴⁶ Ibid Friedman

⁷⁴⁷ Ibid Friedman

⁷⁴⁸ William Bromwich, Olga Rymkevich and Lacopo Senatori, *Rethinking Corporate Governance: From Shareholder Value to Stakeholder Value* (Kluwer Law International 2011).

⁷⁴⁹ John Donne, *Devotions Upon Emergent Occasions, And Severall Steps in My Sicknes Meditation XVII* (1624)

together; to apply this concept to a business context, all activities of a company must be taken into consideration. Businesses must consider their ability to generate profit and their ability to integrate holistically into societies. Their overall effects on society, their financial strength and resilience allows them to continue to exist. Thus, a company cannot expect to operate in only a secure financial way, without contributing to society.

For a better understanding of what CSR means, it is therefore important to highlight the major global and institutional definitions of CSR. As noted earlier, although the phrase corporate social responsibility (CSR) has received the attention of many organisations, institutions, and even academics, there is as yet no singular universal definition of this concept.⁷⁵⁰ Table 5-1 below presents a range of definitions from different players in different societies showing how they have understood CSR over the period from the early 1950s up to the present time.

Table 5:1 Summary of Definitions of CSR⁷⁵¹

ACADEMIA/ INSTITUTION	CSR DEFINITIONS/ INTERPRETATIONS	RESEARCH IMPACT
Howard R. Bowen ⁷⁵² (1953)	Obligations of businesses to pursue those policies, to make those decisions, or to follow those lines of action most desirable in terms of the objectives and values of societies	Highlights the early role of CSR in business.
Keith Davis ⁷⁵³ (1960)	"Businessmen's decisions and actions, adopted for reasons, at least partially, beyond the firm's direct economic interests.	CSR is directly in the interest of the company.
T. M. Jones (1980) ⁷⁵⁴	The notion that corporations have an obligation to society beyond the law.	Highlights the voluntary and beyond legal compliance nature of CSR.

⁷⁵⁰ Andy Lockett, Jeremy Moon and Wayne Visser, 'Corporate Social Responsibility in Management Research: Focus, Nature, Salience and Sources of Influence*' (2006) 43 Journal of Management Studies pages 115-136; also see Abigail McWilliams, Donald S. Siegel, and Patrick M. Wright, 'Corporate Social Responsibility: Strategic Implications*' (2006) 43 Journal of Management Studies pp. 1-18

⁷⁵¹ Authors creation, deduced from the research and the acknowledged authors within the table

⁷⁵² Howard R Bowen, *Social Responsibilities of The Businessman* (Harper and Brothers 1953) p. 6

⁷⁵³ Keith Davis, 'Can Business Afford to Ignore Social Responsibilities?' (1960) 2 California Management Review pp. 70-76

⁷⁵⁴ Thomas M. Jones, 'Corporate Social Responsibility Revisited, Redefined' (1980) 22 California Management Review pp. 59-67

ACADEMIA/ INSTITUTION	CSR DEFINITIONS/ INTERPRETATIONS	RESEARCH IMPACT
Michael Blowfield & Jędrzej George Frynas (2005) ⁷⁵⁵	"An umbrella term for a variety of theories and practices all of which recognise that companies have a responsibility for their impact on society and the natural environment, sometimes beyond legal compliance and the liability of individuals."	It reflects the moral obligations that companies should voluntarily take on whether legally mandated or otherwise.
World Business Council for Sustainable Development (1999), ⁷⁵⁶ (2000) ⁷⁵⁷	The commitment of business to contribute to improving employees, their families, local communities, and society.	Adopts voluntarily the stakeholder dimension.
Commission of the European Communities (2001) ⁷⁵⁸	A concept whereby companies integrate social and environmental concerns in their interactions with stakeholders on a voluntary basis.	Adopts voluntarily the stakeholder dimension.
McWilliams and Siegel (2001) ⁷⁵⁹	Actions that appear to further some social good, beyond the interests of the firm and that which is required by law.	It is voluntary and considers certain stakeholders.
CSR Wire (2003) ⁷⁶⁰	The integration of business operations and value, whereby the interest of all stakeholders, including investors, customers, employees and the environment are reflected in the companies' policies and actions	It adopts a wide voluntary and stakeholder dimension, inclusive of the environment.
United Nations Industrial Development Organization (UNIDO, 2021) ⁷⁶¹	Corporate social responsibility is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders.	Goes beyond the law and includes a variety of stakeholders.

⁷⁵⁵ Michael Blowfield and Jędrzej George Frynas, 'Editorial Setting New Agendas: Critical Perspectives on Corporate Social Responsibility in The Developing World' (2005) 81 *International Affairs* p. 503

⁷⁵⁶ World Business Council for Sustainable Development, 'Corporate Social Responsibility: Meeting Changing Expectations. World Business Council for Sustainable Development: Geneva'.

⁷⁵⁷ World Business Council for Sustainable Development, 'Corporate Social Responsibility: Making Good Business Sense. World Business Council for Sustainable Development (2000).

⁷⁵⁸ Commission of the European Communities, 'Promoting A European Framework for Corporate Social Responsibilities, COM (2001) 366 final.'

⁷⁵⁹ Abigail McWilliams and Donald Siegel, 'Corporate Social Responsibility: A Theory of The Firm Perspective' (2001) 26 *The Academy of Management Review* pp. 117-127

⁷⁶⁰ 'CSRwire - Corporate Social Responsibility Newswire Profile' (*Environmental-expert.com*, 2003) <https://www.environmental-expert.com/companies/csrwire-corporate-social-responsibility-newswire-6511#:~:text=Corporate%20Social%20Responsibility-Corporate%20Social%20Responsibility,the%20company's%20policies%20and%20actions.> accessed 22 September 2021.

⁷⁶¹ 'What Is CSR? | UNIDO' (*Unido.org*, 2021) <https://www.unido.org/our-focus/advancing-economic-competitiveness/competitive-trade-capacities-and-corporate-responsibility/corporate-social-responsibility-market-integration/what-csr> accessed 23 September 2021.

ACADEMIA/ INSTITUTION	CSR DEFINITIONS/ INTERPRETATIONS	RESEARCH IMPACT
Organisation for Economic Cooperation and Development (OECD) ⁷⁶²	Business's contributions to sustainable development. Corporate behaviour must respond to societal and environmental concerns.	CSR must evolve to the context of the environment and societies.
The International Labour Organization (ILO) ⁷⁶³	CSR is "...a means for businesses to evaluate the social effect of their activities and to express their beliefs and values both internally and externally. CSR is a voluntary, enterprise-driven effort that refers to actions that go beyond the law."	It contains stakeholder, voluntary and beyond legal compliance elements

It is worth noting that in the above table none of the definitions of corporate social responsibility view the concept from the perspective of Milton Friedman.⁷⁶⁴ Rather, the various definitions have explained the systematic evolution of CSR as a continuing trend. It is also worth pointing out that perhaps one of the sources of the definitional ambiguity in this area is not so much about how CSR is defined, but is more about what defines corporate social responsibility at a particular stage in its conceptual development. Taking this view, an effective CSR strategy must be context-specific for each company,⁷⁶⁵ i.e., what specific CSR problems need to be handled and how should interaction with the stakeholders be accomplished?

Any definition that purports to answer all of these questions would not be relevant in a range of situations, making it less valuable as a definition. As a result, more understanding of how CSR is socially determined within in a specific environment must be acquired via methods other than a generic definition of CSR.⁷⁶⁶ Therefore,

⁷⁶² 'Corporate Social Responsibility: Partners For Progress - OECD' (*Oecd.org*, 2021) [https://www.oecd.org/cfe/leed/corporatesocialresponsibilitypartnersforprogress.htm#:~:text=Corporate%20Social%20Responsibility%20\(CSR\)%20is,to%20societal%20and%20environmental%20concerns](https://www.oecd.org/cfe/leed/corporatesocialresponsibilitypartnersforprogress.htm#:~:text=Corporate%20Social%20Responsibility%20(CSR)%20is,to%20societal%20and%20environmental%20concerns). accessed 24 September 2021.

⁷⁶³ 'Https://Www.Ilo.Org/Wcmsp5/Groups/Public/---Ed_Emp/---Emp_Ent/---Multi/Documents/Publication/Wcms_116336.Pdf' (*Ilo.org*) https://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_116336.pdf accessed 24 September 2021.

⁷⁶⁴ Ibid, Milton

⁷⁶⁵ Marcel van Marrewijk, 'Concepts and Definitions of CSR And Corporate Sustainability: Between Agency and Communion' (2003) 44 *Journal of Business Ethics* pp. 95–105

⁷⁶⁶ Ronald K Mitchell, Bradley R Agle and Donna J Wood, 'Towards A Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' (1997) 22 *The Academy of Management Review* pp. 853-886

bearing in mind that the context of this research work is the oil and gas industry, a definition/interpretation of the concept of CSR is as follows:

“The agenda of oil and gas companies to perform beyond the confines of the law in partnering with host communities and government to improve and sustain the environment where they operate. The evidence of CSR is normally contained in the company’s reports and policy documents”.

This definition appears to encompass the voluntary agenda of CSR as currently recognised by the United Nations and academic researchers. Many businesses are integrating CSR into their strategic management and corporate governance structures.⁷⁶⁷ Many firms, too, have developed management and organisational systems for reporting and controlling socially aware policies and practices in their businesses. It also appears that the variety of stakeholders and problems defining CSR has expanded, particularly during the last few decades. Thus, the concept of CSR has now grown from its initial emphasis on a few close-knit stakeholders to become more encompassing and inclusive; making, at the same time, its scope and reach ultimately more global.⁷⁶⁸ In Table 5.2, a range of approaches espoused by players in the O and G sectors is presented.

Table 5.2 Interpretation of CSR among Businesses⁷⁶⁹

NAME OF BUSINESS	UNDERSTANDING OF CSR	RESEARCH INTERPRETATION
Shell ⁷⁷⁰	“We are responsibly supplying energy to a rising population. This includes being a responsible corporate citizen and contributing to the well-being of the communities where we work and live. Among the CSR programmes Shell implements are those in the areas of education, health, capacity-building/livelihood, environment, and safety.”	It is voluntary and contributes to stakeholders but does not include stakeholder engagement.
ExxonMobil ⁷⁷¹	“Around the world, ExxonMobil aims to be a preferred business partner, neighbour, employer, and supplier. We maintain a corporate-wide	The framework primarily focuses on stakeholder involvement but

⁷⁶⁷ Table 5.2

⁷⁶⁸ Ibid, OHB CSR

⁷⁶⁹ Authors creation, deduced from the research and the acknowledged corporations within the table.

⁷⁷⁰ ‘Sustainability’ (Shell.us) <<https://www.shell.us/sustainability.html>> accessed 24 September 2021.

⁷⁷¹ ‘Sustainability Report | Exxonmobil’ (ExxonMobil) <<https://corporate.exxonmobil.com/Sustainability/Sustainability-Report>> accessed 28 September 2021.

NAME OF BUSINESS	UNDERSTANDING OF CSR	RESEARCH INTERPRETATION
	commitment to safeguarding the health and security of our employees and the public, responsibly managing our social impacts, and upholding respect for human rights in our operations.”	excludes the environment
Chevron ⁷⁷²	“We demonstrate our commitment to transparency by reporting metrics and performance data annually so we can hold ourselves responsible for our progress, and our stakeholders can hold us accountable.”	It significantly adheres to international standards of a transparent depiction of their CSR approach.
Seplat ⁷⁷³	“An integral part of Seplat’s operating model has been the positive and unparalleled relationships we have built amongst our host communities. It has been a critical element of our corporate social responsibility (‘CSR’), a rigorous approach to performance assessment, measurement, and evaluation across Seplat's four key CSR pillars: local stakeholder involvement, health, safety, and environmental rigor, workforce effectiveness, and business and ethical conduct.”	The framework primarily focuses on a very wide range of stakeholder engagement , including the environment
BP ⁷⁷⁴	<p>“Our new sustainability data management system, OneCSR, has been designed to enable a more efficient collection, analysis, and reporting of our carbon, environmental and social data and performance. This new platform will improve our tracking and management of sustainability performance in the coming years.”</p> <p>We believe creating value for our stakeholders more widely – for society, our employees, and our shareholders – is key to the long-term resilience and value of our business.</p>	Identifies the need for reporting CSR systematically and creates a CSR platform.

⁷⁷² Chevron, 'Corporate Sustainability Report' (2020) <https://www.chevron.com/-/media/shared-media/documents/chevron-sustainability-report-2020.pdf> accessed 28 September 2021.

⁷⁷³ 'A Positive Social Impact' (Seplat Petroleum Development Company Plc) <https://seplatpetroleum.com/sustainability/a-positive-social-impact/> accessed 28 September 2021.

⁷⁷⁴ BP, 'Reimagining Energy For People And Our Planet' (2020) <https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/sustainability/group-reports/bp-sustainability-report-2020.pdf> accessed 28 September 2021.

CSR has thus been interpreted within a range of business sectors to include a wider range of stakeholder involvement with the goal of placing it under their direct control. Although various companies use different CSR approaches for a variety of discrete reasons, the view can now justifiably be held that CSR initiatives by businesses and social organisations are more practical, localised, and often focused on sustainability. Furthermore, it is more reliant on the inputs from a range of stakeholders.⁷⁷⁵ This evolution is graphically depicted in Figure 5.1.



Figure 5.1: Core elements of the CSR interpretation and definition⁷⁷⁶

5.3 The Carroll Theory, the Triple Bottom Line Theory, and the Stakeholder Theory

In the sections below the three main theories of CSR will be critically appraised. The reason for this analysis is that companies, by and large, are using one of these approaches in implementing their CSR policies.⁷⁷⁷ This review of these theories will highlight the strength and weaknesses of each strategy in achieving optimal CSR outcomes.

⁷⁷⁵ Jenny Dawkins and Stewart Lewis, 'CSR In Stakeholder Expectations: And Their Implication for Company Strategy' (2003) 44 *Journal of Business Ethics* pp. 185–193

⁷⁷⁶ Authors creation, deduced from the research.

⁷⁷⁷ Pavlo Brin and Mohamad Nassif Nehme, "Corporate Social Responsibility: Analysis of Theories and Models" (2019) 5 *Eureka: Social and Humanities* 22

5.3.1 The Carroll Theory⁷⁷⁸

Carroll suggested that CSR could be categorised into four levels of obligations, prioritised from bottom to top, for socially responsible behaviour or activities. His categories of action progressed from the economic foundation to legal, ethical, and philanthropic obligations. Carroll maintained that as a primary duty, a company must be financially sound, or it would cease to exist and, by default, would not be able to contribute further.

As a consequence, the first duty of a CEO is to build a strong economic base because the foundation of social responsibility that can only endure if it rests on such a base. The second layer of duty, according to Carroll, is the need to follow the law. The company has a duty to obey the norms that society has designed for all the players in society, including societies, states, business organisations, a range of other stakeholders and in terms of sustainability, the natural environment. The third degree of responsibility relates to business ethics. Once the chief executive officers (CEOs) have met their economic and legal obligations, Carroll argued that they should focus on fulfilling their ethical mission. It is contended that this degree of duty includes both a negative prohibition against damage and a positive requirement to treat people equitably. Philanthropic duty is the highest degree of obligation, as argued by Carroll. After completing the other three goals, the CEOs may then focus on philanthropic endeavours. In other words, just as a human beings' priorities include survival, compliance, care, and charity, a business may mirror a similar set of goals or duties.⁷⁷⁹

Carroll approached these issues pragmatically. Thus, an organisation can accomplish nothing if it does not have income or assets – these constitute a basic foundation for the other obligations. Therefore, it might be held that this approach did, in essence, adopt the initial Friedman concept of financial security, from which a practical framework which identified the basic principles embodied in ethical custom might grow.

⁷⁷⁸ Archie B Carroll, 'The Pyramid of Corporate Social Responsibility: Toward The Moral Management Of Organizational Stakeholders' (1991) 34 Business Horizons pp. 34, 39–48

⁷⁷⁹ Ibid, Carroll

Although the CSR pyramid, as shown in Figure 5.2 below, was published thirty years ago, it continues to be ranked as one of the most frequently downloaded papers with over 100 variations to the pyramid.



Figure 5.2: Carroll's Pyramid⁷⁸⁰

Although the pyramid has been frequently revisited to provide more clarification,⁷⁸¹ this research, initially, might not agree that Carroll's pyramid is inherently sustainable.⁷⁸² However, further analysis of the pyramid suggests that it is sustainable because of the way it targets a range of stakeholders. As an example, when it comes to economic obligations, shareholders and employees bear the brunt of any company finances failure. It could be further argued that although legal obligations for businesses are also fundamental, in today's litigious environment, the danger of lawsuits against companies is more often posed by employees and consumer stakeholder interests.⁷⁸³

Thus, although the pyramid still maintains its relevance, this thesis finds, in the succeeding section 5.5.2 entitled Social License to Operate (SLO), that for a corporation involved in the mining and extractive sector to succeed, it is crucial to engage in a multi-stakeholder approach in its operations in the field right from the beginning, to avoid potential community conflicts that will later interfere with smooth field operations and, ultimately, the profits of the business. This thesis,

⁷⁸⁰ Ibid Carroll pp. Also see Google Images:

https://www.google.com/search?q=carrolls+pyramid&rlz=1C1GCEA_enGB970GB970&oq=carrolls+pyramid&aqs=chrome..69i57j0i10i9.6000j0j7&sourceid=chrome&ie=UTF-8

⁷⁸¹ Archie B Carroll, "Carroll's Pyramid of CSR: Taking Another Look" (2016) 1 International Journal of Corporate Social Responsibility, Denise Baden D, "A Reconstruction of Carroll's Pyramid of Corporate Social Responsibility for the 21st Century" (2016) 1 International Journal of Corporate Social Responsibility, Jintao Lu and others, "Modified Carroll's Pyramid of Corporate Social Responsibility to Enhance Organizational Performance of SMES Industry" (2020) 271 Journal of Cleaner Production 122456

⁷⁸² See paragraph 5.3.2 The Triple Bottom Line Theory for more details

⁷⁸³ Carrol 2016 p.3

therefore, proposes that the pyramid should start initially with ethical and philanthropic considerations. This means that costs incurred to achieve this should be initially factored into the company's operation, rather than using the current structure, which emphasises profit and economics regardless of the stakeholder engagement identified when the pyramid was re-evaluated. On account of its failure to capture the complexity of implementing CSR, Wayne Visser⁷⁸⁴ has referred to the pyramid as both 'static' and 'simplistic' because it cannot capture the complexity of implementing CSR. In Africa, it can be said that this complexity in implementing CSR undermines Carroll's original pyramid.

5.3.2 The Triple Bottom Line Theory

The term 'Triple Bottom Line' became mainstream in the late 1990s, due to an international poll aimed at canvassing views from a range of corporate social responsibility (CSR) and sustainable development (SD) experts⁷⁸⁵ in relation to the TBL theory. The TBL theory essentially contends that businesses should commit to concentrating as much attention to social and environmental problems as they do to profitability. The idea underpinning this theory is illustrated in Figure 5.3 below.

According to the proponents of this theory, the philosophy behind it is that, instead of the single bottom line, there should be three lines: "profit, people, and the planet."⁷⁸⁶ The TBL theory attempts to assess a corporation's level of commitment to corporate social responsibility as well as its long-term environmental effects.⁷⁸⁷

The theory contends unequivocally that the achievement or failure of sustainability objectives cannot be assessed in terms of profit and loss. It must also be assessed in terms of the well-being of societies and the health of the planet. However, the

⁷⁸⁴ Wayne Visser, "Revisiting Carroll's CSR Pyramid: An African Perspective," in Mahad Huniche and Esben Rahbek Pedersen, *Corporate citizenship in developing countries: New partnership perspectives* (Copenhagen Business School Press 2006)

⁷⁸⁵ John Elkington, *Enter the Triple Bottom Line* (2004) p.1

⁷⁸⁶ Ibid Elkington

⁷⁸⁷ John Elkington, 'Towards the Sustainable Corporation: Win-Win-Win Business Strategies For Sustainable Development' (1994) 36 *California Management Review*. pp. 90-100

sustainability sector's track record in moving the needle on both goals has, disappointingly, been very uneven.⁷⁸⁸

While Carroll's pyramid builds on the sustainability of economics and the profits of a company, the Triple Bottom Line theory contends, and many researchers agree, that only a corporation that utilises the TBL approach is able to factor in the entire cost of doing business.⁷⁸⁹

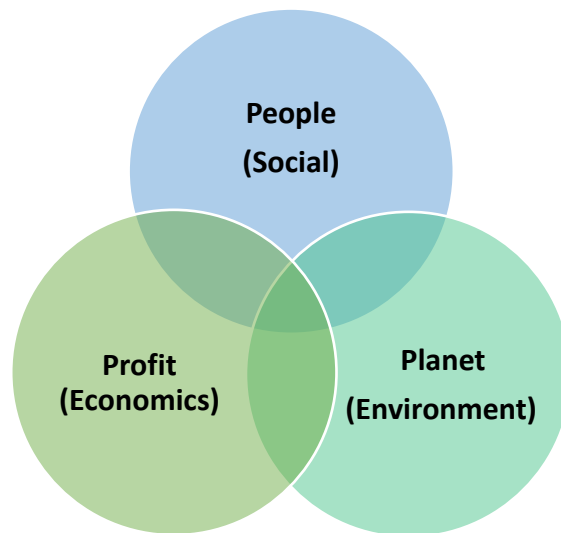


Figure 5:3 John Elkington's Triple Bottom Line⁷⁹⁰

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Although the TBL theory has been linked to the field of accounting, Elkington retooled the concept further, as a sustainability framework, captured below:

People: an organisation's influence on its most essential stakeholders, both positively and negatively. Employees, their families, consumers, suppliers, and the communities they live in are all included.

Environment: involves not only the active removal of waste but also the regeneration of the environment as well as the repair of harm caused by the company's use of natural resources.

⁷⁸⁸ John Elkington, '25 Years Ago I Coined The Phrase "Triple Bottom Line." Here's Why It's Time To Rethink It.' (*Harvard Business Review*, 2018) <https://hbr.org/2018/06/25-years-ago-i-coined-the-phrase-triple-bottom-line-heres-why-im-giving-up-on-it> accessed 2 October 2021

⁷⁸⁹ Ibid Elkington

⁷⁹⁰ Ibid Elkington

Profitability: an organisation's positive and negative influences on the local, national, and global economies. The economic effect encompasses all and anything from creating new jobs to innovating and paying taxes to build wealth.

5.3.3 The Stakeholder Theory

The stakeholder theory holds corporations accountable and responsible to a wider range of stakeholders than just shareholders.⁷⁹¹ The stakeholder theory upon which this thesis is built is central to the CSR debate. It has successfully challenged traditional analytical frameworks in disciplines such as law, management, and human resources by arguing that stakeholders' demands should be prioritised from the outset of any project or action.⁷⁹² This is the framework utilised in the approaches used in corporate social responsibility. ISO 26000 and GRI (Global Reporting Initiative) are prime examples of the stakeholder approach.⁷⁹³

As identified by Freeman, the stakeholder approach was established as a result of the role of activists in industry, foreign competition, new industrial relations, and corporate planning. Freeman cited the theory as necessary due to management inadequacies in other theories. Examples of these inadequacies include, but are not limited to, the rapid growth of environmental concerns. For a more practical insight, some specific examples have been cited, such as; General Motors' inability to compete successfully with high-quality and fuel-efficient Japanese imports after the Clean Air Act of 1970, OPEC-driven price increases, and a growing activism by pressure organisations such as Ralph Nader's proxy battle for more socially responsible corporate conduct.⁷⁹⁴ Another key factor on which the stakeholder theory rests is that corporations, especially those in the mining and oil and gas sectors, are usually large entities, and potentially have major impacts on the communities where they are located, and the surrounding environment. The stakeholder theory, thus asserts that a company should be held accountable for its negative impacts on societies and on the environment, and not simply on the shareholders.⁷⁹⁵

⁷⁹¹ R Edward Freeman, *Stakeholder Management: A Stakeholder Approach* (Pitman 1984).

⁷⁹² Edward R Freeman, Jeffrey S Harrison and Andrew C Wicks, *Stakeholder Theory* (Cambridge University Press 2010).

⁷⁹³ Rosemond Ann Moore and Holly Alison Duckworth, *Social Responsibility: Failure Mode Effects and Analysis* (CRC Press, 2010).

⁷⁹⁴ *Ibid* Freeman 1984 p. 5

⁷⁹⁵ Jill Solomon, *Corporate Governance and Accountability* (4th edn, John Wiley & Sons Ltd 2017) p. 15

The stakeholder theory has been identified as an important factor in enhancing CSR goals,⁷⁹⁶ but it is not the same as CSR per se.⁷⁹⁷ Therefore, organisations have to take cognisance of a wide range of stakeholders. While this is welcomed for making business decisions that include all those potentially affected, the stakeholder approach still has major challenges regarding efforts to balance the needs and interests of the different groups in society. There is no 'one-size-fits-all' in this process. Hence, a distinction between internal and external stakeholders must be made.⁷⁹⁸ However, a core element of the approach advocates having a fair and honest relationship with all stakeholders to produce a kind of 'welcome synergy'.⁷⁹⁹

For this reason, the Global Reporting Initiative (GRI) has attempted to provide guidance specifically for the mining sector and highlight the different levels of stakeholders' engagement and reporting expectations.⁸⁰⁰ A new UN framework titled Sustainable Development Licence to Operate (SDLO) also encourages fairer agreements, an equitable sharing of benefits among stakeholders, and a comprehensive approach to laws that, on their own, do not mandate inclusivity.⁸⁰¹ From empirical research conducted in Brazil (a major oil and gas producing jurisdiction), it was found that out of 102 financial agents of firms — such as shareholders, also known as a 'definitive stakeholder' — enjoyed significantly more influence than others, due to the power and legitimacy they possess. Again, most companies did not recognise how significant societal inclusion was to the success of their businesses, nor the impacts of having a pro-environmental reputation.⁸⁰²

5.4 Fundamental Principles to Test CSR

⁷⁹⁶ See Section on CSR above

⁷⁹⁷ Amy J Hillman and Gerald D Keim, 'Shareholder Value, Stakeholder Management, And Social Issues: What's The Bottom Line?' (2001) 22 Strategic Management Journal pp. 125-139

⁷⁹⁸ T Notteboom and W Winkelmans, 'Stakeholders Relations Management In Ports: Dealing With The Interplay Of Forces Among Stakeholders In A Changing Competitive Environment', *IAME 2002, International Association of Maritime Economists Annual Conference* (2002).

⁷⁹⁹ R. Edward Freeman and others, *Stakeholder Theory* (Cambridge University Press 2010).

⁸⁰⁰ Ibid Freeman

⁸⁰¹ IISD's Hub, 'IRP Report Proposes Governance Framework For Extractives | News | SDG Knowledge Hub | IISD' (*Sdg.iisd.org*, 2020) <https://sdg.iisd.org/news/irp-report-proposes-governance-framework-for-extractives/> accessed 4 October 2021.

⁸⁰² Jeffrey Harrison, R Edward Freeman and Mônica Cavalcanti Sá de Abreu, 'Stakeholder Theory as An Ethical Approach to Effective Management: Applying The Theory To Multiple Contexts' [2015] *Review of Business Management* pp. 858-869

The principles established to test CSR have been defined as “something essential that individuals perceive to be true or represent a core value that drives people to behave”, and three CSR principles have also been identified: legitimacy, public responsibility, and management discretion.⁸⁰³ However, Wayne Visser has gone further and identified five ultimate tests for CSR: creativity, scalability, responsiveness, locality, and circularity.⁸⁰⁴ David Crowther, Gülar Aras,⁸⁰⁵ and other researchers, have identified CSR principles to include accountability, sustainability, and transparency. Thus, as elaborated earlier, there appear to be no uniform principles for defining CSR. Therefore, it becomes imperative to identify the essential elements of CSR based on the research definition for it. This research, therefore, has adopted these from the GRI principles and the research definition of CSR, to formulate its own principles of CSR, to include all of the following:

1. Accountability

When an organisation's activities impact the environment, such organisations should accept the consequences of their activities and accept responsibility for them. As a result, accountability involves quantifying the consequences of decisions made within and outside of the business. More precisely, the idea of responsibility suggests that the quantifications should be communicated to all the parties impacted by the company. This means that the company must report to the external stakeholders the effects of its activities and the impact of its actions on stakeholders.

In other words, the concept of responsibility requires an understanding that the organisation is part of a larger social network and has obligations not only to its owners but also to everyone in that community. External stakeholders must be recognised as having the power to influence how actions of the organisation are executed and in playing a part in determining whether such activities are justifiable and, if they are, at what cost to the company and other stakeholders. Along with this acknowledgment of responsibility, developing and reporting on

⁸⁰³ Bjørn-Tore Blindheim* and Oluf Langhelle, 'A Reinterpretation of The Principles Of CSR: A Pragmatic Approach' (2010) 17 *Corporate Social Responsibility and Environmental Management* pp. 107-117

⁸⁰⁴ Wayne Visser, *CSR 2* (Springer 2013) pp. 51-65

⁸⁰⁵ David Crowther and Gülar Aras, *Corporate Social Responsibility* (David Crowther, Gülar Aras and Ventus Publishing ApS 2008) p. 15

good environmental performance metrics and activities requires accountability. Documenting and reporting on such performance costs money for the company, and the benefits must outweigh the costs if the effort is to be worthwhile. Value is established by the effectiveness of measurements used for decision-making and the ease with which resources are allocated inside and across stakeholder organisations. The following criteria should be used to inform such reporting:⁸⁰⁶

- a) The capacity for communications needs to be understood by all those involved.
- b) The usefulness of the information supplied in the report to the user.
- c) The measurement of accuracy, impact representation, and freedom from bias are all reliability aspects, and should be considered.
- d) Consistency across time and between various organisations i.e., comparability.

2. Transparency and Multi-inclusivity

In terms of corporate social responsibility, transparency means the removal of all barriers in order to provide public access to corporate, political, and personal information, as well as laws, rules, social connivance, and processes that make this access possible and protect those individuals and companies who freely participate in the process.

Radical transparency is a management approach in which almost all decisions are made in public.⁸⁰⁷ Each and every draft document, as well as every argument in favour of and against a proposal, including all final decisions, are made public and stay so indefinitely.⁸⁰⁸ Transparency may help build trust, respect, and a feeling of justice about the way things are done. A corporation's mission, rules, processes and standards must be clear. Similarly, the provision of accurate information about a company should be prioritised. Companies should be open and honest about the risks associated with their goods or services and the impacts that they may have on all stakeholders. Transparency must include financial performance as well as social and environmental impacts. The aim of this is to allow stakeholders to

⁸⁰⁶ Ibid, Visser

⁸⁰⁷ Samuel O Idowu and others, *Encyclopedia of Corporate Social Responsibility* (Springer 2013)

⁸⁰⁸ Ibid, Idowo

choose between several options for spending their money depending on what they value.⁸⁰⁹ Major initiatives that can help companies enhance transparency include the OECD Anti-Bribery Convention,⁸¹⁰ Transparency International,⁸¹¹ the GRI and IPIECA.⁸¹²

More specifically, for true transparency, reporting on companies' initiatives must be in-depth. Although there appears to be an abundance of regulations on transparency, this appears to be a dangerous issue.⁸¹³ The question then arises: how can companies improve their ability to be transparent and multi-inclusive in their dealings? Global Reporting Initiative (GRI) and The Sustainability Accounting Standards Board (SASB) have released a new joint guide that addresses these and other important issues by interviewing four multinational businesses that combine the usage of both sets of standards to fulfil their disclosure requirements. This research found that for this goal to be achieved, the following criteria should be met:

3. Clarity on the company's impacts, both good and bad

Companies should not be anxious about reporting on difficult subjects or themes if they aim to achieve comprehensive sustainability reporting. Esther An, the Chief Sustainability Officer of City Developments Limited, observed that "a sustainability report is not a PR report". Thus, rather than simply highlighting the good, it is advisable that the company should be honest and remark on the bad and identify specific areas that need improvement.⁸¹⁴ Suncor Energy's Kris Frederickson, the Manager of Sustainability Disclosure and Engagement, believes that GRI and SASB

⁸⁰⁹ Øyvind Ihlen, Jennifer Bartlett and Steve May, *The Handbook Of Communication And Corporate Social Responsibility* (Wiley-Blackwell 2011).

⁸¹⁰ 'OECD Convention On Combating Bribery Of Foreign Public Officials In International Business Transactions - OECD' (*Oecd.org*, 1997)

<https://www.oecd.org/corruption/oecdantibriberyconvention.htm> accessed 12 October 2021.

⁸¹¹ IPIECA, IOGP and Energy API, 'Sustainability Reporting Guidance For The Oil And Gas Industry' (2020) https://www.ipieca.org/media/5108/ipieca_sustainability-guide_2020_mod1-rep.pdf p. 1.18. accessed 12 October 2021.

⁸¹² Ibid IPIECA, IOGP and Energy API

⁸¹³ GRI 'GRI - True Transparency Requires In-Depth Reporting' (*Globalreporting.org*, 2021) <https://www.globalreporting.org/about-gri/news-center/true-transparency-requires-in-depth-reporting/> accessed 12 October 2021.

⁸¹⁴ Ibid, GRI

may assist in identifying problem areas. Companies are advised that they should take advantage of opportunities for progress highlighted by these standards.⁸¹⁵

i. Readiness to comply with new rules being implemented

A growing number of markets — both nationally and regionally — have implemented or proposed ESG reporting requirements that go beyond what is already required. According to the respondents, the future landscape will be altered by more stringent guidance and regulation. Legislators aren't the only ones putting pressure on the industry. Throughout the value chain, investors and other businesses also put pressure on the industry. Global Non-Financial Reporting and ESG Lead at Diageo, Harriet Howey, emphasises that "it's going to be increasingly regulated. Therefore companies should strive to stay ahead of the legislation right now".⁸¹⁶

ii. Be aware that investors' interest is expected to increase in the future

According to the respondents, stakeholders are now paying more attention to environmental, social, and governance (ESG) issues. Investors are particularly interested in the reaction to new regulations and an awareness of the relevance of these problems for financial performance and business value.

The Chief Sustainability Officer for City Developments Limited (CDL), a global real estate company based in Singapore, predicts that "sustainable reporting and transparency, in general, will increase significantly in the years ahead. Companies will have to react more quickly about transparency issues concentrating on the essential points, and investors will have to express themselves more clearly."⁸¹⁷

iii. Use global norms to the company's advantage

Sustainability information needs are evolving at a very rapid pace. Furthermore, since a rising number of stakeholders are interested in how a company's

⁸¹⁵ Ibid, GRI

⁸¹⁶ Ibid GRI

⁸¹⁷ GRI and SASB with Support from PWC, The Impact Management Project, and Climate Works Foundation, 'A Practical Guide To Sustainability Reporting Using GRI And SASB Standards' (2021) <https://www.globalreporting.org/media/mlkjp1i/gri-sasb-joint-publication-april-2021.pdf> accessed 12 October 2021.

sustainability affects its performance, reporting requirements must stay up to date and be continually in development.

According to Sharon Basel, Senior Manager Sustainability Reporting & ESG Strategy, GM, "GRI drives the conversation and the narrative of how a business manages the material problems to all stakeholders, while SASB is more focused only on financial materiality". To help businesses communicate successfully with a wide variety of stakeholders, both GRI and SASB Standards provide advice and tools that may be used today and in the future.⁸¹⁸

4. Sustainability and Environmental Sustainability

The environmental principles contained in CSR approaches strike a balance between the requirement to generate profit from investments, societal obligations and a desire to minimise environmental impacts caused by company activities. Companies should be involved in remediating environmental harm caused by their use of natural resources, since environmental concerns in business operations may create long-term profit and reputational benefits and reduce business risk.⁸¹⁹ Sustainable business practices emphasise corporate social responsibility (CSR) as a means of reducing the negative environmental effects of businesses. This includes industries such as Oil and Gas, which have a significant influence on the environment. Major international instruments that provide normative criteria for corporate obligations for environmental protection serve as the foundation for large commercial companies' approaches. There are many guiding concepts for this strategy, and they change depending on the situation.⁸²⁰

In addition to the OECD⁸²¹ and the ICC Business Charter for Sustainable Development,⁸²² several international organisations have established environmental responsibility guidelines for multinational corporations. The ICC Business Charter builds on the UN Global Compact principles of environmental

⁸¹⁸ Ibid, GRI

⁸¹⁹ Ibid, Idowu

⁸²⁰ Ibid Idowu

⁸²¹ OECD, 'OECD Guidelines for Multinational Enterprises' (OECD Publishing 2011)

⁸²² International Chamber of Commerce Policy and Business Practices: World Business Organization, 'Business Charter For Sustainable Development - Business Contributions To The Un Sustainable Development Goals' (Prepared by the ICC Commission on Environment and Energy and the ICC Task Force on Green Economy 2015).

management, which are based on priority and efficient use of energy, materials, and renewable resources within effective corporate management systems. The fundamental concept is that businesses must take a precautionary approach, reduce their negative environmental impacts, cut down on waste production, and safely and responsibly dispose of any leftover waste. Environmental CSR and corporate social responsibility go hand in hand. According to the ICC Charter, what emphasises the importance of these concepts is the need to assist multinational companies to assess and consider the potential health and environmental consequences of their operations and their impact on natural resources. The OECD has also developed Guidelines for Multinational Enterprises. These guidelines help companies estimate the health risks associated with their products. According to these recommendations, CSR activities should have an environmental perspective that focuses on reducing negative environmental impacts. CSR methods use environmental techniques as a critical tool, such as reducing environmental risk for multinational corporations and merchants. It is the duty of a company to avoid negatively impacting the environment. If this doesn't happen, the company will be sued and almost certainly lose market share. Transparency, ethical consumption, and the influence of branding on market share have all grown in importance, while unethical or irresponsible corporate activities have the potential to significantly negatively affect corporations.⁸²³

5. Creativity

The principle of creativity means that management needs to work with and beyond the IS2006 and GRI. Social, economic, and environmental issues are not so straightforward, and engaging with multiple stakeholders is not a straightforward process either. Given the context within the companies, management needs an incremental approach, where companies voluntarily increase and adopt their own set of CSR guidelines or regulations.⁸²⁴ These go beyond the 'tick-box' approaches to corporate social responsibility, embrace rules and standards that encourage social and environmental innovation and entrepreneurship and create goods and services that address sustainability issues. For example, in India, social entrepreneur Anurag Gupta founded A Little World and expanded mobile banking

⁸²³ Ibid ICC

⁸²⁴ Ibid, Visser 2013

even further.⁸²⁵ His “tiny branches” in rural Indian villages are run by a single person and cost \$80 per month, making basic banking services available to millions who were previously unable to access them.⁸²⁶ Gupta views the branch network as a means of providing rural India's impoverished citizens with a wide range of vital services. He developed rechargeable LED lightboxes to replace polluting and dangerous kerosene lamps and improvements to wood or cow-dung burning stoves that use a fan to save cooking time, reduce fuel use, and reduce or even eliminate toxic smoke emissions. Water filters, bicycles, TVs, eyeglasses, radios, medications, and textbooks are some of the further inventions. Gupta intends to utilise a lease-purchase approach to make all of these items accessible, dividing prices into weekly instalments over 6, 12, 18, or 24 months, depending on the product. The leaser returns it at the end of the week and pays for a rechargeable LED lightbox replacement for the following week. To make community toilets more affordable, communities would be able to pay for them over time with monthly payments of 20 Rupees (40 US cents).⁸²⁷

6. Legitimacy and Communication

The argument around CSR also revolves around the notion of legitimacy.⁸²⁸ According to CSR scholars in the early-late 1900's the principle of legitimacy is based on the relativistic premise that business' social institution should change along with societal views on how power should be wielded responsibly.⁸²⁹ Society has certain expectations about what defines a company's social responsibility (understood as a social and economic institution). The 'Iron Law of Responsibility'⁸³⁰ underpins the principle of legitimacy, which states that businesses get legitimacy and authority from society as a whole and that those who do not use that power responsibly will eventually find themselves without

⁸²⁵ Aston Business School, 'A Little World: Facilitating Safe and Efficient Mobile-Banking in Rural India' (United Nations Development Programme 2010).

⁸²⁶ Wayne Visser, *Corporate Sustainability & Responsibility: An Introductory Text on CSR Theory & Practice – Past, Present & Future* (Kaleidoscope Futures Ltd 2012).

⁸²⁷ Ibid Visser 2012

⁸²⁸ Guido Palazzo and Andreas Georg Scherer, 'Corporate Legitimacy as Deliberation: A Communicative Framework' (2006) 66 *Journal of Business Ethics* pp. 71-88

⁸²⁹ Donna J Wood, 'Corporate Social Performance Revisited' (1991) 16 *The Academy of Management Review* p. 691

⁸³⁰ Keith Davis, 'Understanding the Social Responsibility Puzzle' (1967) 10 *Business Horizons* pp. 45-50

it.⁸³¹ Companies must be aware of and responsive to societal norms and expectations if they are to retain their legitimacy. This can only be accomplished via open communication with all relevant parties. Corporate communication may help decision-making, stakeholder involvement, and governance all improve.⁸³² Shell's 'annus horribilis',⁸³³ in 1995, illustrates the risk of being out of touch with public opinion on CSR. Shell tried to decommission an offshore oil rig and on account of its ties with the Nigerian military government, the firm was rocked by worldwide responses. In hindsight, Shell realised that it had fallen out of step with societal expectations and failed to see how more stakeholders demanded a voice in its business.⁸³⁴ To map and assess issues as stakeholders see them, companies need to regularly communicate with its stakeholders to improve legitimacy.

5.5 Concepts Related to Corporate Social Responsibility in the Areas of Environmental Sustainability

As touched on earlier (S.5.2), many writers recognise that the concept of CSR is context-dependent.⁸³⁵ This means that CSR involves the use of various actions in different circumstances. There are also significant differences in the perception of social responsibilities across countries,⁸³⁶ which can be attributed to culturally specific mental models of social responsibilities or distinct political traditions, government policies, or regulations governing business's social responsibilities.⁸³⁷ There can also be significant differences in the understanding of social

⁸³¹ Keith Davis, 'The Case for And Against Business Assumption of Social Responsibilities' (1973) 16 *Academy of Management Journal* pp. 312-322

⁸³² *Ibid*, Idowo

⁸³³ John Vidal, 'Damage Control: How Niger Delta Crisis Threatened Shell's Global Brand' *The Guardian* (2010) <https://www.theguardian.com/business/cif-green/2010/nov/09/niger-delta-shell-crisis> accessed 12 October 2021.

⁸³⁴ *Ibid* Idowo

⁸³⁵ Some of these concepts are Corporate Sustainability, Corporate Social Performance, Creation of Shared Value, Corporate Citizenship, Environmental Corporate Social Responsibility, Environmental Social and Governance Criteria, among others. See Mauricio Andrés Latapí Agudelo, Lára Jóhannsdóttir and Brynhildur Davídsdóttir, "A Literature Review of the History and Evolution of Corporate Social Responsibility" (2019) 4 *International Journal of Corporate Social Responsibility*.

⁸³⁶ Yves Fassin and others, "CSR and Related Terms in SME Owner-Managers' Mental Models in Six European Countries: National Context Matters" (2014) 128 *Journal of Business Ethics* 433; Hans-Jörg Schlierer and others, "How Do European SME Owner-Managers Make Sense of 'Stakeholder Management'? Insights from a Cross-National Study" (2012) 109 *Journal of Business Ethics* 39

⁸³⁷ Jonathan P Doh and Terrence R Guay R, "Corporate Social Responsibility, Public Policy, and NGO Activism in Europe and the United States: An Institutional-Stakeholder Perspective" (2006) 43 *Journal of Management Studies* 47 and Jette Steen Knudsen, Jeremy Moon and Rieneke Slager, "Government Policies for Corporate Social Responsibility in Europe: A Comparative Analysis of Institutionalisation" (2005) 30 *Academy of Management Review* 166

responsibilities and CSR practise across industries,⁸³⁸ between small and large businesses,⁸³⁹ and between individual corporate leaders.⁸⁴⁰ As well as this, CSR practices can change over time.⁸⁴¹

Based on the research context of proposing an effective multistakeholder strategy for environmental sustainability in oil and gas producing areas, the research in section 5.5.1 and section 5.5.2 will establish how CSR can be a vital tool for environmental sustainability and improving stakeholder engagement through host community relations.

5.5.1 Crucial Links between CSR and Environmental Sustainability

Global climate changes have recently compelled governments to take measures to conserve the environment. CSR is becoming an increasingly essential management approach in today's economic climate.⁸⁴² Every year, global enterprises spend around US\$20 billion on CSR initiatives, and more than 90% of the world's 250 largest companies publish CSR reports.⁸⁴³

During the inaugural Earth Day, 20 million people protested across the United States, demanding a clean and sustainable environment and protesting against pollution produced mostly by the oil and gas upstream and downstream sectors, but also by other sectors (e.g., oil spills, toxic dumps, polluting factories and power plants).⁸⁴⁴ The first Earth Day had such an impact on the political agenda of the

⁸³⁸ Sabrina Colombo, Marco Guerri and Toloue Miandar, "What Do Unions and Employers Negotiate under the Umbrella of Corporate Social Responsibility? Comparative Evidence from the Italian Metal and Chemical Industries" (2017) 155 *Journal of Business Ethics* 445; and Judy N Muthuri and Victoria Gilbert, "The Price of Morality: An Institutional Analysis of the Profitability of Responsibility" (2011) 98 *Journal of Business Ethics* 467

⁸³⁹ Jędrzej George Frynas and others "Introduction to small business social responsibility: Global perspectives" in Jędrzej George Frynas and others, *Research Handbook on Small Business Social Responsibility Global Perspectives* (Edward Elgar Publishing 2018)

⁸⁴⁰ Ante Glavas, "Corporate Social Responsibility and Organizational Psychology: An Integrative Review" (2016) 7 *Frontiers in Psychology* 144 and Jennifer L Robertson and Julian Barling, "Greening Organizations through Leaders' Influence on Employees' pro-Environmental Behaviors" (2013) 34 *Journal of Organizational Behavior* 176

⁸⁴¹ Archie B Carroll, "The Four Faces of Corporate Citizenship" (1998) pp.100-101 *Business and Society Review* 1, and Dirk Matten and Jeremy Moon, "'Implicit' and 'Explicit' CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility" (2008) 33 *Academy of Management Review* 404

⁸⁴² Wenbin Long and others, "Corporate Social Responsibility and Financial Performance: The Roles of Government Intervention and Market Competition" (2020) 27; *Corporate Social Responsibility and Environmental Management* 525.

⁸⁴³ Guglielmo Briscese, Nick Feltovich and Robert Slonim, "Who Benefits from Corporate Social Responsibility? Reciprocity in the Presence of Social Incentives and Self-Selection" (2021) 126 *Games and Economic Behavior* 288

⁸⁴⁴ Earth Day "The History of Earth Day" (*Earth Day* May 11, 2022) <https://www.earthday.org/history/> accessed December 21, 2022

United States that it forced the Environmental Protection Agency (EPA) to establish a new regulatory framework that would later influence corporate behaviour and create additional responsibilities for corporations.⁸⁴⁵

In the 1990s, academics such as Carroll⁸⁴⁶ and Lee⁸⁴⁷ added a new dimension to the obligations of companies. "Business is being asked to assume broader responsibilities to society than ever before and to serve a wider range of human values."⁸⁴⁸ The analysis in chapter 3⁸⁴⁹ of this thesis highlighted how international organisations are asking businesses to take on more roles within environmental sustainability. The establishment of these international organisations and the signing of international treaties have signified worldwide attempts to raise the bar regarding climate-related concerns and, indirectly, business conduct.⁸⁵⁰

When a corporation blends its primary business plan with financial and CSR aims as a long-term commitment, CSR ceases to be a restriction, cost, or charity activity. Instead, it may be transformed into a source of opportunity, innovation, and competitive advantage.⁸⁵¹ This means that CSR and CSR reporting have become essential company standards, though it should be highlighted that reporting is not the same as real performance.⁸⁵²

To ultimately develop sustainable businesses through the implementation of corporate social responsibility, the fundamental tests of CSR analysed in section 5.4 should be met since they are both GRI compliant and academically recognised.⁸⁵³

⁸⁴⁵ Clean Air Act of 1970; the creation of EPA

⁸⁴⁶ Archie B Carroll, "Corporate Social Responsibility" (1999) 38 *Business and Society* 268

⁸⁴⁷ Paul Min-Dong Lee, "A Review of the Theories of Corporate Social Responsibility: Its Evolutionary Path and The Road Ahead" (2008) 10 *International Journal of Management Reviews* 53

⁸⁴⁸ CED, *Social Responsibilities of Business Corporations a Statement on National Policy* (CED 1971)

⁸⁴⁹ This research addresses international institutions like the UNGC and the ISO which provide global recognition of the inputs of CSR in enhancing environmental sustainability.

⁸⁵⁰ UCSUSA, "The IPCC: Who Are They and Why Do their Climate Reports Matter?" (*Union of Concerned Scientists* 2017) <https://www.ucsusa.org/resources/ipcc-who-are-they> accessed December 22, 2022

⁸⁵¹ Mark Anthony Camilleri, "Corporate Sustainability and Responsibility: Creating Value for Business, Society and the Environment" (2017) 2 *Asian Journal of Sustainability and Social Responsibility* 59; Andrew Crane and others, "Contesting the Value of 'Creating Shared Value'" (2014) 56 *California Management Review* 130

⁸⁵² Stefan Zeisel, "Is Sustainability a Moving Target? A Methodology for Measuring CSR Dynamics" (2019) 27 *Corporate Social Responsibility and Environmental Management* 283

⁸⁵³ This has been discussed in section 5.5 of this research

It is noteworthy that environmental CSR, as well as philanthropy and social initiatives⁸⁵⁴ come at an additional cost to corporations. However, a range of empirical research has highlighted that the benefits are easily measurable in the long term.⁸⁵⁵

5.5.2 Crucial Links between CSR and the Social License to Operate (SLO)

The manner in which natural resource development and extraction companies have traditionally operated all over the world has been significantly altered by changes in public expectations during the last few decades. Communities are increasingly calling for more input into the decision-making process underlying these activities, as well as having increasing expectations for a larger slice of the benefits that they provide, and seeking reassurances that the businesses involved are properly controlled.⁸⁵⁶ The combination of rising expectations on industrial performance and the accompanying public approval of such resource development and extraction activities essentially describe what a social license to operate signifies.⁸⁵⁷

In the extraction industry, the term "social license to operate" (SLO) has been used to describe "a community's views on the acceptability of a company and its operations in their local area".⁸⁵⁸ As a concept for assessing the legitimacy of extractive industries, the SLO has emerged as a significant force to be reckoned with; conversely, according to the literature analysis,⁸⁵⁹ a SLO may be difficult to get and readily cancelled if society considers that the corporation does not satisfy the requirements of the contract. By obtaining a license to operate from

⁸⁵⁴ Ye Sang and Eunyoung Han, "A Win-Win Way for Corporate and Stakeholders to Achieve Sustainable Development: Corporate Social Responsibility Value Co-Creation Scale Development and Validation" [2022] Corporate Social Responsibility and Environmental Management; Ahmed H Ahmed, Yasser Eliwa and David M Power, "The Impact of Corporate Social and Environmental Practices on the Cost of Equity Capital: UK Evidence" (*International Journal of Accounting & Information Management* August 5, 2019) <https://www.emerald.com/insight/content/doi/10.1108/IJAIM-11-2017-0141/full/html> accessed December 22, 2022

⁸⁵⁵ For more discussion on the benefits of CSR to business, see section 6.1

⁸⁵⁶ Kieren Moffat, Justine Lacey, Airon Zhang, and Sina Leipold, "The Social Licence to Operate: A Critical Review" (2015) 89 *Forestry* 477

⁸⁵⁷ Prno J, "An Analysis of Factors Leading to the Establishment of a Social Licence to Operate in the Mining Industry" (2013) 38 *Resources Policy* 577

⁸⁵⁸ Darling P, "Social License to Operate," SME Mining Engineering Handbook (Society for Mining, Metallurgy, and Exploration 2011)

⁸⁵⁹ Ibid Darling,; the research also answers this question in Ch.7

stakeholders, a company may instil trust and a willingness to form partnerships to enable more efficient business choices.⁸⁶⁰ The implication of this, however, is that the SLO literature is founded on a narrow notion of who is a significant stakeholder, what is a community, and whether and how they can be treated as equal negotiation partners.⁸⁶¹

*The Bear Creek v. Peru*⁸⁶² tribunal, explicitly concerned with the notion of a social licence to operate, emphasised the need to acquire a social licence to operate to carry out a project. The tribunal concluded that the proposal was "too speculative and unpredictable" since the claimant was not able to get a social licence to operate. By obtaining a licence to operate from stakeholders, a corporation may develop trust to form partnerships and make business choices more effectively. Hence, SLO may only be awarded if that community and its related stakeholders trust the corporation.⁸⁶³

The tribunal in *Copper Mesa v. Ecuador*⁸⁶⁴ examined the idea of social permission to operate through the lens of contributory negligence, which influenced the case's causation and quantum concerns, among other things. When laying out and decreasing the amount of compensation owing to the claimant by 30%, the tribunal took into consideration the claimant's role in the social dispute that led to the project's precarious social licence to function. In other words, the power of host communities to grant a SLO does not allow for it to contribute negatively to the detriment of the SLO. Perhaps this can be linked to why the Nigerian Petroleum Industry Act (PIA) provides sanctions for host communities who take part in activities that cause harm to the environment.⁸⁶⁵

Regrettably, no tried and tested procedure has been devised for achieving free, prior and informed consent (FPIC) and/or a SLO with indigenous tribes. FPIC or an SLO with indigenous people typically requires the presence of a defined community, such as a tribe, with a leader who advocates for the community.⁸⁶⁶

⁸⁶⁰ Wilburn R and Wilburn K, "Social License to Operate as a Business Strategy" (2014) 13 *Organizational Cultures: An International Journal* 21-31

⁸⁶¹ *Ibid*, Wilburn 21-31

⁸⁶² *Bear Creek Mining Corporation v. Republic of Peru*, ICSID Case No. ARB/14/21

⁸⁶³ "Measuring the Social Licence" [2017] *The Social Licence to Operate* 51

⁸⁶⁴ *Copper Mesa Mining Corporation v. Republic of Ecuador*, PCA No. 2012-2

⁸⁶⁵ PIA 257(2)

⁸⁶⁶ *Ibid* Wilburn

As a result, a business may identify a known individual to initiate the process. However, when a company seeks a social licence to operate in a larger community, it frequently discovers that this community comprises numerous stakeholder groups with multiple leaders and interests. There is no identifiable leader or spokesperson with whom contact can be initiated.⁸⁶⁷ This problem, known as Elite Capture,⁸⁶⁸ will be discussed in more detail in chapter 7 of this thesis. To foster community cohesion, businesses must engage in ongoing and value-based communication to identify the many classes of stakeholders with vested and non-vested interests. By adopting this approach, one stakeholder group's capacity to overturn the majority can be avoided.⁸⁶⁹

In the absence of an SLO, the issue arises of how to demonstrate the beneficial impact of an SLO on the company's bottom line. Due to limitations in empirical data,⁸⁷⁰ it is hard to truly ascertain the detrimental effect of the loss or absence of an SLO. Depending on the severity of the impact, it may be limited to a certain area of an organisation, or it may affect the whole business or perhaps the entire industry. For example, SPDC lost its social licence to undertake exploration and production activities in the Ogoni territory of Nigeria in 1993, after causing severe environmental damage and a serious loss of confidence among the Ogonis towards its business.⁸⁷¹ SPDC pulled out of several Nigerian projects in response to the loss of its SLO. Still, the overall impact on the company was minimal, even locally, and SPDC still produces more than one-third of Nigeria's oil production.⁸⁷²

No matter how badly it has been hit by protests all over the globe or by legal action in the United States, Shell is still seen by many of its stakeholders as an established, internationally engaged energy and petrochemical company.⁸⁷³ Shell's environmental devastations and alleged involvement in human rights crimes in Nigeria will probably not deter many businesses from doing business with the company.

⁸⁶⁷ Ibid Wilburn

⁸⁶⁸ Bill Cooke and Uma Kothari, *Participation: The New Tyranny?* (Bloomsbury Academic 2001)

⁸⁶⁹ Ibid Wilburn

⁸⁷⁰ Ibid FASTERLING

⁸⁷¹ Esther Hennchen, "Royal Dutch Shell in Nigeria: Where Do Responsibilities End?" (2014) 129 *Journal of Business Ethics* 1

⁸⁷² Ibid Hennchen

⁸⁷³ Ibid, FASTERLING

Since the social licence to operate is voluntary and requires the community's approval, it is not easy to either get one or to maintain it. Additionally, it is also worth mentioning that the SLO prioritises local and social consequences above global and environmental ones, making it inherently unsustainable.⁸⁷⁴

5.6 Conclusion

In this chapter the various definitions of CSR reflected the notion that companies have acquired a new role in society, in which they need to be responsive to societal expectations and be driven by the pursuit of environmental sustainability, which means they now need to make strategic decisions to accomplish these objectives. Thus, businesses will increasingly need to adopt new methods and technologies, but they must do so within a more comprehensive and principled framework that is rooted in corporate social responsibility. This framework must incorporate the ideas of sustainability, shared value creation, and the belief that corporations can reinvent their role in society to serve the greater good.⁸⁷⁵

It is based on this notion that the research has highlighted the importance of environmental CSR in the undertakings of oil and gas companies. The research will continue in this vein and will critically evaluate the various approaches of multinational oil companies towards achieving environmental sustainability through CSR in chapter 6.

⁸⁷⁴ Joel Gehman, Lianne M Lefsrud and Stewart Fast, "Social License to Operate: Legitimacy by Another Name?" (2017) 60 *Canadian Public Administration* 293

⁸⁷⁵ *Ibid*, Andre

6 CHAPTER SIX: CORPORATE SOCIAL RESPONSIBILITY: A REVIEW OF THE OIL AND GAS INDUSTRY

6.1 Introduction

The public in oil-rich countries are becoming increasingly politically vocal and equally concerned about the environmental, and health and safety dangers arising from oil and gas production. Governments, non-governmental organisations (NGOs), and local residents are actively exploring ways to improve the management of oil and gas production, to reduce the risk of environmental harm and provide reparations in the event that harm occurs.⁸⁷⁶ Oil and gas corporations have had to adjust to this changing political and social context by implementing sophisticated corporate social responsibility (CSR) initiatives.⁸⁷⁷ Learning from some of the industry's high-profile disasters, oil and gas corporations have begun to adopt environmental and social performance standards that frequently exceed what is legally required in host countries. The challenges of maintaining connections with a range of stakeholders and incorporating stakeholder interests into corporate goals is central to this process.

Oil firms are increasingly offering, thorough environmental reports, primary indicators of their approaches to the environment and environmental sustainability. Indeed, many worldwide comparative studies have shown that environmental reporting by oil and gas corporations is more detailed when compared to other sectors, such as utilities or other areas of manufacturing, but this might well be largely due to the oil and gas industry's higher environmental impacts. Furthermore, compared with corporations in most other industries, a large percentage of oil companies employ third-party verification of their environmental reports.⁸⁷⁸

⁸⁷⁶ David B Spence, "Corporate Social Responsibility in the Oil and Gas Industry: The Importance of Reputational Risk" (2011) 86 Chicago Kent Law Review <https://scholarship.kentlaw.iit.edu/cklawreview/vol86/iss1/4/> accessed December 22, 2022

⁸⁷⁷ George Frynas, "Corporate Social Responsibility in the Oil and Gas Sector" (2009) 2 The Journal of World Energy Law & Business 178

⁸⁷⁸ Ibid Frynas and Ans Kolk, Seb Walhain and Susanne van de Wateringen, "Environmental Reporting by the Fortune Global 250: Exploring the Influence of Nationality and Sector" (2001) 10 Business Strategy and the Environment 15

The conclusions in this chapter are based on a critical examination of annual and other sustainability reports from various oil and gas corporations.

6.2 The Role of Corporate Social Responsibility and Environmental Sustainability in the Business World

As noted earlier, CSR has attracted a great deal of attention from academics and business experts alike over the past three decades, as CSR has emerged as a multifaceted concept. Although as we have seen Friedman⁸⁷⁹ and others have contended that CSR has no place in business, which according to Friedman should be concerned only with making profits for its shareholders, the CSR concept has been modified and enhanced by modern scholars to include a wide range of stakeholders.⁸⁸⁰

In return, corporate social responsibility is meant to empower businesses to significantly increase their capacity for sustainable development.⁸⁸¹ Based on this, the following section will explore the benefits of CSR through its role in the business world, especially towards environmental sustainability.

Corporate social responsibility is designed to provide companies with the tools they need to thrive in the long term. Research has shown that CSR may be used for a number of goals, including addressing stakeholders' requirements, enhancing a company's reputation, and influencing consumer behaviour.⁸⁸²

In other words, for businesses to harness the impact of CSR, this research holds that, similar to obtaining customer satisfaction in a business, stakeholders in this context have to benefit from the impact of the business. Thus, in engaging CSR practices, companies have to make a clear contrast between the real and perceived experiences of their stakeholders, which translates into corporate reputation. Reputation in this context can be seen as the quick mental image of the corporation that changes over a period of time due to excellent quality, uniformity in processes, and a stakeholder-centric approach to enhance the public view of the company.⁸⁸³ In the business world, a company's reputation is seen as

⁸⁷⁹ Ibid Friedman 1994,

⁸⁸⁰ Ibid Caroline et al

⁸⁸¹ Ibid Caroline et al

⁸⁸² Abigail McWilliams and Donald S Siegel, 'Creating and Capturing Value' (2010) 37 Journal of Management pp. 1480-1495

⁸⁸³ Adopted and modified from the definition of Robert and Dowling see: Peter W Roberts and Grahame R Dowling, 'Corporate Reputation and Sustained Superior Financial Performance' (2002) 23 Strategic Management Journal pp. 1077-1093

an intangible asset that may be used to gain a competitive advantage, increase customer loyalty, charge premium rates, and provide a positive customer experience.⁸⁸⁴

According to some research, companies' corporate reputations benefit directly from CSR.⁸⁸⁵ Thus CSR activities help to develop positive relationships with stakeholder groups and improve the company's reputation through promoting social and environmental responsibility.⁸⁸⁶ CSR can also be viewed as a system to create strong ties with communities and improve a company's overall reputation with peer organisations. In the eyes of consumers, CSR activities such as sustainable business, renewable energy, and green human resource management (HRM) are key indicators of a company's values.⁸⁸⁷

CSR, thus, has a role to play in achieving the strategic objectives of a business. Researchers have recently investigated CSR and economic performance in micro, small, and medium firms, and it has been discovered that CSR considerably increases economic performance.⁸⁸⁸ A long-term oriented manager is concerned not just with maintaining current profitability, but also with the ramifications for the future. Retaining and supporting the customers' programme and keeping clients long-term is part of this strategy. As a result of this strategy, the bottom line is already benefiting from a sustainable strategy.⁸⁸⁹ When a company's operations are more closely tied to the natural world, its employees are held to a higher standard of accountability for their actions. There will be both legitimate and inappropriate opposition to every programme that asks for environmental permits or planning authorization. Responsible companies are more likely to secure development licences and carry out successful programmes. As a result,

⁸⁸⁴ Gianfranco Walsh and Klaus-Peter Wiedmann, 'A Conceptualization of Corporate Reputation In Germany: An Evaluation And Extension Of The RQ' (2004) 6 *Corporate Reputation Review* pp. 304-312

⁸⁸⁵ *Ibid*, Walsh

⁸⁸⁶ Bryan W Husted and David B Allen, 'Strategic Corporate Social Responsibility and Value Creation Among Large Firms' (2007) 40 *Long Range Planning* pp. 594-610

⁸⁸⁷ Isabelle Maignan and O C Ferrell, 'Corporate Social Responsibility and Marketing: An Integrative Framework' (2004) 32 *Journal of the Academy of Marketing Science* pp. 3-19

⁸⁸⁸ Juan Pablo Sánchez-Infante Hernández, Benito Yañez-Araque and Juan Moreno-García, 'Moderating Effect of Firm Size on The Influence of Corporate Social Responsibility In The Economic Performance Of Micro-, Small- And Medium-Sized Enterprises' (2020) 151 *Technological Forecasting and Social Change* p.151

⁸⁸⁹ David E Hawkins, *Corporate Social Responsibility* (Palgrave Macmillan 2014) p.192

the sustainable ethos is desirable and necessary for many industries to function well.⁸⁹⁰

Companies that are irresponsible have a limited chance of getting contracts if public pressure conflicts with the project's goals. As a result, for most businesses, a sustainable strategy may be of value in and of itself. Importantly, it also serves as a franchise for future ventures. It will aid in developing long-term connections with customers, workers, investors, and suppliers and in promoting a risk management culture, all of which are necessary for a solid investment profile and profits potentially to the advantage of all stakeholders. This makes it logical and a sound business practice.⁸⁹¹

Companies must explore the possible benefits of a thorough sustainability programme within their own environment to shift the culture of CSR compliance to business development. We have previously seen the importance of customer and investor acceptability.⁸⁹² Therefore, enhanced financial performance is at the top of the list of advantages. The stability and trust transferred into a sustainable company's plan will almost surely cut its operational expenses.⁸⁹³

⁸⁹⁰ Ibid Hawkins

⁸⁹¹ Bureau of Safety and Environmental Enforcement, "Organizational History" (*History | Bureau of Safety and Environmental Enforcement*) <https://www.bsee.gov/about-bsee/our-organization/organizational-history> accessed December 15, 2022

⁸⁹² More discussion can be in section 5.5.6 of this work, Social License to Operate.

⁸⁹³ Ibid Bureau of Safety and Environmental Enforcement



Figure 6:1 Four spheres of CSR in the Business World⁸⁹⁴

After the collapse of the energy company Enron, the financial impact of corporate governance and CSR became clear. It is not surprising that in a relatively recent survey by the management consultants McKinsey,⁸⁹⁵ the feedback report showed that 80% of investors would be willing to pay a premium price for shares in a well-governed business.

There is always a danger of regulatory oversight, which may significantly affect the firm's bottom line. A company with a sustainable culture is more likely to be one step ahead of any regulations that might come their way.⁸⁹⁶ Reduced liability and a better product reputation may be achieved via a life-cycle CSR design and implementation approach. Sustainable practices may cut expenses and increase the company's position in the marketplace, therefore boosting profitability.

In addition to the direct advantages to the areas in which businesses operate, there are also indirect benefits. As a result of their involvement in local communities, many companies, based on discussions on the analysis of

⁸⁹⁴ Deduced from the research, created by the researcher

⁸⁹⁵ A McKinsey Global Survey, 'How Companies Act On Global Trends' (2008) <https://tice.agroparistech.fr/coursenligne/courses/24885/document/organizing%20for%20international%20operations/HowCompaniesactonglobaltrends.pdf> accessed 12 December 2021.

⁸⁹⁶ Sheila Bonini and Steven Swartz, "Profits with purpose: How organizing for sustainability can benefit the bottom line"(McKinsey & Company,2014) <https://www.mckinsey.com/~media/McKinsey/Business%20Functions/Sustainability/Our%20Insights/Profits%20with%20purpose/Profits%20with%20Purpose.ashx>

sustainability reporting in oil and gas producing areas, appear to be 'hyping' their community participation, while overlooking the larger implications of their corporate activities.⁸⁹⁷ This is not to say that these corporate engagements are without gains. These programmes have successfully supported charity endeavours in reviving communities, so they can't be dismissed. As a result of corporate social responsibility, businesses can function with more confidence, which in turn results in more dedicated employees who are more than willing to put their hearts and minds to work on the company's behalf.

In order to further strengthen the local economy, businesses should strive to invest in or assist small local businesses, since as the local community's resource base expands, so will its population. Some of the world's largest corporations (such as Shell, Anglo American, BP and BHP, among others) have stepped in to help small businesses in their vicinity, bolstering the local economies.⁸⁹⁸

Sustainability is a complex issue, and organisations will not be able to address every issue or take advantage of every opportunity. Integrating it into the overall company strategy is essential in ensuring that there are no internal conflicts.⁸⁹⁹ An example of this is the Fairtrade programme, which ensures that farmers are not abused and that acceptable profits are spent to increase output. Market share for this profile has grown steadily across a wide range of products. This shows that buyers are willing to pay more for things they perceive to have extra value than those already included in their purchases. Sustainability should not be seen as a drain on profits, but rather as a driver for preserving, expanding, or developing new products and services.⁹⁰⁰

6.3 Issues linked to Corporate Social Responsibility Strategies

CSR implementation is not a simple task, since it entails significant changes to corporate structures, practices, and employees' behaviour. It is moulded by socio-political forces and is facilitated by integrating CSR's macro-level, socio-political

⁸⁹⁷ Ibid Hawkins, p. 194

⁸⁹⁸ McKinsey & Company, "What matters most? Five priorities for CEOs in the next normal" (2021)

⁸⁹⁹ Ibid Hawkins

⁹⁰⁰ Ibid Hawkins, p. 196

dimensions with the meso-level, organisational ramifications.⁹⁰¹ Cultural values within an organisation may either assist or obstruct CSR implementation. For instance, in an organisational culture that prioritizes competitiveness, the managers may prioritize activities and procedures that contribute to competitive advantage.⁹⁰²

Numerous research projects have been conducted to determine the motivations and hurdles to CSR adoption.⁹⁰³ Academics, businesses, and other interested parties have acknowledged the complexity of CSR's drivers and its impediments,⁹⁰⁴ which can be classified as both internal and external factors, as follows: ⁹⁰⁵

Table 6:1 CSR Barriers⁹⁰⁶

Internal Drivers		External Drivers		
Ethical corporate culture	Management commitment	Globalization	Political	Social forces
Insufficient time for CSR engagements	Lack of financial resources for CSR	Too many/ conflicting or lack of models/ guidelines for CSR implementation	Low/absence of government obligations and incentives	Stakeholders' expectations
	Lack of external funding The rules of the law			
The lack of CSR departments or personnel				
Lack of support for businesses in the community				
	Lack of competent CSR personnel			
	CSR's commercial advantages are not well understood.			

⁹⁰¹ François Maon, Valérie Swaen and Adam Lindgreen, 'One Vision, Different Paths: An Investigation of Corporate Social Responsibility Initiatives in Europe' (2015) 143 Journal of Business Ethics.

⁹⁰² Luisa Pinto and Alwyia Allui, 'Critical Drivers and Barriers of Corporate Social Responsibility in Saudi Arabia Organizations' (2020) 7 The Journal of Asian Finance, Economics and Business.

⁹⁰³ Ibid Maon

⁹⁰⁴ Ibid Maon

⁹⁰⁵ Shawn L Berman and others, 'Does Stakeholder Orientation Matter? The Relationship Between Stakeholder Management Models and Firm Financial Performance' (1999) 42 Academy of Management Journal pp. 488-506.

⁹⁰⁶ Division by Juelin Yin. and further elaborated by researcher see Juelin Yin, 'Institutional Drivers for Corporate Social Responsibility in An Emerging Economy: A Mixed-Method Study of Chinese Business Executives' (2017) 56 Business & Society.

Financial resources, both internal and external, are sometimes seen to be major hindrances to adopting CSR. Although there are many ways to be socially responsible that do not require significant financial obligations, there are also certain activities that demand a lot of money. Sadly, it appears that many business owners assume that CSR necessitates a large financial outlay. There are several methods for putting into action socially or environmentally beneficial behaviours at a low cost. The most important goal must be to be committed to whatever policy and target is designed by the company. CSR may be demonstrated via creative thinking and a careful examination of environmental circumstances, by choosing suitable CSR instruments that will not be too expensive.⁹⁰⁷

It could be observed that the culture of a specific nation or society has a considerable impact on the acceptance of CSR activities in that country or the communities within it. There has been a claim that there are no universal standards for judging people's conduct across civilizations. Based on this reasoning, the culture of a society may be considered a significant factor in determining a company's CSR. When doing business with important stakeholders, corporate managers should be aware of the prevailing cultural behaviour. The contradictory values of one culture are no more or less valid than the conflicting values of another culture.⁹⁰⁸ Thus, no matter how many or which projects a business is involved in or communicates to the outside world, the business's impact on how it is seen by the existing and prospective partners and clients as well as the potential workers is important. As a consequence of its CSR strategy, a company's proactive approach to business is more realistic and less expensive than adopting an approach where the company simply reacts to issues that develop as the business progresses.⁹⁰⁹

Delegating an employee or workers to focus on CSR has been proven to be essential to the successful delivery or implementation of a CSR strategy.⁹¹⁰ Moreover, this person must be well-trained in implementing and performing

⁹⁰⁷ Paul Hohnen, "Corporate Social Responsibility an Implementation Guide for Business" (IISD,2007)72

⁹⁰⁸ Wilburn R and Wilburn K, "Social License to Operate as a Business Strategy" (2014) 13 Organizational Cultures: An International Journal 21

⁹⁰⁹ Wojciech Leoński, 'Barriers of the implementation of corporate social responsibility in chosen enterprises' (2019) 2019 Scientific Papers of Silesian University of Technology. Organization and Management Series pp. 353-362

⁹¹⁰ Ibid Leoński pp.353-362

socially responsible activities within the organisation. A company's product, service, location, or current external image should naturally be associated with social responsibility solutions. Incorporating them into the company's operations and organisational culture is essential. As a consequence of the company's actual requirements to solve social and environmental challenges, CSR should be the outcome of corporate action. This is the only way it can develop a long-term strategy that gives the firm a solid foundation for developing a reputation as a reliable and reputable partner in the social sphere of influence-building. People and their expertise are the most valuable assets for socially responsible businesses. Both have a significant impact on the growth of the business.⁹¹¹

The discussions above reflect a range of holistic issues attached to CSR. However, developing countries are more susceptible to the impacts of business entities on environmental sustainability, since they frequently rely heavily on the extraction of natural resources for their economic development. They are also in danger of high mortality rates owing to pollution, poor water quality, environmental impacts and, more frequently, illnesses linked to climate change.⁹¹²

The major issues that affect CSR practices also vary according to the local environment. An examination of studies on sustainable development and corporate social responsibility in some developing countries shows that CSR can be very different depending on the country in question.⁹¹³ The business environment in developing countries is not the same as that in developed countries. Under-developed capital markets, weak legal controls, poor protection for investors, and uncertainty about the economy or politics can make it hard for businesses to do good things for the world, such as practicing CSR.⁹¹⁴ In a country that is not financially stable, the government usually encourages businesses to invest in the country's economy rather than encouraging businesses to follow standard CSR practices.⁹¹⁵

⁹¹¹ Ibid Leoński 353-362

⁹¹² Ibid Leoński 353-362

⁹¹³ See table 6.2 For a summary.

⁹¹⁴ Mathew Tsamenyi, Elsie Enninful-Adu and Joseph Onumah, 'Disclosure and Corporate Governance in Developing Countries: Evidence from Ghana' (2007) 22 *Managerial Auditing Journal*. Also, see Ite, 2004

⁹¹⁵ Ibid, Tsamenyi,

Table 6:2 Academic Research on CSR Barriers in Developing Countries⁹¹⁶

Continents	Country	Researcher	Research Barriers Identified
Central and South America	Costa Rica	Kowszyk et al. 2015	Ineffective CSR may lead to tensions and arguments rather than gains in quality of life in developing nations.
Africa	Nigeria	Ite, 2004	The absence of national macroeconomic planning and management, supported by equal resource allocation and an enabling environment, has important ramifications for the overall effectiveness of CSR programmes by multinational companies (MNCs) in developing nations.
Africa Asia	Nigeria China	Frynas 2005	Country and context-specific issues, such as not involving the people who will benefit from CSR, oil company staff's social attitudes, and not integrating CSR into a larger development plan.
		Graafland and Zhang 2014	Government is very fragmented and bureaucratic. Inadequate enforcement of laws across China.
East Europe and the Middle East	Across various regions, Poland	Agudo-Valiente et al. 2017	The result from samples across 416 Spanish firms accessing enough resources in terms of money, time, and people.

Examples of such practices include the activities of Shell, (SPDC in Nigeria), which was unable to adopt improved corporate social responsibility policies in the country owing to, debatably; the absence of macroeconomic planning, management activities, and stakeholder engagement in the country.⁹¹⁷ As noted, currently in oil and gas companies, the role of CSR is firmly embedded in the Petroleum Industry Act,⁹¹⁸ where companies with oil production licences are asked to make their contributions to a fund to be used for CSR initiatives. There are not a lot of reasons for companies in countries with strict laws to go above and beyond the rules. Companies from countries with less strict laws, on the other hand, may find it

⁹¹⁶ References on barriers in developing areas: Johan Graafland and Lei Zhang, 'Corporate Social Responsibility In China: Implementation And Challenges' (2014) 23; Business Ethics: A European Review pp. 34-49; José Agudo-Valiente, Concepción Garcés-Ayerbe and Manuel Salvador-Figuera, 'Corporate Social Responsibility Drivers And Barriers According To Managers' Perception; Evidence From Spanish Firms' (2017) 9 Sustainability p. 1821, and Yanina Kowszyk and others, 'Corporate Social Responsibility In The Context Of Relations Between The European Union And The Community Of Latin American And Caribbean States' (EU-LAC Foundation and Red Forum Empresa 2022) https://eulacfoundation.org/en/system/files/EU_LAC_CSR_EN.pdf accessed 20 January 2022.

⁹¹⁷ Uwem E. Ite, 'Multinationals and Corporate Social Responsibility in Developing Countries: A Case Study of Nigeria' (2004) 11 Corporate Social Responsibility and Environmental Management.

⁹¹⁸ The Nigeria Petroleum Industry Act 2021 chapter 3

easier and even feel a little pressured to go above and beyond the rules.⁹¹⁹ On the other hand, strict environmental regulations in developed countries could make businesses more creative, which could in turn make them more competitive.⁹²⁰

According to neoclassical economic theory,⁹²¹ many firms in developing countries may not be motivated to adopt environmental management systems targeting reducing the environmental footprints of their business activities, because in their view the costs of environmental compliance may outweigh the benefits.⁹²² For instance, from 2006 to 2016, researchers⁹²³ analysed 34,000 CSR initiatives launched by 839 enterprises in 31 provinces in China, based on environmental and social responsibility data. The research outcome demonstrates that the CSR activities are heavily influenced by the location of the businesses as well their GDP.⁹²⁴ Shanghai, Beijing, and Guangdong, the three Chinese provinces and cities with the highest GDP per capita, had the highest level of CSR initiatives in 2016.

6.4 Issues Related to the Non-Implementation of CSR in the Oil and Gas Industry

The scale of the risks associated with oil and gas extraction was brought into the limelight by the Deepwater Horizon oil leak in the Gulf of Mexico in 2010⁹²⁵ The long-term survival of oil and gas firms hinges on their capacity to effectively manage a wide range of risks, including; environmental, health and safety, liability, and, ultimately, reputational issues. Exploration and production of oil and gas can be technically difficult, as was the case with the Deepwater Horizon

⁹¹⁹ Ibid Ch. 3

⁹²⁰ Qinghua Zhu and Qiangzhong Zhang, 'Evaluating Practices and Drivers of Corporate Social Responsibility: The Chinese Context' (2015) 100 *Journal of Cleaner Production* pp. 315-324

⁹²¹It implies that since the consumer's purpose is utility maximisation or customer happiness, and the organization's goal is profit maximisation, the customer ultimately has power over market factors like pricing and demand. See "Neoclassical Economics: Definition, Theory & Model" (*Study.com* | *Take Online Courses. Earn College Credit. Research Schools, Degrees & Careers*) <https://study.com/academy/lesson/neoclassical-economics-definition-theory-model.html> accessed February 9, 2022

⁹²² Theodore Levitt, 'The Dangers of Social Responsibility [1958] *Harvard Business Review*.

⁹²³ Kun Li, Nasrin Khalili and Weiquan Cheng, 'Corporate Social Responsibility Practices in China: Trends, Context, And Impact on Company Performance' (2019) 11 *Sustainability* p. 354

⁹²⁴ Brian Husted, Dima Jamali and Walid Saffar, "Near and Dear? the Role of Location in CSR Engagement" (2016) 37 *Strategic Management Journal* 2050; Farah Zamir and Abubakar Saeed; "Location Matters: Impact of Geographical Proximity to Financial Centers on Corporate Social Responsibility (CSR) Disclosure in Emerging Economies" (2018) 37 *Asia Pacific Journal of Management* p.263

⁹²⁵ (National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling 2011) publication <https://www.govinfo.gov/content/pkg/GPO-OILCOMMISSION/pdf/GPO-OILCOMMISSION.pdf> accessed February 9, 2022

incident. Oil and gas producers strive to extract petroleum from the earth by tapping into hidden, pressured subsurface petroleum deposits. Pressurized pipelines or oceangoing tankers are frequently used to carry the final product across vast distances once extracted. A range of complex chemical processes at high temperatures and pressures can then be used to refine or change the products.⁹²⁶

As the steps briefly outlined above are all handled by human beings, they are naturally susceptible to human mistakes. Therefore, it may be reasonable for the public/host communities to have mixed feelings about the oil and gas business and its potential negative impacts on their lives and health. For these reasons, governments, nongovernmental organisations, and the public seem to always be looking for a way to keep oil and gas development under control. Among the members of the OECD, this is usually done through laws and regulations. For example,⁹²⁷ the United States Government has many policies and rules regulating oil and gas projects; rules that set limits on how much pollution a project can create, what safety standards they must meet, how to clean up oil spills etc. However, it should be noted that accidents may still occur in what is a very complex technological industry. Thus, society still expects oil and gas companies to self-regulate their activities and standards by doing more to protect it than just following the law. Perhaps more than in any other industry, the public expects the oil and gas industry to positively contribute to the Triple Bottom Line.⁹²⁸

Legal frameworks are expected to shape the interaction between the international oil companies (IOCs) and the external stakeholders in industrialised democracies. Government institutions are expected to handle some of the disputes with the stakeholders. A well-developed legal and administrative mechanism was in place to compensate for the damage caused by the Deepwater Horizon tragedy. Fortunately, in the United States, there exists legal standards for apportioning blame for environmental and other damage caused by the explosions, and an

⁹²⁶ David B Spence, 'Corporate Social Responsibility in The Oil and Gas Industry: The Importance of Reputational Risk' (2010) 86 Kent law review pp 59-85

⁹²⁷ There are numerous examples that have been provided earlier in this research under the subtopic of environmental sustainability laws across several jurisdictions. Chapter three

⁹²⁸ Lisa Rushton, "ESG: How It Applies to the Oil & Gas Industry and Why It Matters" (*womblebondnickinson* September 22, 2021)

<https://www.womblebondnickinson.com/us/insights/articles-and-briefings/esg-how-it-applies-oil-gas-industry-and-why-it-matters> accessed December 31, 2022

efficient judicial system to ensure that those laws are enforced equitably. In contrast, it appears that poor or non-existent legal norms and corrupt or ineffective administrations are more common in developing and underdeveloped countries.⁹²⁹ As a result, most developing countries have had to learn the hard way on how to improve their CSR initiatives. For instance, in the 1950s — prior to Nigerian independence — Royal Dutch Shell started drilling for oil in Nigeria.⁹³⁰ The company discovered oil and made some downstream products in the early years of Nigerian independence. Still, this discovery and experience eventually became the 'poster child' for the idea of "the oil curse".⁹³¹ The inhabitants of the Niger Delta were blessed with tremendous oil deposits, but the resources and their products were never shared with the people in the host communities.⁹³²

It has always been alleged that a large portion of Shell's royalties were diverted to corrupt government officials in Nigeria.⁹³³ As a result of the lax or almost non-existent environmental and health and safety laws in Nigeria, oil extraction in the Niger Delta has been linked to widespread destruction of the area's ecology.⁹³⁴ Shell (SPDC) eventually realised the attendant reputational problems of its activities and inadequacies and addressed the issue by investing in Nigerian communities; making some efforts to build good relationships with all of its important stakeholders.

However, much of the damage to the communities had already been done and seems irreversible, even though Shell spent considerable amounts of money on projects focusing on improving the social ties between the company and the host communities in Nigeria in the 1990s and early 2000s.⁹³⁵ Despite this, protests against the company grew stronger and more organised. Groups like the Movement for the Survival of the Ogoni People (MOSOP) fought against SPDC's right to work in Nigeria — sometimes in ways that were not legal or peaceful.⁹³⁶

SPDC has since been confronted with numerous litigations for its poor social and environmental responsibility towards the host communities and their

⁹²⁹ Joshua P Eaton, *The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, And The Human Right To A Healthy Environment* (Routledge 2003)

⁹³⁰ Ibid Eaton pp. 269 -283

⁹³¹ Ibid Eaton pp. 269 -283

⁹³² Ibid Eaton 269 -283

⁹³³ Ibid Eaton 269 -283

⁹³⁴ Ibid Eaton pp. 269 -283

⁹³⁵ Ibid Eaton 269 -283

⁹³⁶ Ibid Eaton pp. 269-270

environment.⁹³⁷ Additionally, in the Middle East and in Indonesia, ExxonMobil found itself in a similar conflict. As a result, about 110 Indonesian villagers were reported to have sued ExxonMobil under the American Tort Claims Act (ATCA) in 2001, claiming that the business had assisted in perpetrating human rights violations (such as torture and murder) through the instrumentality of Indonesian military personnel (as corporate security).⁹³⁸ Interestingly, labour rights groups and the International Labour Rights Fund lent its support to the lawsuit.⁹³⁹ Meanwhile, ExxonMobil won its petition to dismiss the complaint in 2009, following a lengthy series of procedural issues, particularly because the plaintiffs lacked the locus standi to file the case.⁹⁴⁰ In an echo of the case of SPDC being accused of aiding the government's suppression of the rebels, NGOs and others have accused ExxonMobil of doing the same.⁹⁴¹

In Latin America, other IOCs have also had similar issues. Although most of the situations in Latin America were not as violent as the prolonged fight between the Peruvian Government, Chevron, and the Amazonian indigenous peoples, which has been as prolonged as the previous ExxonMobil legal dispute.⁹⁴² When Chevron first entered the Peruvian Amazon in the early 1980s to explore and exploit the Camisea fields, they did not anticipate the issues that could arise from their activities and, consequently, they were unable to control the social and health repercussions that their presence and activities had created in the host communities and the environment.

Chevron returned in the 1990s to continue investigations, this time with a greater commitment to environmental organisations and indigenous populations. However, the next issue that endangered the project's survival did not come from the civil society but from the Peruvians' own government — the host state. As a

⁹³⁷ Ibid Eaton 269 -283

⁹³⁸ *Doe v Exxon Mobil Corp* [2008] US Court of Appeals for the District of Columbia, 09–7125 (US Court of Appeals for the District of Columbia).

⁹³⁹ Ibid, the plaintiffs in this case were represented by attorneys from the International Labour Rights Fund. The plaintiffs in this case were represented by attorneys from the International Labour Rights Fund

⁹⁴⁰ Ibid *Exxon Mobil Corp*

⁹⁴¹ Ibid *Exxon Mobil Corp*

⁹⁴² David Hill, 'US's Hunt Oil Suspends Drilling In Peru's Amazon' (*HuffPost UK*, 2016) <https://www.huffingtonpost.co.uk/david-hill/uss-hunt-oil-suspends-dri b 7561416.html> accessed 10 January 2022.

result, Chevron had no option but to cease doing business with Peru in 1998; largely due to lack of agreement on contractual conditions and market pricing.⁹⁴³

Camisea's development was awarded to a new consortium in 2000; amidst strong disapproval of the project from the host communities — for the low quality of construction and operations as well as the consortium's lack of commitment to environmental and indigenous rights. The Peruvian Government nevertheless entered into a contract for the exploitation of another nearby gas field (Lot 56), known as Camisea II.⁹⁴⁴ Notably, as of March 2006, there had been five pipeline leakages relating to this project where three people were injured. There is a great likelihood that if the Camisea Gas Project were to be expanded into the Nahua-Nanti Reserve, some uncontacted and isolated tribes would be put in danger of sickness and death, as well as acute scarcity brought on by the disturbances to the habitats of game animals.⁹⁴⁵

Many oil companies now provide extensive information about their environmental performance in their annual sustainability or CSR reports. This is one way to display their social consciences and to demonstrate that they are interested in cherishing the environment. As part of this reporting, most show their plans and regularly gauge their performances. There are general guidelines for all oil companies, and there are also specific recommendations for them.⁹⁴⁶ It may be argued that the fact that a company does not have an environmental report does not mean that it is necessarily environmentally irresponsible. Still, the regular publication of instances of oil spills and other environmental data could help the public compare the performances of different companies and encourage those found wanting to improve.⁹⁴⁷

Another example of how voluntary regulation⁹⁴⁸ could help to prevent oil spills emerged in the aftermath of the Exxon Valdez spill in 1989, which caused the spillage of about 11 million gallons of crude oil into the environment in Alaska in

⁹⁴³ Valeria Vences, 'The Camisea Gas Project A Multi-Stakeholder Perspective on Conflicts & Negotiation' (*Gpc.stanford.edu*, 2006)
https://gpc.stanford.edu/sites/g/files/sbiybj8226/f/wp027_0.pdf accessed 11 January 2022.

⁹⁴⁴ Ibid Vences

⁹⁴⁵ 'Worldwide Protests to Stop Amazon Gas Project Expansion' (*Survivalinternational.org*, 2013)
<https://www.survivalinternational.org/news/9157> accessed 11 January 2022.

⁹⁴⁶ Ibis, See new GRI draft for the extractive industries and IPIECA 2010

⁹⁴⁷ Jędrzej George Frynas, *Beyond Corporate Social Responsibility* (Cambridge University Press 2009). P. 87

⁹⁴⁸ By voluntary regulation CSR is meant.

1989.⁹⁴⁹ Because the US Oil Pollution Act came into effect in 1990, there were significantly fewer oil spills in U.S. waters in the period 1990-1995. Notably, though, the reduction in oil spillages had already been experienced before the 1990 Oil Pollution Act became fully effective in 1996. Some of these voluntary initiatives included; an increase in company awareness of liability, better auditing and inspection of ships, more efforts by classification societies to make sure ships met requirements, voluntary replacement of old ships with double-hulled vessels, better staff training, and changes in vessel routes; though it isn't clear precisely which single factor led to a reduction in oil spills.⁹⁵⁰

According to an industry analyst, Goldman Sachs,⁹⁵¹ the causes of company-community conflicts are becoming more predictable. Still, few organisations adopt root cause analysis or comparison techniques to examine the issues and learn important lessons. Other corporate systems and procedures, such as environmental impact assessments, risk and commitment registries, and operational-level grievance channels, were deemed especially significant for detecting (and avoiding) conflict-related costs. Taking the time required to avoid and manage such conflicts, especially the time required to create durable relationships of trust via regular interactions with local communities, can sometimes be at odds with short-term production objectives or ambitious production timetables.⁹⁵²

⁹⁴⁹ "Exxon Valdez Spill Profile" (EPA) <https://www.epa.gov/emergency-response/exxon-valdez-spill-profile#:~:text=On%20March%2024%2C%201989%2C%20shortly,million%20gallons%20of%20crude%20oil.> accessed February 9, 2022

⁹⁵⁰ Inho Kim, 'Ten Years After the Enactment of The Oil Pollution Act Of 1990: A Successor A Failure' (2002) 26 Marine Policy. pp. 197-207

⁹⁵¹ 'Goldman Sachs – "360 Projects To Change The World" (English)' (*Aleklett's Energy Mix*, 2008) <https://aleklett.wordpress.com/2013/09/16/goldman-sachs-360-projects-to-change-the-world-english/> accessed 12 January 2022.

⁹⁵² Rachel Davis and Daniel Franks, 'Costs of Company-Community Conflict in The Extractive Sector' [2014] Corporate Social Responsibility Initiative Report Cambridge, MA: Harvard Kennedy School.

6.5 Corporate Approaches to Environmental Sustainability

Various stakeholder groups place emphasis on multinational corporations acting responsibly in the community and the environment.⁹⁵³ The 2020 McKinsey reports show that companies are taking technical steps to reduce climate change.⁹⁵⁴ However, to fulfil the research aim of achieving environmental sustainability through a CSR multistakeholder strategy, the research critically analyses the reports of five major oil and gas companies in the sections below; from major oil and gas producing corporations such as Sinopec in China, Energie Beheer Nederland (EBN) in the Netherlands, Seplat Energy in Nigeria, Petrobras in Brazil, and Exxon Mobil in the USA. The rationale for selecting these companies stems from the fact they are major oil and gas producing companies in their respective regions. These companies undertake more ambitious exploration and production projects meaning they are likely to be exposed to a wider range of activities than smaller companies. Thus providing the research a more comprehensive understanding of their engagement strategies.

The analysis includes the level of stakeholder engagement reporting⁹⁵⁵ and their general strategy based on recommendations from analyses on the global institutional framework for CSR and environmental sustainability. However, it is worth reiterating that reporting is not the same as implementation. The research will additionally explore national newspapers, institutional survey reports, or news from national media to corroborate or counter the findings from these reports.

⁹⁵³ Chantal Beck and others, "The Future Is Now: How Oil and Gas Companies Can Decarbonize" (*McKinsey & Company* January 7, 2020) <https://www.mckinsey.com/industries/oil-and-gas/our-insights/the-future-is-now-how-oil-and-gas-companies-can-decarbonize> accessed December 24, 2022

⁹⁵⁴ *Ibid* Beck

⁹⁵⁵ GRI Compliant: see Chapter Three, Section 3.1.5 on GRI Sustainability Reporting Standards, 2020

6.5.1 Case Study of Sinopec: China

The Sinopec group is one of the PRC's major state-owned enterprises, operating as a state-authorised company in which the government has a significant stake.⁹⁵⁶ Sinopec's main business includes exploring, refining and marketing petrochemicals. Sinopec's environmental sustainability efforts are well documented on their website, with reports ranging from 2014 – 2015, and this can be translated into their effort towards current trends in environmental sustainability. It adopts the Global Reporting Institute (GRI) guidelines and other national guidelines such as those of the Shanghai Stock Exchange (SSE), the Environmental, Social and Governance Reporting Guide issued by Hong Kong Stock Exchange (HKEx), and the Ten Principles of the United Nations Global Compact (UNGC).⁹⁵⁷ On the issue of stakeholder engagement, the 2020 report lists its stakeholders to include a wide range of parties; encompassing communities, government and regulators, shareholders, customers and employees. However, upon further investigation into how it has adopted the GRI reporting index⁹⁵⁸ for host communities, Sinopec's report lacks a comprehensive coverage of what to report, and it does not provide details on the process for consultation and informed participation of affected stakeholders or access to grievance mechanisms. The provided communication channels are robust enough for the government, due to its daily reporting and communications with the government, in contrast to its marginal interaction with host communities. Although Sinopec's report emphasises the company's engagement process, to include an online open day event in China with an undisclosed number of attendees, it begs the question of whether a one-off communication is sufficient in achieving the detailed engagement process and reporting as mandated by the GRI.

According to the Sinopec 2020 report, it adopted government initiatives on green planting with a record of 1.703 million trees planted in 2019. Sinopec achieved this by engaging their employees, rather than working with the local community.

⁹⁵⁶ 'Corporate Social Responsibility Practices Of China Sinopec Commerce Essay' (*UKEssays.com*, 2015) <https://www.ukessays.com/essays/commerce/corporate-social-responsibility-practices-of-china-sinopec-commerce-essay.php> accessed 9 August 2021.

⁹⁵⁷ 'Sustainability Report Cleaner Energy and Better Life' (SINOPEC 2020) <http://www.sinopec.com/listco/en/Resource/Pdf/20210328011.pdf> accessed 12 August 2021 p.2

⁹⁵⁸ Ibid, Draft GRI for the oil and gas sector p. 41

Owing to the fact that the three⁹⁵⁹ major O&G companies in China are state-owned investments, allegations that the Chinese government and these corporations are acting in unison have emerged.⁹⁶⁰ Complaints have been made about these three major oil companies and their undue advantages over western business because of the political and economic support they get from the Chinese government.⁹⁶¹ These assertions have not been denied and there appears to be a consensus that the government promotes these oil companies to improve their goal of market expansion.⁹⁶² Literature on the main players in the Chinese oil and gas industry succinctly makes the case for their lack of good governance by expressly stating that they operate no differently from western companies.⁹⁶³ These arguments may seem to be true on the surface because, like the Western companies, the 3 major oil and gas producers in China have been using CSR reporting since 2006 and uploading it on their website for transparency. Both Petro China and Sinopec's 2009 CSR reports mention the UN Global Compact's 10 principles and identify where each is handled in the report. However, without substantial reporting on what really counts, for example, stakeholder engagement, Sinopec's CSR can be interpreted as mere acts of philanthropy or 'greenwashing'.

6.5.2 Case Study of Energie Beheer Nederland: Netherlands

The Netherlands has a high concentration of energy-intensive and emission-intensive industries and is still heavily reliant on fossil fuels. The Groningen gas field, situated in the northeast of the Netherlands, is one of the world's biggest gas fields and was traditionally the primary source of domestic gas production.⁹⁶⁴ Between 2008 and 2018, the share of fossil fuels in total primary energy supply (TPES) fell slightly; from 92 % to 90 % . As a response to the recent increase in economic activity, emission reductions have stalled. Energy-related GHG emissions were notably higher than in 2014.⁹⁶⁵ A court case filed by environmentalists in 2015 and upheld by the Supreme Court in 2019 compelled

⁹⁵⁹ The China National Petroleum Corporation (CNPC), the China Petroleum and Chemical Corporation (Sinopec) and the China National Offshore Oil Corporation (CNOOC),

⁹⁶⁰ Scott Pegg, 'Social Responsibility and Resource Extraction: Are Chinese Oil Companies Different?' (2012) 37 Resources Policy pp, 160-167

⁹⁶¹ Ibid, CNPC

⁹⁶² Ibid CNPC

⁹⁶³ Ricardo Soares de Oliveira, *Oil and Politics In The Gulf Of Guinea* (Columbia University Press 2007).

⁹⁶⁴ IEA, 'The Netherlands 2020 Energy Policy Review' (IEA 2020) <https://www.iea.org/reports/the-netherlands-2020> accessed 1 September 2021.

⁹⁶⁵ Ibid IEA Netherlands

the government to take action to cut emissions to 25% below 1990 levels by the end of 2020, at the latest.⁹⁶⁶

There are over 1,500 climate based lawsuits globally either completed or ongoing, including similar cases in Ireland and Norway, however this is by far the most impactful to date.⁹⁶⁷ According to a November 2019 analysis by the Netherlands Environmental Assessment Agency (PBL), the Netherlands is not on target to reach the 2030 objective of a 49 % reduction in GHG emissions.⁹⁶⁸ In light of this, the International Energy Agency (IEA) has advised the government to closely monitor progress on emission reductions and other energy sector objectives and be prepared to change policies when necessary, to keep the country on track for a thriving low-carbon economy while maintaining energy security.⁹⁶⁹

Regulatory frameworks currently stress the (possible) involvement of corporate boards in promoting corporate sustainability. Boards of some 'public-interest businesses' with over 500 employees are required to disclose non-financial data under the European Directive 2014/95/EU.⁹⁷⁰ The 2016 Dutch Company Governance Code (DCGC) instructs corporate boards to function in a sustainable way by concentrating on long-term value development in the performance of their work'.⁹⁷¹ Although the DCGC does not contain the word 'sustainability', it mandates corporations to take the environment and social and employee matters into consideration. On the other hand, the Netherlands Extractive Industries Transparency Initiative (NL-EITI) mandates full disclosure of facts from extraction through to income distribution and public benefit.⁹⁷² Because there is no social levy on corporations as provided in the Mining Act,⁹⁷³ it mandates companies to report on all voluntary activities. Thus, reporting appears to be a vital standard in

⁹⁶⁶ Urgenda Foundation (on behalf of 886 individuals) v The State of the Netherlands (Ministry of Infrastructure and the Environment) ILDC 2456 (NL 2015)

⁹⁶⁷ Owen Mulhern, 'Netherlands - Ranked 13th In The Global Sustainability Index | Earth.Org - Past | Present | Future' (*Earth.Org - Past | Present | Future*, 2020) https://earth.org/global_sustain/netherlands-ranked-13th-in-the-global-sustainability-index/ accessed 1 September 2021.

⁹⁶⁸ Ibid IEA Netherlands

⁹⁶⁹ Ibid IEA Netherlands

⁹⁷⁰ Directive 2014/95/EU – also called the Non-Financial Reporting Directive see 'Directive 2014/95/Eu of The European Parliament and of The Council' (2014) Article 19a and 29a(1)

⁹⁷¹ Dutch Corporate Governance Code 2016 Principle 1.1.1, section vi

⁹⁷² EITI Report 2017 The Netherlands Extractive Industries Transparency Initiative (NL-EITI), 'The Netherlands Extractive Industries Transparency Initiative (NL-EITI) Report 2017' (2021)

https://www.rvo.nl/sites/default/files/2020/09/NL-EITI%20Report%202017_EN_WEB.pdf accessed 1 September 2021.

⁹⁷³ Nigerian Minerals and Mining Act 2007

The Netherlands.⁹⁷⁴ The Netherlands Extractive Industries Transparency Initiative multi-stakeholder group (NL-EITI MSG) further raises the compliance bar by requesting that all reports be signed off by an authorised officer to ensure data completeness and correctness.⁹⁷⁵ Perhaps this approach is worth emulating for improved environmental sustainability reporting in oil and gas producing areas.

However, a major challenge experienced as identified by the NL-EITI Secretariat is the lack of a comprehensive database of all extractive firms. It attributes the problem to the lack of an official contact between the government and oil and gas companies and emphasises the need for both new and existing oil and gas companies to register with the EITI secretariat. However, the extractive industries are yet to be fully compliant, as expressed in its 2018 report.⁹⁷⁶

The Dutch government owns 100% of Energie Beheer Nederland (EBN).⁹⁷⁷ EBN is a non-operating partner in virtually all oil and gas projects in the Netherlands. In most cases, they have a 40% interest in these activities. Most of the proceeds go into the state coffers and thereby benefit Dutch society.⁹⁷⁸ EBN is given a variety of public duties as a result of the Act.⁹⁷⁹ EBN operates a policy-oriented involvement (beleidsdeelneming), which implies that it helps to execute government policies. The government has no additional holdings in E&P firms.⁹⁸⁰ Its 2020 report reflects the lack of sufficient local stakeholder participation in development projects, however it reports technical progress on mitigating climate change in Netherlands.⁹⁸¹ There is no participation of local communities in environmental policies that can be traced to the development of its National Environmental Policy Plan (NEPP), also known as the Green Plan.⁹⁸² Whilst the Netherlands subscribes to the UN sustainable goals agenda, it does not mention other international reporting standards. It is worth stating that this may be the

⁹⁷⁴ Ibid, EITI p. 58

⁹⁷⁵ Ibid, EITI p. 62

⁹⁷⁶ The Netherlands Extractive Industries Transparency Initiative (NL-EITI), 'The Netherlands Extractive Industries Transparency Initiative (NL-EITI) Report 2018' (2018) <https://eiti.org/files/documents/nl-eiti-report-2018-english.pdf> accessed 2 September 2021. p. 67

⁹⁷⁷ 'About EBN' (EBN.nl) <https://www.ebn.nl/en/about-ebn/> accessed 2 September 2021.

⁹⁷⁸ Ibid EBN

⁹⁷⁹ Ibid Section 82(1) of the Mining Act

⁹⁸⁰ Ibid EITI 2018

⁹⁸¹ EBN, 'EBN Annual Report 2020' (EBN BV) http://file:///C:/Users/LIKA/Downloads/Annual_Report_EBN_2020_EN.pdf accessed 2 September 2021.

⁹⁸² Peter Hofman, 'Public Participation In Environmental Policy In The Netherlands' (1998) 13 TDRI Quarterly Review <https://core.ac.uk/download/pdf/11451764.pdf> accessed 2 September 2021 page 25-30

case because Directive 2014/95/EU relies on the frameworks for GRI, OECD and ISO 2600, to mention a few.⁹⁸³ To conclude, it would appear that EBN still has a long road to travel towards acting responsibly to the community and the environment.

6.5.3 Case Study of Seplat: Nigeria

Located in Nigeria's Niger Delta, Seplat Energy (SEPLAT) is a Nigerian oil and gas company listed on the London and Nigerian stock exchanges. Seplat operations are primarily based in Edo, Delta and Eastern Niger Delta, with a major element in the Niger Delta.⁹⁸⁴ According to Seplat's general business principles,⁹⁸⁵ the objectives of the company are to meet Nigeria's energy needs in a responsible way. Its business strategy sets out how they intend to achieve this aim: "through partnership and commitment, we support Nigeria's economy and create value for all our stakeholders". According to SEPLAT's Chief Executive Officer, Seplat's sustainability policy is based on the following principles: transparency and complete disclosure of their ESG performance; encouraging the responsible use of resources, such as energy and water; implementing human rights; gender equality; needs assessment of stakeholders to identify appropriate solutions; considering the natural and cultural circumstances of SEPLAT's host communities in the implementation of CSR initiatives; and setting a target of zero net emissions.⁹⁸⁶

Seplat has taken the initiative to equip itself for the future and report on its environmental sustainability initiative, both technically and in its CSR strategy and involvement.⁹⁸⁷ The Seplat report strategy mentions its conformity with international guidelines.⁹⁸⁸ It also takes into consideration the provisions of the

⁹⁸³ Ibid Directive 2014/95/EU Preamble 9

⁹⁸⁴ See Table 5: Interpretation of CSR among Businesses

⁹⁸⁵ 'The Shell General Business Principles' (Shell.com, 2021) https://www.shell.com/about-us/our-values/_jcr_content/par/relatedtopics.stream/1572622107415/f3e59c06223516799f4a2d5fe63b824839f3a4f3/shell-general-business-principles-2014.pdf? accessed 2 November 2021.

⁹⁸⁶ Seplat "Seplat Shows Strong Commitment to Environment, People and Values" (Seplat Energy2021) <https://www.seplatenergy.com/news-insights/news/seplat-shows-strong-commitment-to-environment-people-and-values/> accessed March 19, 2022

⁹⁸⁷ Seplat, 'Powering Nigeria's Energy Transition' (2020) <http://ar2020.seplatpetroleum.com/pdfs/seplat-ar2020-full-report.pdf> accessed 6 September 2021.

⁹⁸⁸ UN, TCFD and IPIECA

2021 Petroleum Industry Act (PIA) on host communities' development funds, submitting an environmental management plan and maintaining a decommissioning fund amongst other recommendations for oil companies.⁹⁸⁹

The report also takes into consideration major reporting standards and frequently mentions stakeholder engagement. However, there is no robust feedback on stakeholder engagement to ensure the report is compliant with the United Nations GRI framework.⁹⁹⁰ The GRI directed that quality of information is necessary to allow stakeholders to make positive and informed judgements. Furthermore, omitting a substantial number of mandatory disclosures might undermine the credibility of the report and its value to stakeholders.⁹⁹¹ A fundamental aspect of SEPLAT's reporting strategy is its verification by an external auditor, as well as its provision for including risk management sections in its report. Seplat is an example of a national oil company going above and beyond legal compliance with regards to its reporting standards. However, the report on stakeholder involvement and participation still needs to be elaborated, rather than simply reprinting standard clauses with generic and vague data on stakeholder involvement.⁹⁹² A primary example of this is the failure to state the number of engagement and feedback forums or measures, and reports from these in its 2019 and 2020 Annual Reports.

6.5.4 Case Study of Petrobras: Brazil

Petróleo Brasileiro S.A., or Petrobras for short, is a Brazilian state-owned multinational business with its main office in Rio de Janeiro. It is one of the world's largest oil and gas firms and the largest in Brazil.⁹⁹³

⁹⁸⁹ Ibid Seplat report also see 'A Positive Social Impact' (*Seplat Petroleum Development Company Plc*) <https://seplatpetroleum.com/sustainability/a-positive-social-impact/> accessed 28 September 2021.

⁹⁹⁰ GRI, 'Consolidated Set of GRI Sustainability Reporting Standards (2020) page 7

⁹⁹¹ Ibid GRI page 24

⁹⁹² SEPLAT, 'sustainability Report' (Raitas Communication 2019) <https://seplatpetroleum.com/media/1454/seplat-2019-sustainability-report.pdf> accessed 7 September 2021.

⁹⁹³ Bruna Alves, "Topic: Petrobras" (*Statista* April 26, 2022) <https://www.statista.com/topics/2444/petrobras/#topicOverview> accessed December 24, 2022

A number of studies have been conducted in Brazil to examine the sustainability reporting practices of businesses in this sector, such as Petrobras.⁹⁹⁴ However, their approach has been more focused on the socio-economic sector.

An analysis of the 2020 sustainability report indicates that Petrobras's reporting guidelines and general approach to sustainability is compliant with law 13303/16 of Brazil,⁹⁹⁵ the GRI, the IPIECA guide and the principles of the Global Pact for the Environment. It is clear that Petrobras is making in-depth attempts to implement these guidelines; for example, it regularly updates its content to meet the expectations of stakeholders, including the prioritization of material topics inclusive of environmental and stakeholder engagement. The mode of stakeholder engagement is clearly indicated in the report.⁹⁹⁶ Unlike ExxonMobil, it is creative and innovative and aims to reach a wider audience.⁹⁹⁷

The research is confident in adopting the Petrobras report as the standard role model for a sustainability report for oil and gas companies. Compared with the standard and quality of reporting and the use of indicators in other regions such as; EBN in the Netherlands, Seplat in Nigeria, Sinopec in China, as analyzed in this study, the 2020 Petrobras report is the pacesetter, capturing its conclusive summary in pictures with the option to read more or download a detailed copy.⁹⁹⁸ Furthermore, it has attached to the appendix of the report proof that it had been assessed by an external independent auditor to verify the content prior to

⁹⁹⁴ Abdulsamad Alazzani and Wan Nordin Wan-Hussin, "Global Reporting Initiative's Environmental Reporting: A Study of Oil and Gas Companies" (2013) 32 *Ecological Indicators* 19; Carlos Eduardo Infante and others, "Triple Bottom Line Analysis of Oil and Gas Industry with Multicriteria Decision Making" (2013) 52 *Journal of Cleaner Production* 289 and Flavio Hourneaux Junior and others, "Strategic Aspects in Sustainability Reporting in Oil & Gas Industry: The Comparative Case-Study of Brazilian Petrobras and Spanish Repsol" (2017) 72 *Ecological Indicators* 203

⁹⁹⁵ Brazilian Law N° 13.303/2016

⁹⁹⁶ Petrobras, "Sustainability Report 2020" (Petrobras2020) <https://petrobras.com.br/en/society-and-environment/sustainability-report/> accessed December 25, 2022

⁹⁹⁷ These approaches include the collaborative use of interviews, online forums, one on one, group meetings and surveys

⁹⁹⁸Ibid Petrobras report 2020

publication.⁹⁹⁹ The 2021 draft¹⁰⁰⁰ highlights the use of this external auditor to enhance the credibility of its sustainability reporting.¹⁰⁰¹

6.5.5 Case Study of ExxonMobil: USA

ExxonMobil is rated number six on the Fortune 500 and twelfth on the Fortune Global 500.¹⁰⁰² The ExxonMobil Corporation is the largest publicly traded oil and gas corporation in the world by market capitalization and the largest oil and gas firm based in the Western Hemisphere.¹⁰⁰³ ExxonMobil is second only to China's Sinopec in terms of daily refining capacity, with 21 oil refineries and a total of 4.9 million bbl/day (780,000 m³) of refining capacity.¹⁰⁰⁴

According to current reports Exxon Mobil, a non-governmental oil and gas company in Texas, is due to increase capacity by 2022 to 220,000 b/bl day and to 750,000 bbl/day by 2026¹⁰⁰⁵ from its new offshore discoveries in Guyana,¹⁰⁰⁶ in addition to its current production capacity of 4 million oil-equivalent bbl/day from operations in over 40 countries.¹⁰⁰⁷

Consequently, emphasis should be placed on its overall global environmental sustainability framework. Many laws, notably the Clean Water and Clean Air

⁹⁹⁹ GSSB 'Item 02 – GRI Universal Standards Project – Revised GRI 101: Section 5' (Global Sustainability Standards Board (GSSB) 2021) <https://www.globalreporting.org/media/5c5dl5ax/item-02-gri-universal-standards-project-revised-section-5-gri-101.pdf> accessed 8 September 2021.

¹⁰⁰⁰ Petrobras, "2021 Risk Management and Sustainability Governance Report 2021" (*Sustainability Report 2021*2021) <https://sustentabilidade.petrobras.com.br/en/web/relatorio-de-sustentabilidade/w/2021-gerenciamento-de-riscos-e-governan%C3%A7a-de-sustentabilidade> accessed December 25, 2022

¹⁰⁰¹ Ibid, GRI 101, section 5.2

¹⁰⁰² "Exxon Mobil" (*Fortune 500*May 18, 2020) <https://fortune.com/company/exxon-mobil/fortune500/> accessed December 25, 2022

¹⁰⁰³ Umar Ali, "Top Ten Companies by Oil Production" (*Offshore Technology*November 26, 2019) <https://www.offshore-technology.com/analysis/companies-by-oil-production/> accessed December 25, 2022

¹⁰⁰⁴ N Sönnichsen, "Oil Companies with Largest Refining Capacity 2019" (*Statista*April 19, 2022) <https://www.statista.com/statistics/543782/atmospheric-distillation-capacity-of-petroleum-companies-worldwide/> accessed December 25, 2022

¹⁰⁰⁵ ExxonMobil, 'Upstream Annual Report' (2021) <https://corporate.exxonmobil.com/Investors/Annual-Report/Upstream> accessed 10 September 2021.

¹⁰⁰⁶ Luc Cohen and Arunima Kumar, 'Exxon Mobil Discloses Another Oil Discovery Offshore Guyana' (*Reuters*, 2021) <https://www.reuters.com/business/energy/exxon-mobil-makes-discovery-pinktail-offshore-guyana-2021-09-09/> accessed 10 September 2021.

¹⁰⁰⁷ Ibid, ExxonMobil 2021,p.

Acts,¹⁰⁰⁸ have been passed by state and federal governments to protect persons and the environment from the harmful consequences of pollution.

However, the research critically appraises the annual sustainability report to gauge its level of adherence to the GRI guidelines for reporting on environmental sustainability and its stakeholder involvement. The Sustainability Report for Exxon Mobil does acknowledge engaging with international guidelines such as GRI and IPECA.¹⁰⁰⁹ The report thus indicates its approach to stakeholder engagement and identifies its stakeholders. However, as identified under the challenges of environmental sustainability reporting, companies generally fail to adhere to the core standards of the GRI or what truly matters; for example the GRI guidelines on disclosure.¹⁰¹⁰ The organisation's approach to stakeholder involvement, including the frequency of engagement by type and stakeholder group, as well as an indication of whether any of the engagement was explicitly done as part of the report preparation process, needs to be disclosed in a transparent manner. For example, its 2020 annual report only discloses generic information about "communicating with local residents in areas where we operate through direct correspondence and group meetings". This same trend has been identified across all engagement strategies with its stakeholders.¹⁰¹¹ Furthermore, the research identifies that the entire report for Exxon Mobil is not location-specific, but rather is generic across its area of operations, whereas the GRI standard only permits the reporting context for individual locations. Failing to provide sufficient and focused data in a report can make a company lose its legitimacy and may be construed as hiding information. So it is no surprise that in 2020 the Minnesota Attorney General Keith Ellison filed a lawsuit against the Exxon Mobil Corporation and ExxonMobil Oil Corporation.¹⁰¹² The lawsuit alleged fraud, failure to warn, and multiple separate violations of Minnesota statutes prohibiting consumer fraud, deceptive trade practices and false advertising statements. Exxon Mobil's use of

¹⁰⁰⁸ The US Clean Air Act 1970 2021, and US The Clean Water Act 1972.

¹⁰⁰⁹ Ibid *Mrcplas*,

¹⁰¹⁰ 'Sustainability Report Highlights' (Exxon Mobil 2021) <https://corporate.exxonmobil.com/-/media/Global/Files/sustainability-report/publication/Sustainability-Report.pdf> accessed 11 September 2021.

¹⁰¹¹ Note that its 2018 report has the same content as its 2020 report, which further highlights the generic nature of the content

¹⁰¹² State of Minnesota vs American Petroleum Institute, Exxon Mobil Corporation, ExxonMobil Oil Corporation, Koch Industries, Inc, Flint Hills Resources LP, Flint Hills Resources Pine Bend, [2020] District Court (District Court).

rhetoric and framing to shape public information on climate change and global warming has in fact been negatively appraised since 1999.¹⁰¹³

The research further identifies that top oil companies tend to focus on the use of technology and pride themselves on the notion that climate change can be controlled by their technology and that no radical, immediate actions need be taken.¹⁰¹⁴ Notably, from a practical standpoint, this narrative is beneficial to multinational businesses' economic interests, since it defuses public concern about environmental damage and unsustainable practices and encourages individuals to maintain their current consumption habits.¹⁰¹⁵

6.6 Conclusion

The oil and gas industry has a growing understanding and appreciation of key factors relating to environmental sustainability. All the major oil and gas companies, critically assessed above, understand that environmental sustainability at its core means dealing with global energy demand responsibly and at a reasonable cost, while protecting the environment and communities until a more eco-friendly product is commonly accessible.

A major way of Identifying environmental sustainability involvement is through regular appraisals of the annual or Sustainability Report of oil and gas companies. The research has identified a trend among top oil and gas companies. They tend to align their report with international standards and initiatives. However, these reports have been identified as employing generic data without adequate disclosure in compliance with GRI standards. Another trend within oil and gas reporting is that the reports largely dwell on technological aspects and improvement of same. While this is a positive trend, because the use of sustainable technology can be used to enhance the goals of environmental

¹⁰¹³ Geoffrey Supran and Naomi Oreskes, 'Rhetoric And Frame Analysis Of Exxonmobil's Climate Change Communications' (2021) 4 One Earth pp. 696-719

¹⁰¹⁴ José-Santiago Fernández-Vázquez, 'Analysing The Environmental Websites Of The World'S Greatest Polluters: A Multimodal Ecolinguistic Approach' (2020) 34 Economic Research-Ekonomska Istraživanja.

¹⁰¹⁵ Ibid, Vazquez

sustainability, reporting on stakeholder engagement is vital to the enhancement of environmental sustainability.

On the other hand, it is logical that major companies would want to safeguard their operations and are less likely to report on their negative impact or dwell on it as much as they highlight their technological advancements. Including the negative consequences of their occurrence, however, as recommended by the GRI, would demonstrate to stakeholders that the corporation genuinely cares about the environment and shares citizens' concerns about climate change and sustainability issues.

The limits of sustainability reports and subsequent comparison attempts presents intrinsic constraints to research sources. Although it is obvious that these documents may lack accuracy and reliability, it should also be recognised that the demand for and use of Sustainability Reports is increasing globally, and that they remain the most institutionalised reference for companies' disclosure regarding their environmental sustainability credentials.¹⁰¹⁶

The next chapter shifts the focus from the corporate approach of environmental sustainability to stakeholder involvement towards this goal.

¹⁰¹⁶ Jędrzej George Frynas, "Corporate Social Responsibility in the Oil and Gas Sector" (2009) 2 Journal of World Energy Law & Business 178

7 CHAPTER SEVEN: HOST COMMUNITIES IN THE OIL AND GAS INDUSTRY

7.1 Introduction

Host communities are normally enthusiastic in welcoming the arrival of a company's presence to their areas, since it signals the possibility of much-needed social amenities such as decent roads, schools, utilities and healthcare.¹⁰¹⁷ Yet the environmental deterioration and devastation of their basic livelihoods that generally occurs from inviting businesses into their areas, or the absence of sustainable economic growth in their neighbourhoods, is something that host communities, particularly in the mining and the oil and gas sector, may not have bargained for.

Compared with other parts of the globe like the UK (Scotland) or Norway (Stavanger), where host communities have witnessed tremendous economic development after a few years of operation, the resultant situation in Nigeria's Niger Delta region is significantly different from what may be happening elsewhere.¹⁰¹⁸ Even after direct and proactive interactions between companies and host communities, the problem persists. The reasons for this are obvious: the Nigerian government has shown little interest at both national and state levels to consolidate these interactions and pursue policies of regional sustainable development in these communities.¹⁰¹⁹

It is against this background, and with the aim of answering the research question of this thesis in this chapter, that the researcher will critically analyse and demonstrate the urgent need for an effective multistakeholder strategy in oil and gas producing areas, with the research emphasis on Nigeria. The research will answer this question by initially defining what host communities are and the modes of engagement and the challenges they face. It will provide case studies of the particular experiences of host communities with key stakeholders, such as the

¹⁰¹⁷ Uwafiokun Idemudia, 'Rethinking the Role of Corporate Social Responsibility in The Nigerian Oil Conflict: The Limits Of CSR' (2009) 22 *Journal of International Development* pp. 833-845

¹⁰¹⁸ Jędrzej Frynas, "The False Developmental Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies" (2005) 81 *International Affairs*, 581

¹⁰¹⁹ Ben Naanen, "Oil-Producing Minorities and the Restructuring of Nigerian Federalism: The Case of the Ogoni People" (1995) 33 *The Journal of Commonwealth & Comparative Politics* 46

government and oil and gas companies, in both a developed and a developing region.

The deductions from these and previous chapters will inform the research recommendation for an effective partnership strategy in chapter 8 of the thesis.

7.2 Defining Host Communities

The concept of a host community is fluid and subject to change, based on a number of criteria. It can have a range of meanings, depending on factors such as; the nature of the project's technology, its location, the relationship between a particular community and its neighbours, and the perceived advantages being delivered. Some use the phrase in a sense where such advantages are related to the basic and possibly future interests of the communities; others, in a sense related to the perceived advantages on offer; and still others, in a sense unrelated to either.¹⁰²⁰

According to the Webster dictionary,¹⁰²¹ a host is a person who receives or entertains a guest. Webster further defines a host as a 'country', a 'government' etc., that agrees to allow an outside business, organisation, group of people etc., to operate, function or live within its boundaries, jurisdiction or population. The Law Insider¹⁰²² states that host communities include the nearest governmental entity, as measured along main facility access roads and highways, exercising zoning jurisdiction within a twelve-mile radius of a planned project. It is worth noting that outside of the provided definition the word is seldom used. However, the international community refers to it as 'local community'.

In the oil and gas industry, the term "host communities" has been controversial for a long time. The question, "who or what is a host or a host community", particularly in oil and gas producing areas, is a popular one. Is the person outside of an oil and gas-producing region with a pipeline running under his property and not a drop of oil under his property also a host community member? Can such a

¹⁰²⁰ Ulupono Initiative, "Where the Benefits Begin: Defining a Host Community" (*Ulupono* January 1, 2022) <https://ulupono.com/newsletter-listing/july-2022/where-the-benefits-begin-defining-a-host-community/>

accessed December 26, 2022

¹⁰²¹ Merriam Webster, 'Host Noun (1)' <https://www.merriam-webster.com/dictionary/host> accessed 19 October 2021

¹⁰²² Merriam Webster, 'Host Community Definition | Law Insider' (*Law Insider*) <https://www.lawinsider.com/dictionary/host-community> accessed 21 October 2021

person lay claim to being an oil and gas stakeholder? Questions such as these and many others recur many times in the Petroleum Industry Bill (PIB) consultative roundtable, held in Nigeria by Spaces for Change, a public policy and advocacy group based in Lagos, Nigeria.¹⁰²³ Three of the several definitions proposed by the participants in this programme have sparked additional debates and even more passionate interactions. The first of these defined the host community as “a place where oil is extracted and where oil exploration and extraction facilities are located”. The second defined it as “a community that has suffered economically due to petroleum exploration”. The petroleum businesses and facilities may not be based in the neighbourhood, but their operations and those of the facilities have an impact on it.¹⁰²⁴ The third defined a host community as “a place where hydrocarbon extraction takes place, as well as the contingent community that surrounds it”.¹⁰²⁵ However tense and diverse the opinions and perspectives of the participants in the PHC Fund were, all agreed on one thing: the communities deserve special attention because of the unfair treatment they have received over time from oil exploration and production. Thus, what needs to be worked out appears to be how to pay attention to communities in a structured and meaningful way.¹⁰²⁶

The rights of indigenous people is provided for under the *United Nations Declaration on the Rights of Indigenous Peoples*, which recognises that host communities have a right to the lands that they traditionally own, and when states control this resource host communities need to be involved in the process.¹⁰²⁷ International Labour Organisation (ILO) Convention No. 169, concerning *Indigenous and Tribal Peoples in Independent Countries*, further provides that host communities should not be removed from their land, and if they must be removed, then due process must be followed based on consultation with relevant parties.¹⁰²⁸

Based on the context and its potential impacts through the recommendation of this thesis in chapter 8 the research explores what a host community means in

¹⁰²³ Spaceforchange, 'What Is A HOST COMMUNITY' (<https://spacesforchange.org/>, 2013) <https://spacesforchange.org/what-is-a-host-community/> accessed 23 October 2021.

¹⁰²⁴ Lawyer Joy Eke, of the Legal Research and Resource Documentation Centre in Lagos

¹⁰²⁵ Ibid What is host community

¹⁰²⁶ Ibid What is host community

¹⁰²⁷ United Nations Declaration on The Rights Of Indigenous Peoples (2007) Articles 10, 21.1, 23 and especially 26.

¹⁰²⁸ International Labour Organisation (ILO) Convention No. 169 Concerning Indigenous And Tribal Peoples In Independent Countries(1989) Article 16

the context of the oil and gas industry in Nigeria. The Nigerian Petroleum Industry Act, 2021 (PIA) defines host communities as communities situated in or appurtenant to the area of operation of a settlor, and any other community as a settlor, as may be determined under Chapter 3 of the Act.¹⁰²⁹ This definition is however rather unclear and gives rise to several interpretations of what a host community is. In the researcher's considered view, host communities in the context of this research should be clearly defined as communities in which oil or gas is produced or which contain petroleum facilities or installations or waste facilities, which is in line with IPIECA guidelines for oil and gas companies.¹⁰³⁰ Oil and gas companies must consider all social groups and communities that are situated close to, and are impacted by, their operations.¹⁰³¹ To encompass the potential impact of both the direct and indirect effects of such operations, a 50 km wide radius is recommended around each facility.¹⁰³²

7.3 Understandings between Host Communities and Corporations

Host community attitudes towards business organisations are frequently influenced by their views and expectations of what they see as effective corporate activity.¹⁰³³ However, it is challenging to understand the expectations or relationships between extractive industries and their host communities. Local communities do not always speak with one voice in their opposition to or support for extractive operations, since diverse groups of people within a geographic region may have opposing interests, which other stakeholder organisations may also represent.¹⁰³⁴

¹⁰²⁹ PIA interpretation S. 318 also see S.235(3)

¹⁰³⁰ OECD, *Collaborative Strategies for In-Country Shared Value Creation: Framework for Extractive Projects* (OECD Publishing)

¹⁰³¹ IPIECA, "Working with Local Communities" (*Ipieca*) <https://www.ipieca.org/our-work/people/working-with-local-communities/> accessed December 26, 2022

¹⁰³² Laura J Sonter and others, "Renewable Energy Production Will Exacerbate Mining Threats to Biodiversity" (2020) 11 *Nature Communications* 4174

¹⁰³³ Uwafiokun Idemudia and Uwem E Ite, "Corporate-Community Relations in Nigeria's Oil Industry: Challenges and Imperatives" (2006) 13 *Corporate Social Responsibility and Environmental Management* 194

¹⁰³⁴ Michelle Greenwood, "Community as a Stakeholder: Focusing on Corporate Social and Environmental Reporting" (*Monash University* January 1, 1970) <https://research.monash.edu/en/publications/community-as-a-stakeholder-focusing-on-corporate-social-and-envir> accessed December 26, 2022

Irrespective of the views and understandings of the range of stakeholders in oil and gas companies and host communities, environmental sustainability is a mutual need and a common understanding for both. This is based on the undisputed rationale that oil and gas activities have adverse impacts on the environment.¹⁰³⁵ Seismic explorations, drilling waste sites, water, soil and atmospheric pollution and the loss of farmlands and water courses in host communities have exacerbated poverty.¹⁰³⁶ Consequently, the notions of Corporate Social Responsibility and the Social License to Operate were developed to address such issues and alleviate tensions. The reality is that generating profit should not come at the expense of the public. Profit-making must be ethical and humane.¹⁰³⁷

In chapter 5, the research explained what the Social License to Operate meant and how it works. Oil and gas corporations must gain their SLO from host communities; there is an underlying need for corporations to work with host communities to gain, increase and sustain this legitimacy to avoid costly interruptions to their investments and projects.¹⁰³⁸ The quality of relations between the corporation and the surrounding communities is a reliable predictor of whether there will be peaceful coexistence permitting smooth operations, or whether there are risks of impending violent confrontations that can have negative consequences for the resource extraction industries- even to the point of cessation.¹⁰³⁹

7.4 Host Communities: Stakeholder Engagement Strategies

Community engagement may significantly impact the outcomes for both communities and organisations. Thus, community participation must be a cornerstone of any organisation's strategy, regardless of size or sector, because it is critical to long-term success.¹⁰⁴⁰ There is no "one-size-fits-all" method for effective community participation. Every host country has a distinct political,

¹⁰³⁵ Michael Peel, *A Swamp Full of Dollars: Pipelines and Paramilitaries at Nigeria's Oil Frontier* (I B Tauris 2011)

¹⁰³⁶ Ibid Peel

¹⁰³⁷ Ogbemi O Brickins, "Corporate social responsibility as a conflict management strategy in selected oil producing communities in Delta State". (Dissertation, 2017) 37

¹⁰³⁸ Fritz Brugger, "Getting a Social License: Enough to Catch the Elusive Ghost in Town?" (2020) 1 OGEL <https://www.ogel.org/article.asp?key=3857> accessed December 29, 2022

¹⁰³⁹ Ibid Brugger

¹⁰⁴⁰ Tractivity, "What Is Community Engagement: Concept and Methods" <https://www.tractivity.co.uk/blog/what-is-community-engagement> accessed December 26, 2022

economic, and social setting and distinct national methods for managing host communities.¹⁰⁴¹

Research suggests that corporations act differently in the different communities where they operate.¹⁰⁴² How businesses engage with community stakeholders will depend on the unique qualities, even the history, of each society. A body of research indicates that internal discourses (patterns of stakeholder interactions) may provide an understanding of how businesses might proactively connect with communities.¹⁰⁴³

Strategies for engaging communities include:¹⁰⁴⁴ meetings and open events, surveys, focus groups and seminars, citizens' panels (phone, mail, online events), websites and blogs, social media (Facebook, Twitter accounts) and other platforms. Each of these can be translated into direct engagement between companies and host communities and indirect engagement between NGOs and host communities, to ensure a high and consistent engagement in oil and gas-producing areas. In more sophisticated forms of oil and gas engagement, forms such as standard contracts and profit-sharing agreements can be used. These will be discussed in more detail below.

7.4.1 Standard Contract Agreements

Oil and gas companies can use procedural empowerment in the form of contracts to enhance their Social License to Operate.¹⁰⁴⁵ Examples are contractual arrangements between oil and gas companies and landholders.¹⁰⁴⁶

¹⁰⁴¹ Natasha Butorac, "Effective Engagement for Host Communities" (GOV.UK March 2019) <https://www.gov.uk/research-for-development-outputs/effective-engagement-with-host-communities> accessed December 26, 2022

¹⁰⁴² Kathleen A Getz and Roger J Volkema, "Culture, Perceived Corruption, and Economics" (2001) 40 *Business & Society* 7; Sandra Dow and Jongmoo Jay Choi, *Institutional Approach to Global Corporate Governance; Business Systems and Beyond* (Emerald Group Publishing Limited 2008) pp.81-96

¹⁰⁴³ Robert Bouthillier, *Stakeholder Politics: Social Capital, Sustainable Development, and the Corporation* (Greenleaf Publishing 2009); Emmanuel Adegbite, Kenneth Amaeshi and Olufemi Amao, "The Politics of Shareholder Activism in Nigeria" (2011) 105 *Journal of Business Ethics* 389

¹⁰⁴⁴ Mariana Zanchetta, "What Is Community Engagement: Concept and Methods" (*Tractivity* November 30, 2022) <https://www.tractivity.co.uk/blog/what-is-community-engagement#methods> accessed December 27, 2022

¹⁰⁴⁵ Jędrzej Górski, "Social Licence to Operate (SLO) in the Extractive and Energy Sectors - Introduction" (2020) 1 *OGEL* <https://www.ogel.org/article.asp?key=3856> accessed December 29, 2022

¹⁰⁴⁶ *Ibid* Górski

The guidelines for Durable Extractive Contracts 2019¹⁰⁴⁷ specify that at the national level, long-term extractive contracts balance the legitimate interests of host governments, investors, and communities while taking into account the special rights of impacted indigenous peoples recognised under applicable international and/or national law.¹⁰⁴⁸ Another guideline that impacts the research is the requirement for transparency of contracts and reporting in the extractive sector.¹⁰⁴⁹ Publishing contract agreements can consolidate ex post accountability. This means that the parties will negotiate and present results in a manner that makes the terms public and commercially viable.¹⁰⁵⁰

Such standard contract agreements e.g., Production Sharing Contracts (PSAs) between companies and host communities, usually contain provisions for local content. As an example, in 2003, British Petroleum (BP), publicly disclosed the Baku-Tbilisi-Ceyhan (BTC) pipeline and upstream contracts.¹⁰⁵¹ When BP sought legal advice on whether the BTC agreements could be made public, counsel found no compelling reason not to. Contract disclosure was judged to be permissible.¹⁰⁵²

In Nigeria, prior to the Petroleum Industry Act,¹⁰⁵³ direct contract agreements take the form of a Memorandum of Understanding (MOU) between corporations and host communities.¹⁰⁵⁴ The term "Memorandum of Understanding" refers to a short written document outlining the agreement between at least two persons regarding performance or non-performance of specified future actions.¹⁰⁵⁵ The Collins English Dictionary's¹⁰⁵⁶ entry suggests states that an MOU is an understanding between

¹⁰⁴⁷ OECD "Guiding Principles for Durable Extractive Contracts" (OECD, 2019)

¹⁰⁴⁸ OECD 2019 Principle IV

¹⁰⁴⁹ OECD 2019 Principle II

¹⁰⁵⁰ OECD 2019 page 2

¹⁰⁵¹ Examples of Production Sharing Agreements are available at:

https://www.bp.com/content/dam/bp/country-sites/en_az/azerbaijan/home/pdfs/legalagreements/psas/171214-az-en-swap-psa.pdf accessed December 29, 2022. See also the report on community investment on the project BP Azerbaijan, "Sustainability Report 2003" (BP, 2003)

¹⁰⁵² Peter Rosenblum and Susan Maples, *Contracts Confidential: Ending Secret Deals in the Extractive Industries* (Revenue Watch Institute 2009) p. 45

¹⁰⁵³ Nigeria: Petroleum Industry Act 2021

¹⁰⁵⁴ See S,7.6.2 of this thesis for more discussion on the Niger delta experience with the MOU and the implications of the PIA for this.

¹⁰⁵⁵ Otekenari David Elisha, "Global Memorandum of Understanding Policy Implementation and the Much-Desired Economic Advancement" (2020) 12 International Journal of Scientific Research in Education 230

¹⁰⁵⁶ Collins Dictionary, "Memorandum of Understanding Definition and Meaning: Collins English Dictionary" (*Memorandum of understanding definition and meaning | Collins English Dictionary*) <https://www.collinsdictionary.com/dictionary/english/memorandum-of->

parties, not yet a legally binding contract. In this regard, an MOU is a written document that typically serves as the first step in creating a formal contract, prior to a legally binding agreement.

In certain jurisdictions, Community Development Agreements (CDAs) are also used to guarantee local residents a share of the profits made by major infrastructure projects.¹⁰⁵⁷ Through efficient two-way communication and enhanced community involvement over the life of a development project, CDAs are important instruments for creating and sustaining beneficial company-community partnerships.¹⁰⁵⁸ They have also been referred to as Participation Agreements, Socio Responsibility Agreements, Exploration Agreements (Canada) Impact Benefit Agreements (Canada), Community Development Initiatives, Voluntary Agreements, Indigenous Land Use Agreements, Partnering or Partnership Agreements, and Community Contracts.¹⁰⁵⁹ Similar to the MOU, CDAs are initial steps potentially leading to enforceable contracts.¹⁰⁶⁰ Ghana, like many other countries does not legally mandate CDAs, although some achievements have been attributable to these, leading to the industry's voluntary adoption of best practices through the initial use of CDAs.¹⁰⁶¹

7.4.2 Profit Distribution

The Schlumberger energy glossary defines Profit oil as “The amount of production, after deducting cost oil production allocated to costs and expenses, that will be divided between the participating parties and the host government under the production sharing contract”.¹⁰⁶²

[understanding#:~:text=noun,Abbreviations%3A%20MOU%2C%20MoU](#) accessed December 29, 2022

¹⁰⁵⁷ The World Bank, “Community Development Agreements” (olc.worldbank.org) <https://olc.worldbank.org/> accessed December 29, 2022

¹⁰⁵⁸ David Brereton, “Good Practice Note Community Development Agreements” (2011) <https://static1.squarespace.com/static/5bb24d3c9b8fe8421e87bbb6/t/5c292bd54d7a9c2ebbf3f980/1546202071501/csr-good-practice-notes-on-cdas-document-final-260911.pdf> accessed December 29, 2022

¹⁰⁵⁹ Ibid Brereton

¹⁰⁶⁰ Sunrita Sarkar et al, “Mining Community Development Agreements – Practical Experiences and Field Studies” (The World Bank, 2010) 89

¹⁰⁶¹ Ibid, Sarkar, p.23

¹⁰⁶² SLB Glossary, “Profit_oil” (*profit oil* | *Energy Glossary*) https://glossary.slb.com/Terms/p/profit_oil.aspx accessed December 29, 2022

A government's fundamental claim to its revenue from extractive industries is encapsulated in its part of profit oil, as reflected by the production sharing contract (PSC) or agreement (PSA). But it should be remembered that each PSC/PSA is independently negotiated, and only the signed PSC is binding.¹⁰⁶³

The government generally holds the land in trust for the people, hence the profit oil.¹⁰⁶⁴ Based on this, governments and local governments are required to distribute oil income fairly among host communities, based on sound public policy.¹⁰⁶⁵

However, in Kenya and Nigeria, for example, communities and other stakeholders have reported feeling 'cheated' when the quantification of profit oil is calculated.¹⁰⁶⁶ It is also worth noting that the host state plays a significant role in the PSA negotiating process. This in itself might disadvantage host communities. In the same vein, the Kenya Petroleum Act¹⁰⁶⁷ provides that all stakeholders should effectively participate in the national policy on petroleum operations.¹⁰⁶⁸ The role and value of public engagement has been widely debated, however the courts have constantly confirmed it generally based on the principle of free, prior and informed consent (FPIC).¹⁰⁶⁹

Unlike Kenya and Nigeria, jurisdictions like Norway do not face issues associated with host community expectations, because oil and gas production is offshore.¹⁰⁷⁰ It is worth noting though, that if petroleum operations in a Norwegian fishing area

¹⁰⁶³ Faith Waguthi Waigwa, 'The Adequacy of the legal framework in guaranteeing the equitable distribution of profit oil to the local community in the oil and gas sector in Turkana, Kenya' (Thesis, Strathmore University 2022) p.8

¹⁰⁶⁴ Constitution of the Federal Republic of Nigeria 1999 S. 44(3)

¹⁰⁶⁵ See *Ibid*, Waiwa p. 11 ; and *County Government of Tana River v Dakane Shake Bocha & 10 others* (2021) Eklr where the courts held County Government as the trustee of an unregistered community.

¹⁰⁶⁶ *Ibid*, Waiwa p.12. See also Kennedy Mkutu and Anna Mdee, "Conservancies, Conflict and Dispossession: The Winners and Losers of Oil Exploration in Turkana, Kenya" (2020) 63 *African Studies Review* 831; for Nigeria see Kate Abiri, Festus Emiri and Gowon Deinduomo, *Law and Petroleum Industry in Nigeria: Current Challenges: Essays in Honour of Justice Kate Abiri* (Malthouse Press 2009) pp.11-34

¹⁰⁶⁷ Kenya: Petroleum Act 2019 S.5 (2)

¹⁰⁶⁸ This is not available in Nigeria's PIA 2021.

¹⁰⁶⁹ *Richard Owuor & 2 others (suing on behalf of Busia Sugarcane Importers Association) v Cabinet Secretary, Ministry of Agriculture, Livestock, Fisheries & Cooperatives & 7 others* [2020] and *Eklr Mui Coal Basin Local Community & 15 Others v Permanent Secretary Ministry of Energy & 17 Others*, [2014] Eklr. Also see OHCHR, "Free, Prior and Informed Consent of Indigenous Peoples - OHCHR" <https://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf> accessed February 6, 2022

¹⁰⁷⁰ ITA, "Norway - Offshore Energy - Oil, Gas and Renewables" (*International Trade Administration* | *Trade.gov*2022) <https://www.trade.gov/country-commercial-guides/norway-offshore-energy-oil-gas-and-renewables> accessed December 29, 2022.

lead to losses to fishermen and their livelihood, the State may pursue a claim against the licensee for compensation,¹⁰⁷¹ but the burden of doing so rests with the State.

It is clear that a country's economy can be transformed if oil profits are put to good use. But in order for laws to be effectively implemented, strategic measures must be devised and put in place.

7.4.3 Direct Engagement: Companies and Host communities

There is a plethora of information on how to conduct stakeholder engagements successfully (mostly directed at businesses),¹⁰⁷² but there remain significant obstacles in terms of implementation. To be successful there must be guarantees that public consultation and other forms of community engagement represent constructive, ongoing engagements between businesses, communities, and the government, and that this leads to positive outcomes for local communities and society at large.

Because SLO is intangible and dynamic, conflicting opinions among stakeholders might have an influence on the degree of the licence given.¹⁰⁷³ Thus it is important to make meaningful and impactful engagements with host communities. For meaningful community engagement in the extractive industries both stakeholder perspectives and research priorities as set out both in the International Institute for Environment and Development (IIED)¹⁰⁷⁴ and the Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector by the OECD, discussed in chapter 3 of this thesis, succeed in encapsulating the relevance and appropriate guidelines on such engagement, to ensure optimum implementation.

Direct engagement, as the term implies, is the use of company personnel, such as community liaison officers (CLOs) and other functionaries, to interact with host communities. The IIED and OECD guidelines stipulate that¹⁰⁷⁵ communities should

¹⁰⁷¹Norway: Petroleum Act 1996 S. 82

¹⁰⁷² Emma Wilson et al, 'Meaningful community engagement in the extractive industries: Stakeholder perspectives and research priorities'(IIED, 2016) pp. 2, 8

¹⁰⁷³ Nicholas Agaba, Edgar Mugarura and Denis Yekoyasi Kakembo, "Social License to Operate in the Oil and Gas Industry: Driving the Sustainability Agenda" (*Social License to Operate in the Oil and Gas Industry: Driving the Sustainability Agenda* | *The Kampala Post* August 2, 2021)

<https://kampalapost.com/content/social-license-operate-oil-and-gas-industry-driving-sustainability-agenda> accessed December 29, 2022

¹⁰⁷⁴ Ibid Wilson et al 2, 8

¹⁰⁷⁵ IIED 2016 p.16

be able to develop their own visions and plans, starting at the pre-approval stage. Concurrently, local communities should be provided with expert assistance to understand these projects; ideally, a platform should be created for constant communication and other recommendations for ongoing engagement.

The major highlight of these guidelines is educating stakeholders on the impact of the project during this engagement. The UNEP report¹⁰⁷⁶ on environmental sustainability and stakeholder engagement in Nigeria highlights that this is a problem in Nigeria. The communities did not properly understand what was being communicated to them. The same problem occurred in Peru, where a corporation believed it understood the community and was surprised when its acquisition of a 'water availability permit' prompted a public demonstration, with the permission being cancelled two days later by the central government.¹⁰⁷⁷

Best practice today is that companies are expected to perform stakeholder mapping in the early stages of a project to determine who to interact with and how to engage with them; with what frequency, and with what goals. However, the efficacy of this strategy depends on what organisations do with the information, how identified stakeholders are engaged, and how their input is appraised and utilised.¹⁰⁷⁸ Hence CLOs need to have a very good understanding of the local community context, as well as stakeholder engagement expertise.¹⁰⁷⁹

7.4.4 Indirect Engagement: NGOs and Host Communities

The function of non-governmental organisations (NGOs) has evolved rapidly over several decades and is becoming increasingly evident. It was estimated in 1900 that there were approximately 100 international NGOs (such as the Red Cross and Anti-Slavery Society) but, after 1990, this figure expanded to approximately 50,000 international organisations.¹⁰⁸⁰ The UN Conference on Environment and

¹⁰⁷⁶ Ibid, UNEP 2011 and 2014 in Ch.4 of this work.

¹⁰⁷⁷ H Elliot, 'Presentation on behalf of Anglo American at Conference on Alternative Strategies for Mining-based Economies: Mining and Development in the Andean Region'(Conference hosted by the Institute for the Study of the Americas, London, March 2013)

¹⁰⁷⁸ IIED p.22

¹⁰⁷⁹ This is covered in Ch. 8 and in research recommendations,

¹⁰⁸⁰ John V Mitchell, *Companies in A World of Conflict* (Oxford University Press 1998).page 195-226

Development (UNCED) in Rio de Janeiro in 1992¹⁰⁸¹ and the World Summit on Sustainable Development (WSSD)¹⁰⁸² in Johannesburg in 2002 contributed to this increase. NGOs function as lobbyists in the corridors of power and are much more visible participants in the field since large numbers can be present at the scene of protests or petitions.¹⁰⁸³ These worldwide conferences increasingly focus on forming alliances between corporations, governments and NGOs.

The interactions between corporations and NGOs may be classified as either protest or partnership-based.¹⁰⁸⁴ Not all non-governmental organisations have the same level of global political access, goals or the same opportunity to influence industry via collaborations.¹⁰⁸⁵ As identified in empirical research by Belou, NGOs' relationships with companies is similar to that between dolphins and sharks. 'Dolphins' suggesting that NGOs engage with companies through adaptive strategies; 'sharks' reflecting how NGOs can attack at the points of concern and act in tactical ways.¹⁰⁸⁶ This is not to say that partnerships with an NGO cannot deliver expertise and the ability to solve dynamic issues. When businesses form partnerships with non-governmental organisations (NGOs) based on the identity strategy, the NGOs are often requested to bring in social and intellectual skills that the company lacks.¹⁰⁸⁷

However, in the context of using an NGO as a 'front' for host community engagement, research has shown that this approach has not always been successful. In Azerbaijan, a basic idea to create a uniform brochure on CSR programmes and oil company guidelines failed.¹⁰⁸⁸ While businesses had different agendas, many were sceptical of the Government and Public Advisory (GPA) approach, a forum which was organised by a NGO (Citizens Democracy Corps) rather than the oil companies themselves.¹⁰⁸⁹

¹⁰⁸¹ Ibid, Mitchell

¹⁰⁸² Ibid, Mitchell

¹⁰⁸³ Seb Belou and others, *The 21st Century NGO: In the Market for Change* (L&S Printing Worthing 2003).

¹⁰⁸⁴ Ibid, Belou

¹⁰⁸⁵ Andre Nijhof, Theo de Bruijn and Hakan Honders, 'Partnerships For Corporate Social Responsibility' (2008) 46 *Management Decision* pp. 152-167

¹⁰⁸⁶ Ibid Belou

¹⁰⁸⁷ Ibid Nijhof 152-167

¹⁰⁸⁸ Lars H Gulbrandsen and Arild Moe, "Oil Company CSR Collaboration in New Petro-States" (2005) 2005 *Journal of Corporate Citizenship* 53

¹⁰⁸⁹ Ibid Gulbrandsen 53

In Nigeria, Shell failed in its initial strategy of direct engagement and advanced to the use of NGOs in stakeholder communication.¹⁰⁹⁰ However, the use of NGOs in stakeholder relations was only deemed effective for strengthening direct engagement, rather than this approach emerging as a panacea for stakeholder relations.¹⁰⁹¹ The research thus aligns itself with the rationale that while NGOs can play an essential role in civil society, they should not always or be entirely considered as "gatekeepers" of connections with community members.¹⁰⁹²

7.5 Key Challenges and Criteria for Host Community Acceptance

Communities are not powerless, and to understand the criteria for their acceptance in this research, the sections below analyse key problems corporations are likely to face in achieving a successful SLO.

Working proactively and pre-emptively to minimise conflict and develop lasting relationships with communities and governments yields better results than attempting to diffuse frustration and outrage after it has erupted. At the very least,¹⁰⁹³ companies must be mindful of the possible consequences of their activities, both on their internal operations and on the external settings in which they operate. They must seek procedures and policies that do not lead to new conflicts or exacerbate existing ones. The research thus identifies three core issues that can hinder or undermine a SLO, including trust, elite capture and continuity, critically examined below.

7.5.1 Trust

The Oxford online dictionary defines trust as "to have confidence in somebody; to believe that somebody is good, sincere, honest, etc".¹⁰⁹⁴ In the corporate world, trust is paramount. Without it, you lose clients, investors and money. Earning

¹⁰⁹⁰ Uwafiokun Idemudia, "Shell-NGO Partnership and Peace in Nigeria: Critical Insights and Implications" (2018) 31 *Organization & Environment* pp.384-405

¹⁰⁹¹ Ibid, Idemudia, p. 384

¹⁰⁹² ARCON International, "Issue No. 35: Oil & Gas and Ngos: New Rules of Engagement?" (*Acorn International* July 22, 2021) <https://acornintl.com/issue-no-35-oil-gas-and-ngos-new-rules-of-engagement/> accessed December 29, 2022

¹⁰⁹³ IPIECA, 'Operating in areas of conflict An IPIECA guide for the oil and gas industry' (IPIECA, 2008) p.4

¹⁰⁹⁴ "Trust" (*trust_2 verb - Definition, pictures, pronunciation and usage notes | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.com*) https://www.oxfordlearnersdictionaries.com/definition/english/trust_2#:~:text=trust%20to%20believe%20that%20somebody,me%20not%20to%20tell%20anyone. accessed December 29, 2022

credibility in the oil and gas industry at its inception was simple. It was necessary for businesses to show they could efficiently and profitably extract hydrocarbons and deliver fuel to consumers. They had to prove to investors that they could continue making money in the long run.¹⁰⁹⁵

According to the World Economic Forum, in its Trust Challenge Facing the Global Oil & Gas Industry,¹⁰⁹⁶ policymakers and the global audience are rethinking the importance of oil and gas in modern life. This is especially true in light of the commitments of close to 200 nations at the UNFCCC COP21 Paris Agreement in 2015;¹⁰⁹⁷ Articles 3 and 4 specified that each signatory through its Nationally Determined Contribution (NDC) committed to decreasing carbon emissions and revisiting the ambition of its commitment every five years.

Additionally, high-profile accidents and legal disputes over environmental performance,¹⁰⁹⁸ such as the Macondo Gulf of Mexico spill of 2010, the ongoing Lago Agrio dispute in Ecuador, and the legacy of oil development in Nigeria's Niger Delta areas, have eroded confidence in the oil and gas sector's ability to deliver the benefits of oil and gas and their derivatives without imposing onerous environmental costs on local communities. The loss of confidence has been exacerbated by many people's impression that the industry has been reluctant to address climate change.¹⁰⁹⁹ Furthermore, the industry's participation in shaping environmental and safety standards has the unintended effect of being assessed with the benefit of hindsight: after the occurrence of an environmental disaster.¹¹⁰⁰

¹⁰⁹⁵ Jean-Marc Ollagnier, "Trust in Oil and Gas Is Eroding - the Time to Act Is Now" (*Forbes* November 26, 2019) <https://www.forbes.com/sites/jeanmarcollagnier/2019/11/26/trust-in-oil-and-gas-is-eroding-the-time-to-act-is-now/?sh=28ce77ae43cf> accessed December 29, 2022

¹⁰⁹⁶ WEF, "Global Agenda Council on the Future of Oil & Gas: Trust Challenge Facing the Global Oil & Gas Industry" (WEF, 2016)

¹⁰⁹⁷ UNFCCC, Report CP/2015/10/Add.1 of the Conference of the Parties on its twenty-first session [2015]

¹⁰⁹⁸ *Chevron Corporation v. Steven Donziger*, The Law Offices of Steven R. Donziger, Donziger & Associates, PLLC, Hugo Gerardo Camacho Naranjo, and Javier Piaguaje Payaguaje available at: <http://www.rff.org/research/collection/deepwater-drilling-recommendations-safer-future> accessed December 29, 2022

¹⁰⁹⁹ *The New Yorker*, "What Exxon Knew About Climate Change" *The New Yorker* (September 18, 2015) <https://www.newyorker.com/news/daily-comment/what-exxon-knew-about-climate-change> accessed December 29, 2022

¹¹⁰⁰ For example, before the Macondo spill, the duty to complete environmental studies in offshore projects in the Gulf of Mexico was subject to categorical exemptions. See National Commission on the BP Deepwater Horizon Oil Spill and Offshore Drilling, "Deep Water The Gulf Oil Disaster and the Future of Offshore Drilling" (2011).

Oil and gas corporations have established expectations among their stakeholders that they can operate without negatively impacting the environment, but actual performance has often fallen short of these expectations. During local community discussions and environmental assessment procedures, risks of oil and gas-related environmental consequences have been described as minor or even non-existent. Indeed, certain performance failures have been documented in the media, such as surface leaks of fracking chemicals into drinking water aquifers, or the persistent practice of flaring gas despite recognised health and air quality risks.¹¹⁰¹

The trust gap differs by country, with stronger trust issues in nations where national oil firms dominate the petroleum sector.¹¹⁰² In these circumstances, when confidence is low, governments can mistakenly turn to passing and implementing more regulations.¹¹⁰³ This can be clearly seen in the Nigerian government's mandate for the incorporation of a Host Community Development Trust Fund,¹¹⁰⁴ with oversight and control undertaken by a specially structured Government Commission.¹¹⁰⁵

The amount of trust created by oil and gas corporations in local communities is influenced by the quality of the company's consultation processes, its engagement in the political process, and the distribution of the project benefits; financial and in kind.¹¹⁰⁶

According to a World Bank Institute assessment of ten oil-producing nations, there is a general lack of knowledge of the industry.¹¹⁰⁷ Oil firms may assist communities in gaining access to project information and communicating openly about the value that may be provided as well as any potential negative effects. Outlining associated mitigating actions in a way that facilitates responsibility in the case of a blunder may also help to boost confidence.¹¹⁰⁸ Companies can have important

¹¹⁰¹ WEF, 2016 p.3

¹¹⁰² Edelman, "2014 Edelman Trust Barometer" (*Edelman2014*) <https://www.edelman.com/trust/2014-trust-barometer> accessed December 29, 2022 the latest version of the barometer reflects an increase in distrust see Edelman , "2021 Edelman Trust Barometer" (*Edelman2021*) <https://www.edelman.com/trust/2021-trust-barometer> accessed December 29, 2022

¹¹⁰³ Ibid, Edelman

¹¹⁰⁴ PIA,S. 235

¹¹⁰⁵ PIA,S. 242

¹¹⁰⁶ WEF, 2016 p.7

¹¹⁰⁷ World Bank Institute, "Public Perceptions Survey on Extractive Industries" (RIWI corporation, 2014)

¹¹⁰⁸ Valérie Marcel, "Guidelines for Good Governance in Emerging Oil and Gas Producers 2016"(Chatham House, the Royal Institute of International Affairs,2016)

data vetted or validated by these authorities, allowing them to interact with communities more impartially regarding prospective petroleum projects.¹¹⁰⁹

7.5.2 Elite Capture

'Elites' in a certain region may be defined as those who have a disproportionate amount of influence in the region's social, political, or economic institutions.¹¹¹⁰ The phrase "elite capture" describes how these people come to control and corrupt local decision-making processes.

Elite capture can occur in the form of community-driven development (CDD). These initiatives on the surface of it have potential valuable socio-economic rewards because they can alleviate poverty, although they may not be particularly suited to mitigating environmental impacts.¹¹¹¹ Research,¹¹¹² however, indicates that community engagement might even raise the likelihood of elite capture, especially in more unequal societies. When the difference between the poor and the non-poor is wider, the danger increases. With restricted mobility across categories, the poor find it difficult to strengthen their bargaining power or voice their views.¹¹¹³

For example, in the Niger Delta, chieftaincy arrangements and the authority of traditionally well-regarded citizens form the basis of authority.¹¹¹⁴ Consequently, the older generation is traditionally entrusted with the management of multimillion-dollar community improvement initiatives. There is a widespread belief among today's youth that adults are not held accountable for the way they

¹¹⁰⁹ Ibid, GRI recommendations in Ch.3 S.3.1.5 of this work and WEF 2016 p.7

¹¹¹⁰ Several authors have written extensively on different facets of elite capture, including: A Abraham and J Platteau (2000) *The dilemma of participation with endogenous community imperfections*, *Semantic Scholar*. Available at: <https://www.semanticscholar.org/paper/The-dilemma-of-participation-with-endogenous-Abraham-Platteau/336bc006d1d21c73198e8bf2d056f4d7d5edc95c> (Accessed: December 29, 2022); Jean-Marie Baland and Jean-Philippe Platteau, "The Ambiguous Impact of Inequality on Local Resource Management" (1999) 27 *World Development* 773 ; M Das Gupta, H Grandvoinnet and M Romani, "State-Community Synergies in Community-Driven Development" (2004) 40 *Journal of Development Studies* 27

¹¹¹¹ Ghazala Mansuri and Vijayendra Rao, *Community-Based (and Driven) Development: A Critical Review* (The World Bank 2004) pp.1-39

¹¹¹² Rivayani Darmawan and Stephan Klasen, (2013) Georg-August-Universität Göttingen, Courant Research Centre - Poverty, Equity and Growth (CRC-PEG) Working Paper Elite Capture in Urban Development: Evidence from Indonesia No. 145

¹¹¹³ Ghazala Mansuri and Vijayendra Rao, *Localizing Development: Does Participation Work?* (The World Bank 2013).

¹¹¹⁴ Ruben Eberlein, "On the Road to the State's Perdition? Authority and Sovereignty in the Niger Delta, Nigeria" (2006) 44 *The Journal of Modern African Studies*, p.573

spend money on community improvement initiatives. This gerontocratic leadership structure discourages young people from being involved in politics, and many young people feel socially alienated as a result. Discouraged by lack of opportunities, they have attacked this gerontocratic institution and the oil rent it represents.¹¹¹⁵ Again, women are frequently disadvantaged at meetings because they lack the education or independence to attend. Additionally, women face disadvantages due to the increased "opportunity costs" associated with the time commitment required for participation programmes.¹¹¹⁶

For marginalised groups to be able to take part, even the smallest of obstacles must be removed, and this is an expensive endeavour,¹¹¹⁷ because inequalities in access to participation result from a lack of the necessary resources; namely skills and time.

7.5.3 Continuity

Continuity is the ability to not stop or change.¹¹¹⁸ Because companies often engage in many projects, active participation is needed for two-way communication and long-term, equitable, and meaningful discourses. Any lack of project focus can impede genuine stakeholder engagement, and conversely prevent actual reforms in oil and gas projects.¹¹¹⁹

To overcome these limits and power imbalances, contemporary SLO literature promotes alternative engagement conceptualisations that prioritise constant and equitable debate and reflection.¹¹²⁰

¹¹¹⁵ Michael Watts, "Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria" (2004) 9 *Geopolitics*, pp. 50-80

¹¹¹⁶ Linda Mayoux, "Beyond Naivety: Women, Gender Inequality and Participatory Development" (1995) 26 *Development and Change*, pp. 235- 58

¹¹¹⁷ Stuart Corbridge, *Seeing the State Governance and Governmentality in India* (Cambridge University Press 2005)

¹¹¹⁸ Oxford Learners Dictionaries "Continuity" (*continuity noun - Definition, pictures, pronunciation and usage notes | Oxford Advanced Learner's Dictionary at OxfordLearnersDictionaries.com*) <https://www.oxfordlearnersdictionaries.com/definition/english/continuity#:~:text=%2F%CB%8Ck%2F%91%CB%90nt%2F%AA%CB%88nu%CB%90%2F%99ti%2F,not%20stopping%20or%20not%20changing> accessed December 29, 2022

¹¹¹⁹ Martin Brueckner and Marian Eabrasu, "Pinning down the Social License to Operate (SLO): The Problem of Normative Complexity" (2018) 59 *Resources Policy* p.217

¹¹²⁰ Marieke Meesters and others, "The Social Licence to Operate and the Legitimacy of Resource Extraction" (2021) 49 *Current Opinion in Environmental Sustainability* p.7

Securing host communities' SLO entails open-ended, context-specific and dynamic procedures that necessitate long-term engagement techniques.¹¹²¹ Such procedures facilitate the awareness of a variety of values and knowledge sources and post-operational impacts and allow non-corporate and non-profit actors to co-design the engagement process. The key words here are *long-term engagement techniques*. This research therefore advocates that, for long-term host community engagement and sustainability, a central, dedicated, institution must be involved in the role of CSR and in securing the SLO to guarantee environmental sustainability.

In big corporations, research identifies that stakeholder management can be arranged in two ways:¹¹²²

1) horizontal decentralised administration; and 2) vertical management, with an integrated horizontal coordination system, which means a unified centre which is in charge of coordinating interactions between a company's divisions and stakeholders.

In the first example, interactions with stakeholders are handled by multiple departments within the extent of their authority; many activities are cross-functional in nature; and there is no centralised coordinating organisation in charge of stakeholder engagement. The Department for CSR, which is responsible for engaging specific stakeholders, is one of the pillars of horizontal, decentralised management.

In the second case, interaction with stakeholders is carried out by various departments within the scope of their functionality, but a position of vice president for SD or CSR is created to coordinate the interaction between various departments and stakeholders in accordance with the company's strategy. This form of management is rather common in other countries.¹¹²³

¹¹²¹ Kieren Moffat and others, "The Social Licence to Operate: A Critical Review" (2015) 89 Forestry p.477 ; Paul Bowles, Fiona MacPhail and Darcy Tetreault, "Social Licence versus Procedural Justice: Competing Narratives of (Il)Legitimacy at the San Xavier Mine, Mexico" (2019) 61 Resources Policy p.157 ; Hanabeth Luke and Nia Emmanouil, "All Dressed up with Nowhere to Go': Navigating the Coal Seam Gas Boom in the Western Downs Region of Queensland" (2019) 6 The Extractive Industries and Society pp.1350-1361

¹¹²²Bela Bataeva, "Stakeholder Engagement: The Case of the Russian Largest Oil and Gas Companies" (2018) 9 Upravlenets p.22

¹¹²³ Ibid, Bataeva, p.22

For example, in a survey of the seven largest Russian oil and gas companies based on revenue and profit;¹¹²⁴ Gazprom, Rosneft, Surgutneftegaz, Lukoil, Tatneft, RussNeft and Novatek, it was found that there is no such thing as a CSR or SLO division in any of these. However, the same study demonstrated that some Russian corporations, though not in oil and gas business, had CSR departments. Additionally, there are no vice presidents responsible for CSR, but instead, various divisions engage as appropriate in an ad hoc manner.

Based on the discussions above and with a view to improving stakeholder management, this research proposes a multi-stakeholder strategy for developing countries, that centralises the role of CSR within and outwith the organisation, with the strong backing and commitment of the government. This will be critically analysed and discussed extensively in chapter 8 of this thesis.

7.6 Case Studies of Corporate Engagement Strategies

There is abundant evidence that Canadian and Nigerian mining companies and governments have caused, contributed to, or perpetuated; social conflicts, corruption, outright violations of human rights and indigenous rights, gender inequality, gender-based discrimination and other forms of violence against women, environmental degradation, and loss of biodiversity in extractive host communities both inside and outside of operational jurisdictions.¹¹²⁵

The research in this section engages with the experiences of particular Canadian and Nigerian host communities in order to critically analyse current initiatives used by oil and gas companies to improve the goal of environmental sustainability in oil and gas-producing areas from the perspective of a developed country and a developing country with rich oil and gas resources. It also analyses the level of

¹¹²⁴ Ibid ,Bataeva, p.22

¹¹²⁵ Canadian Centre for the Study of Resource Conflict, "Corporate Social Responsibility: Movements and Footprints of Canadian Mining and Exploration Firms in the Developing World" (*Justice & Corporate Accountability Project*) <https://justice-project.org/document/corporate-social-responsibility-movements-and-footprints-of-canadian-mining-and-exploration-firms-in-the-developing-world/> accessed December 29, 2022 ; for more detailed analysis see Sara Seck and Penelope Simons, "Impact Assessment and Responsible Business Guidance Tools in the Extractive Sector: Implications for Human Rights, Gender and Stakeholder Engagement" (Draft Final Report for the SSHRC Knowledge Synthesis Grant: Informing Best Practices in Environmental and Impact Assessments, 13 April 2020)

government involvement in achieving these initiatives. A dual approach is taken, to critically evaluate the experiences of particularly disadvantaged communities in both a developed country; Canada, and a developing one; Nigeria. It is believed that valuable outcomes for the research will be determined.

7.6.1 Developed Country: The Canadian Experience with Social Licence to Operate.

For decades, resource development on First Nations land in Canada has depended heavily on the social license to operate (SLO) in order to gain community approval and satisfy legal consultation obligations.¹¹²⁶ The SLO is generally "formalised" by a contract, known as an Impact and Benefit Agreement (IBA).¹¹²⁷

However, companies are increasingly facing the reality that SLOs, whether granted by an IBA or otherwise, cannot address indigenous opposition to specific projects where there exists outstanding questions about the nature and extent of indigenous sovereignty over claimed and treaty land.¹¹²⁸ Because the Canadian federal government has not responded to these questions, either by ratifying the United Nations Declaration on the Rights of Indigenous Peoples or by implementing clear standards for fulfilling the constitutional obligations for free, prior and informed consent (FPIC),¹¹²⁹ the role of the SLO is unclear.¹¹³⁰

Understanding why it is no longer sufficient, at least in certain circumstances, necessitates a look at its role in Canadian natural resource initiatives thus far. For example, mining and oil and gas firms may engage in IBAs with First Nations

¹¹²⁶Brad Gilmour and Bruce Mellett, "The Role of Impact and Benefits Agreements in the Resolution of Project Issues with First Nations" (2013) 51 Alberta Law Review 385 ; Laura Wright and Jerry P White, "Developing Oil and Gas Resources on or near Indigenous Lands in Canada: an Overview of Laws, Treaties, Regulations and Agreements" (2012) 3 International Indigenous Policy Journal 11,10

¹¹²⁷ Ibid, Wright,pp. 11,10

¹¹²⁸ Kristen van de Biezenbos, "Measuring the Social Licence" (2019) 14 The Social Licence to Operate 157

¹¹²⁹ Ibid OCHCR

¹¹³⁰ Brenda Gunn, "Indigenous peoples' right to consent already exists in Canada, UNDRIP or not" (*The Globe and Mail*, 17 March 2020) <https://www.theglobeandmail.com/opinion/article-indigenous-peoples-right-to-consent-already-exists-in-canada-undrip/> accessed December 29, 2022; Robert Hamilton and Joshua Nichols, "In Search of Honourable Crowns and Legitimate Constitutions: Mikisew Cree First Nation v Canada and the Colonial Constitution" (2020) 70 University of Toronto Law Journal p.341

communities in order to exploit resources on indigenous property.¹¹³¹ First Nations must be consulted under Canadian law before drilling or other resource development may occur on their ancestral territories.¹¹³² IBAs are used to satisfy the consultation requirement, to ensure economic benefits for First Nations, and to address the group's concerns about negative environmental, social, cultural, and economic effects.¹¹³³ IBAs do not nullify the requirement that the Canadian government consult with First Nations on any proposed hydrocarbon development. Rather, IBAs are legal contracts that serve as a framework for negotiations between oil and gas firms and impacted First Nations. These negotiations allow the First Nations to determine whether the benefits offered by the oil and gas company – which may include royalty rates, mineral interest lease duration, and promises to employ community members, invest in local businesses, and make certain environmental assurances – are sufficient to assuage their concerns.¹¹³⁴ It should also be noted that when an IBA does not include all impacted First Nations as parties, problems might occur.¹¹³⁵

In circumstances when the oil and gas company has fulfilled its legal duty of consultation, it is likely to encounter less resistance from host communities.¹¹³⁶ However, because the provisions of IBAs are kept private, First Nations groups cannot benefit from the earlier experiences of other indigenous communities that have signed similar agreements¹¹³⁷ This makes it difficult for a First Nations party to determine whether or not they are receiving a fair bargain in comparison to what the oil and gas corporation has been ready to commit to other parties.¹¹³⁸ It also implies that First Nations cannot bring in a third party to assist them in monitoring and enforcing the oil and gas company's contractual commitments without potentially breaking confidentiality.¹¹³⁹ Furthermore, many IBAs include

¹¹³¹ Ibid, Wright, pp. 10, 11 ; The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) Arts. 5, 10

¹¹³² Geoff Wood, Jędrzej Górski, and Gökçe Mete (eds), *Palgrave Handbook of Social License to Operate and Energy Transitions* (Palgrave 2022-2023)

¹¹³³ Ibid, Wood et al

¹¹³⁴ Ibid, Wood et al

¹¹³⁵ CBC news, "Deninu Kue First Nation Takes Fight for Benefits to New Indigenous Affairs Minister" *CBC News* (January 19, 2016) <https://www.cbc.ca/news/canada/north/deninu-kue-diamond-mine-ibas-1.3409567> accessed December 29, 2022

¹¹³⁶ Ibid Wright, p. 10

¹¹³⁷ Courtney Fidler and Michael Hitch, "Impact and Benefit Agreements: A Contentious Issue for Environmental and Aboriginal Justice" (2007) 35 *Environments Journal* p. 64

¹¹³⁸ Ibid Wood ; Ken J Caine and Naomi Krogman, "Powerful or Just Plain Power-Full? A Power Analysis of Impact and Benefit Agreements in Canada's North" (2010) 23 *Org. & Env* p.84

¹¹³⁹ Ibid, Caine, p. 84

noncompliance provisions that legally require First Nations not to take any action that would obstruct the oil and gas company's exploration, development and production activities¹¹⁴⁰

Finally, many of the environmental concessions made by oil and gas firms may be too difficult for First Nations to monitor and enforce,¹¹⁴¹ again due to the confidentiality and noncompliance provisions of IBAs. Again, there is no way to bring in a third party, whether a provincial agency or a nongovernmental organisation, to assist the First Nations by performing monitoring and enforcement activities¹¹⁴² Despite these disadvantages, IBAs have grown in usage. This implies that First Nations are now automatically expected to participate into IBAs with oil and gas firms.¹¹⁴³

There is also no doubt that these agreements have provided indigenous communities with a direct opportunity to engage in the commercial aspects of these operations.¹¹⁴⁴ This is a significant improvement over the previous legal landscape for First Nations, which left them on shaky foundations due to the unresolved legitimacy of their land claims and where First Nations' approval was not a legal requirement before oil and gas corporations commenced operations on their land.¹¹⁴⁵ While there is a feeling of "cutting a deal with the devil" when it comes to contracting with oil and gas firms, in the case of First Nations communities, this was considered as preferable to no arrangement at all.

Although acquiring a SLO might enhance long-term development and reduces project delays, it is not a one-size-fits-all problem-solving tool. Engaging with indigenous groups and attempting to obtain a SLO can undoubtedly help to ensure that energy project proponents are working with communities to create long-term, sustainable plans, while also acknowledging that the greatest negative environmental and quality-of-life impacts of these projects are often local: "local communities are often a key arbiter in the process by virtue of their proximity to

¹¹⁴⁰ Ibid, Wood et al

¹¹⁴¹ Courtney Fidler and Michael Hitch, "Impact and Benefit Agreements: A Contentious Issue for Environmental and Aboriginal Justice" (2007) 35 *Environments Journal* 58; Ibid, Caine, p, 84

¹¹⁴² Ibid Fidler 58 and Caine 84

¹¹⁴³ Ibid Caine 84

¹¹⁴⁴ Ibid Fidler 61

¹¹⁴⁵ Ibid Caine 79

projects, sensitivity to effects, and absorption of effects."¹¹⁴⁶ Addressing these particular local implications, as well as communities' power to postpone projects, are among the reasons why the notion of the SLO was of course created in the first place.¹¹⁴⁷

The above analysis of the researcher is endorsed by a case study of Coastal GasLink (CGL) corporation, which was constructing a pipeline that failed to get a SLO from an affected community in Wet'suwet'en. The lack of consent was because of existing disagreements between the community and the governments of Canada and British Columbia, which had a significant influence on CGL's response to the community's resistance to its project. CGL, on the other hand, took another approach and consulted and obtained social authorization from the Wet'suwet'en chief and council; a more authoritative institution.¹¹⁴⁸ The Unist'ot'en accepted the Wet'suwet'en hereditary chiefs, but rejected the council. This highlights the major restriction of social licence in Canada with regard to indigenous communities: legal recognition of land claims and status is closely linked to the readiness to provide a social licence.

The provincial government also defended its decision by claiming that the Coastal GasLink pipeline represented the single largest cash investment in a private enterprise in Canadian history, with the federal government promising an additional \$275 million in investments.¹¹⁴⁹ CGL and British Columbia consequently had every incentive to proceed with the project, despite a highly predictable problem: the Unist'ot'en people's checkpoint along the pipeline's proposed path.

Ultimately a court order granted CGL the right to enter the Wet'suwet'en territory. Soon after this court order, solidarity protests around the country disrupted train lines. The blockades and solidarity marches continued until February 24th, 2021,

¹¹⁴⁶ Jason Prno and D Scott Slocombe, "Exploring the Origins of Social Licence to Operate in the Mining Sector: Perspectives from Governance and Sustainability Theories" (2012) 37 *Resources Policy* 354

¹¹⁴⁷ Kristen van de Biezenbo, "When Social License and Sovereignty Collide on First Nations Land in Canada" in Geoff Wood, Jędrzej Górski, and Gökçe Mete (eds), *Palgrave Handbook of Social license to operate and Energy Transitions* (Palgrave 2022-2023)

¹¹⁴⁸ *Ibid*, Hudson, p.18

¹¹⁴⁹ Kitimat, B.C.'s LNG project" (*CBC News*, 24 June 2019) <https://www.cbc.ca/news/canada/british-columbia/275m-federal-government-lng-canada-kitimat-1.4649654> accessed December 30, 2022

when the last blockade was lifted by the CMRP implementing government injunctions.¹¹⁵⁰

The Unist'ot'en and their opposition to the CGL project serve as a cautionary story for the Canadian government as well as other nations with substantial indigenous populations. Indigenous communities that have been dispossessed, delegitimized, disempowered, or otherwise exposed to colonial aggression by national governments may no longer accept a SLO. Instead of bargaining with project proponents, rising resistance – even violent resistance – to natural resource development on traditional lands is expected to persist and even expand, and instead of bargaining, these people may seek to be heard by political leaders and governments. The statement made by Freda Huson, Unist'ot'en Hereditary Spokesperson, expresses the resistance and expectations of host communities: "Our people's belief is that we are part of the land. The land is not separate from us. The land sustains us. And if we don't take care of her, she won't be able to sustain us, and we as a generation of people will die".¹¹⁵¹

Many of these communities cannot get what they actually want through social licence and we may have passed the point where communities are ready to accept less. This is not to imply that social licence is unimportant. It is not, however, a substitute to guarantee actual change, and for certain indigenous communities, nothing short of major social changes will satisfy them.¹¹⁵²

7.6.2 Developing Country: The Niger Delta experience with Memorandum of Understanding and host communities' development fund.

A Memorandum of Understanding (MOU), according to Black's Law dictionary,¹¹⁵³ is equivalent to a Letter of Intent and is defined as: "A written declaration expressing the preliminary understanding of parties who plan to enter into a

¹¹⁵⁰ Shreya Shah, "Wet'suwet'en Explained" (*The Indigenous Foundation* July 26, 2022) <https://www.theindigenousfoundation.org/articles/wetsuweten-explained> accessed December 30, 2022

¹¹⁵¹ Ibid Shah

¹¹⁵² Ibid, Biezenbos.

¹¹⁵³ The Law Dictionary "You Searched for Memorandum+of+Understanding" (*The Law Dictionary 2nd Ed*) <https://thelawdictionary.org/?s=memorandum%2Bof%2Bunderstanding> accessed December 31, 2022

contract or some other arrangement; a noncommittal writing preparatory to a contract".

Taking the definition of MOU from Black's Law dictionary into account, the Supreme Court held in *BPS Construction & Engineering Co. Ltd v. Federal Capital Development Authority*¹¹⁵⁴ that "A Memorandum of Understanding, also known as a Letter of Intent, simply states in writing what the parties intend to use as the basis for a formal contract between them. Taking into account the characteristics of a legitimate contract, an MOU is just a representation of the parties' purpose, subject to the execution of a formal agreement ".

In the case of *Star Finance & Property Ltd. & Anor. v. Nigerian Deposit Insurance Corporation*,¹¹⁵⁵ the learned justices of the Court of Appeal defined an MOU as a document entered into by contracting parties to declare their intent to contract and to guide them later when they are ready to sign a legally binding contract. The contents of an MOU, according to the learned justices, serve to fix in memory the parties' desires, which is to serve as the foundation for a future formal contract; as it is not the actual agreement but a document directing the future agreement, and its status is something less than a complete contract.

Given the foregoing, a MOU, as suggested by its name, is a document that expresses the parties' understanding, which may or may not be the final stance of the parties. By its nature, it is a preparatory contract which implies a predetermined transaction and may thus be regarded as "an agreement to agree" or an "agreement to bargain". It is non-binding in nature, and the contractual parties are not normally obligated by its provisions. Overall, an MOU can be legally enforceable or not, depending on how it is written and if it has all of the characteristics of a contract, such as mutual assent, a valid offer and acceptance, consideration, capacity and legality.

Thus, a good MOU specifies the actions to be carried out as well as how expectations should be monitored. The acknowledgement that the parties are partners and will take the lead on the subject matter of the MOU is essential to

¹¹⁵⁴ *BPS Construction & Engineering Co. Ltd v. Federal Capital Development Authority SC.* 293/2011

¹¹⁵⁵ *Star Finance & Property Ltd. & Anor. v. Nigerian Deposit Insurance Corporation (2012) LPELR 8394 C.A.*

signing the MOU.¹¹⁵⁶ However, it is critical to keep in mind that MOUs are the result of discussion and bargaining between the consenting parties and can be influenced by unequal power dynamics.¹¹⁵⁷ As a result, the primary difficulty confronting corporate-community MOUs is that they are frequently influenced by the uneven power ratio that exists between firms and communities, resulting in the restricted nature of enforceability mechanisms in such agreements.¹¹⁵⁸ Nonetheless, the legality of a MOU is also on occasion, dependent on the notion that organisations now require both a legal licence and a SLO.¹¹⁵⁹

To gain its SLO in Nigeria, SPDC (Shell) utilised the corporate NGO-community engagement strategy known as the Global Memorandum of Understanding(GMOU) in order to contribute to community development in its host areas while maintaining its SLO.¹¹⁶⁰ Unlike MOUs, which are often agreements between one community and one corporation, a GMOU is an agreement between Shell and a group of communities determined by and based on local government, region, ethnicity, and historical affinity. Shell pays funds to the Community Development Board (CDB) for five years under the provisions of the agreement, and the communities determine, plan, and implement community development initiatives.¹¹⁶¹ Under the GMOU, its NGO partners supervise the project execution. The CDB is the GMOU's main governance organisation, and it is said to be rooted in the participating communities through a community trust.¹¹⁶² The Community Trust (CT) is made up of 10 people, at least 3 of whom are women who live in the participating communities. Each town supplies three people, including at least one woman, from the 10 CT members to constitute the CDB. The community trusts

¹¹⁵⁶ Robert J I Leke and others, "The Impact of Signing a Memorandum of Understanding on Reproductive Health with the Ministry of Public Health in Cameroon" (2014) 127 *International Journal of Gynecology & Obstetrics* S.13-S14.

¹¹⁵⁷ Ciaran O'Faircheallaigh, "Community Development Agreements in the Mining Industry: An Emerging Global Phenomenon" (2013) 44 *Community Development* pp.222-238; Ciaran O'Faircheallaigh, "Social Equity and Large Mining Projects: Voluntary Industry Initiatives, Public Regulation and Community Development Agreements" (2015) 132 *Journal of Business Ethics* 91-103

¹¹⁵⁸ *Ibid*, O'Faircheallaigh, p.3

¹¹⁵⁹ Justine Lacey, Richard Parsons, and Kieren Moffat, "Exploring the Concept of a Social Licence to Operate in the Australian Minerals Industry: Results from Interviews with Industry Representatives" (2012) 10 *CSIRO*

¹¹⁶⁰ Uwafiokun Idemudia and Nedo Osayande, "Assessing the Effect of Corporate Social Responsibility on Community Development in the Niger Delta: A Corporate Perspective: Table 1." [2016] *Community Development Journal*

¹¹⁶¹ Shell "Global Memorandum of Understanding (Gmou)" (*Shell Nigeria*) <https://www.shell.com.ng/sustainability/communities/gmou.html> accessed February 8, 2022

¹¹⁶² Prince Okporu, "GMOU: Structure and It's Purpose." (*OPJMLITE* October 23, 2022) <https://opjmlite.com/gmou-structure-and-its-purpose/> accessed December 31, 2022

are responsible for ensuring that the benefits of the GMOUs reach their local areas through effective representation at the CDB. The CDB is in charge of overseeing and coordinating the GMOU's development operations throughout all communities in a specific cluster. The CDB is made up of all of the CT's chairpersons, secretaries, and members, as well as having representation from the SPDC, local government, state government, The Niger Delta Development Commission, the National Petroleum Investment Management Services, and the donor community. However, it has been reported that, with the exception of SPDC delegates, the other representatives are generally uninterested.¹¹⁶³

While the GMOU is supposedly a 'bottom-up' strategy, adopted as SPDC's approach to community development, there continue to be critical structural limitations to the ability of the communities to actively participate in their own development, and in the governance of the corporate-community relations, which, unfortunately, appears to be true.¹¹⁶⁴ Community engagement is limited since an oil extraction-centric approach to development defines it, and other meanings and paths to development are ruled out. Instead of addressing the issue of whether oil production should be used as a basis to support community development despite its negative externalities, it is, in this case, limited only to how Shell oil revenues are to be spent. The GMOU, for example, does not include environmental concerns such as dredging, pollution, spills and saltwater input, soil pollution, atmospheric pollution via flared gas; all of which severely impact local lives, and despite the fact that residents frequently raise these issues.¹¹⁶⁵ This implies that the GMOU encourages a particular type of community involvement, consistent with SPCD's goal of sustaining oil extraction in the region.

Currently, the Petroleum Industry Act 2021 (PIA) mandates¹¹⁶⁶ the transfer of all existing host community's development projects and host communities' development schemes whether through Corporate Social Responsibility (CSR) or MOU or any other type of agreement, to a Host Communities Development

¹¹⁶³ Charles Alfred, "Global Memorandum of Understanding: an Analysis of Shell Petroleum Development Company's Current Community Development Model in the Niger Delta" (2014) 2 International Journal of Innovative Social Sciences & Humanities Research pp. 1-14

¹¹⁶⁴ Ibid, Uwafiokun

¹¹⁶⁵ Stephen A Faleti, 'Challenges Of Chevron's GMOU Implementation In Itsekiri Communities Of Western Niger Delta' (*Readkong.com*, 2004) <https://www.readkong.com/page/challenges-of-chevron-s-gmou-implementation-in-itsekiri-9275554> accessed 6 December 2021.

¹¹⁶⁶ PIA 316(1)

Trust(HCDT)¹¹⁶⁷ established by the Act. The implication of this for host community engagement through CSR and SLO is that these approaches and protocols have now been completely regulated and controlled by the Nigerian Upstream Petroleum Regulatory Commission (NUPRC), established by the PIA.¹¹⁶⁸

Under the new regime the oil and gas companies referred to as *settlers* in the PIA, operate and engage with host communities based on the terms of the HCDT and must contribute an annual sum of 3% of their operating expenditure.¹¹⁶⁹ In the first instance, the settlers are to establish a board of trustees (BOT).¹¹⁷⁰ Members of such BOTs are elite members of the host community, and from them a chairperson is appointed with the duties of making financial regulations, fixing remuneration of the BOT members and regulating the activities of the board, over a four year tenure and no longer.¹¹⁷¹ The BOT has a similar remit to SPDC's CDBs, in that they determine the allocation of funds, approve projects and appoint fund managers.¹¹⁷²

The BOT also has the duty to set up a management committee.¹¹⁷³ The committee has the general duties of project management. However, the grey area is the membership constitution of the management committee. The membership consists of one representative of each host community who are non-executive, whereas the executive members constitute elites from any part of the country.¹¹⁷⁴ This provision is likely to stir unrest among oil and gas host communities, who are the major stakeholders. People from the host communities, who are at the heart of the PIA Chapter 3 activities,¹¹⁷⁵ and from whom all interventions in the HCDT would emanate, should be at the heart of effectively implementing their plans and intentions.

In addition to the low level of host community involvement in the HCDT, the PIA also mandates the NUPRC to make regulations on the administration, guidance for and the safeguarding of the utilisation of the trust fund; and it has the oversight

¹¹⁶⁷ PIA 235(1)

¹¹⁶⁸ See interpretation of commission PIA s.318

¹¹⁶⁹ PIA S.240

¹¹⁷⁰ PIA 242(1)

¹¹⁷¹ PIA 242(3) (a-c)

¹¹⁷² PIA 243

¹¹⁷³ PIA 247

¹¹⁷⁴ PIA 247(2)(a-b)

¹¹⁷⁵ PIA chapter 3

and responsibility for ensuring that the projects proposed by the Board of Trustees are implemented.¹¹⁷⁶ Curiously, there is no role for state governments, who are the guardians of security in the separate states where oil and gas activities occur, and to whom settlers have frequently gone for assistance in the past. Another significant difference concerns cooperation and partnerships.¹¹⁷⁷ Although the act allows the trust to collect grants, contributions, gifts, and honoraria, it does not allow for the establishment of new partnerships.¹¹⁷⁸ Table 7.6.2 highlights the potential impacts of the PIA on host communities.

Table 7:1 Potential Challenges for Chapter 3 of the PIA¹¹⁷⁹

PIA provision	PIA provisional interpretation	Potential challenges to host communities
Section 257 (2)	<i>The community shall forfeit its entitlement should vandalism, sabotage or other civil unrest occur</i>	<i>Potential harm to the community</i> <i>Loss of Legitimacy</i>
Section 240 (1)	<i>The settlor, through the operator shall make a contribution of 3% of its actual annual operating expenditure of the preceding financial year in the upstream petroleum operations that affect the community</i>	<i>Loss of income from the midstream and downstream operations.</i> <i>Not clear because all petroleum upstream operations are not sustainable.</i>
Section 240 (2)	<i>The settlor will make an annual contribution of 3% to the host community's trust fund</i>	<i>Potential cover for graft and corruption.</i>
Section 252 (a,g)	<i>The settlor's developments are subject to review by the commission rather than host communities inclusive.</i>	<i>Reduces corporate and community engagement /dialogue</i>
Section 243 (a)	<i>The board of trustees solely determines criteria, process and proportion allotted to projects with provided matrix from the settlor.</i>	

¹¹⁷⁶ PIA 235(6)(a-b)

¹¹⁷⁷ Some of these partnership includes the Nigerian Content Development & Monitoring Board, Nigeria Extractive Industries Transparency Initiatives, and enforcement and monitoring agents like the Economic and Financial Crimes Commission.

¹¹⁷⁸ Tunji Idowu, "PIA: Avoiding Pitfalls in Host Community Development Trusts" *vanguard* (March 7, 2022) <https://www.vanguardngr.com/2022/03/pia-avoiding-pitfalls-in-host-community-development-trusts/> accessed December 31, 2022

¹¹⁷⁹ Joy A. Debski, Elimma C. Ezeani, "Corporate Social Responsibility under the Petroleum Industry Act 2021: Achieving Environmental Sustainability through Multi-Stakeholder Partnership" (2022) 3 *African Journal of Engineering and Environment Research*

PIA provision	PIA provisional interpretation	Potential challenges to host communities
Section 251(4)	<i>The settlor's host community development plan is subject to approval by the commission.</i>	Bottleneck bureaucracy
235 (6)	<i>The commission is an administrator and manages the utilisation of funds</i>	
242(3)	<i>The settlor has to determine the process, procedure for meetings, financial regulations as well as an administrative procedures.</i>	
247 (1) (2)	<i>Sets up a management committee with executive and non-executive members. None of the executive members are from the host community, with the same administrative functions.</i>	
248 (b)	<i>The award for the project is subject to board approval after being verified by the management committee.</i>	
249, 250	<i>Sets up the host community advisory team with similar duties to the management committee.</i>	

Under the review of the environmental sustainability aspect of the PIA in chapter 4 of this work, it has been mentioned that the PIA is still of course a new legal instrument and the direction it takes is subject to interpretations from the courts as well as implementation guidelines. However, considering that the Act now completely regulates CSR activities in Nigeria, the 3% contribution by oil and gas companies and the mode of expenditure leaves a lot to be desired. The PIA expressly provides that funds from the HCDT can be used to remediate sabotage,¹¹⁸⁰ meaning that in a country with well-established organised crime organisations driving a flourishing and profitable oil theft regime, coupled with the appalling condition of the, now ancient, pipelines, there will be nothing left for the host communities; thus bringing us back to where we started.

7.7 Conclusion

In accordance with IPIECA rules for oil and gas companies, host communities should be explicitly characterized as communities that produce oil or have petroleum facilities/installations in their territory.

Although there are various ways of engaging stakeholders, the indirect approach through NGOs is greatly undermined by all stakeholders. This leads to the

¹¹⁸⁰ PIA 257

researcher's considered view that the direct engagement method is recommended, using corporate experts in the area of CSR.

The power of host communities should never be undermined. From the research analysis in S.7.6.1 above, it would appear that the government of Canada is now likely on its way to making the same mistake as the government of Nigeria. They both need to understand the crucial power of host communities in planning their own futures.

Ultimately, the quality of stakeholder engagement with host communities is a reliable and crucial indicator of whether there will be peaceful coexistence between oil and gas companies and host communities. When firmly in place, this will allow for smooth operations, and prevent destructive, violent confrontations, which can have negative and long-lasting consequences, in undermining the aim of achieving environmental sustainability.

8 CHAPTER EIGHT: AN EFFECTIVE MULTI-STAKEHOLDER STRATEGY: OPTIMAL ROLES FOR GOVERNMENT, CORPORATIONS AND HOST COMMUNITIES

8.1 Introduction

This research has identified three major CSR stakeholders in previous chapters: governments, businesses and host communities. Global experts acknowledge that the inputs of and feedback from these major stakeholders have been employed in identifying, structuring and establishing the 17 sustainable development goals.¹¹⁸¹ These goals are closely linked with the concept of environmental sustainability; epitomised for example in goals 3,6,7,13,14,15 and 17.¹¹⁸² To achieve environmental sustainability, it has become increasingly mainstream for businesses to make CSR absolutely fundamental to their overall corporate strategies.

As CSR emerges and now plays a crucial role in such corporate strategies,¹¹⁸³ it is regrettable that the CSR initiatives of many companies are still not strategic enough or as effectively communicated as they might be.¹¹⁸⁴ This could be linked to the failure of many companies to emphasise the concept of the Triple Bottom Line, especially its environmental aspects.¹¹⁸⁵ Regrettably, most CSR projects in Nigeria appear to be more oriented towards economic and social objectives, with the environment regarded as a poor relation.¹¹⁸⁶ This said, it cannot be denied that well-crafted CSR initiatives have made significant contributions to specific community developments; particularly in the social sphere.¹¹⁸⁷

It is to this end that the primary aim of this research is to create a framework for an effective multistakeholder strategy to craft and emphasise CSR goals for environmental sustainability in Nigeria.

It begins by subdividing CSR roles into mandatory and voluntary. Mandatory elements are allocated to the government; voluntary elements to companies and

¹¹⁸¹ *Transforming Our World: The 2030 Agenda for Sustainable Development* (United Nations 2015)

¹¹⁸² *Ibid* SDG 2015

¹¹⁸³ Kellie McElhane, *Just Good Business: The Strategic Guide to Aligning Corporate Responsibility and Brand* (Berrett-Koehler 2009)

¹¹⁸⁴ *Ibid* p. 2

¹¹⁸⁵ Identify the place in this work where the TBL has been analysed

¹¹⁸⁶ *Ibid* p. 2

¹¹⁸⁷ Research inferred from the literature review in Ch.6

host communities. Without such a well-defined and transparent allocation, ambiguities concerning the role of CSR will remain a persistent hurdle.

The multistakeholder framework proposes specific roles for the key stakeholders in the context of Nigeria's unique cultural background. It determines that an effective institution to represent the government's role would be the creation of a CSR Commission holding the sole mandate for its commitments to CSR. It is further proposed that corporations, for their part, set up distinct CSR departments, staffed with CSR experts and operatives who understand and can act as intermediaries between host communities and the CSR Commission.

This new framework has the potential to improve transparency, long-termism, collaboration and accountability; thus addressing endemic corruption in the Nigerian extractive industries, particularly the oil and gas sector. The research does not advocate adopting such a framework informally, but rather as a defined, collaborative partnership strategy to optimise its effectiveness.

8.2 CSR Engagement: Mandatory and Voluntary

CSR is often perceived as a voluntary activity that goes beyond the requirements of the law. Nonetheless, a number of countries, including China, India, and Indonesia, have taken a more progressive approach to CSR, defining its role within company law - a legal arena where CSR has been historically viewed as contentious.¹¹⁸⁸ Still, regardless of whether CSR is voluntary or mandatory, the need for a government's active participation in creating a CSR corporate culture cannot be denied. Through special considerations, licences, monitoring, corporate governance codes,¹¹⁸⁹ subsidies or other initiatives, governments can help to actively encourage voluntary CSR.¹¹⁹⁰

The focus of this research, in this respect, is to articulate which areas of CSR should be voluntary and which areas should be mandatory in Nigeria for the proposed CSR Commission, for oil and gas companies, and for host communities. The table below highlights the salient features of both approaches.

¹¹⁸⁸ Ameer Ishwarbhai Dave, "Voluntary vs. Mandatory CSR "(2017) 3 International Journal for Innovative Research in the Multidisciplinary Field pp. 204-208

¹¹⁸⁹ UK Corporate Governance Code 2018

¹¹⁹⁰ Ibid, Dave.pp 204-208

Table 8:1 Core aspect under Mandatory and Voluntary CSR¹¹⁹¹

Mandatory	Voluntary
CSR Reporting and disclosure	Adopt stakeholder influence in drafting MOU
Binding Memorandum of Understanding	Control of CSR initiatives
Establishment of the CSR Commission	Summarise data in CSR reporting
Endorse CSR projects	Adopt a suitable communication strategy
Facilitate CSR Dialogues	Set up walk-in offices in host communities
Promote CSR Partnerships	Disclose key Drivers for CSR
Allocation of a percentage of operating costs to CSR activities	Adopt established CSR criteria
CSR Departments in companies	Transparent CSR spending
Sanction false CSR representation	

8.2.1 The case for a Mandatory CSR Framework

Currently, Nigerian environmental governance contains an unhealthy cocktail of laws and institutions encouraging environmental sustainability.¹¹⁹² These laws most recently include the 2021 Petroleum Industry Act (PIA) which invests the Nigerian Upstream Petroleum Regulatory Commission (NUPRC) with a mandate to regulate all CSR activities between companies and the development of host communities. The research recognizes that some issues may be beyond the competency of such government institutions since CSR is far from being a piecemeal effort. It is indeed a robust subject area in itself.¹¹⁹³

8.3 A Multi-stakeholder Partnership between Host Communities, Companies and Government: A Strategy Proposal

Governments are increasingly relying on obligatory duties for CSR policy - a movement known as the legislation of CSR.¹¹⁹⁴ In recent years, there has been a global expansion of this more explicit approach to CSR.¹¹⁹⁵ The development of worldwide CSR standards has accompanied the advent of unambiguous CSR. As CSR becomes more institutionalised, greater attention has been placed on the most effective methods of overseeing CSR activities and government

¹¹⁹¹ Compiled by the researcher

¹¹⁹² See Chapter Four: Regulatory Framework for Environmental Sustainability in Nigeria

¹¹⁹³ See Ch.5 on CSR

¹¹⁹⁴ Gerlinde Berger-Walliser and Inara Scott, "Reviewing the Status of Corporate Social Responsibility (CSR) Legal Framework" (2021) 32 Management of Environmental Quality pp.167-218

¹¹⁹⁵ Ibid, Nomikos,

involvement.¹¹⁹⁶ The regulation of non-financial disclosure is proving to be a key weapon in a government’s arsenal towards ensuring greater CSR engagement by the corporate sector. This kind of policy encourages transparency by decreasing information gaps between firms and stakeholders.¹¹⁹⁷

To reinforce the need for the mandatory aspects of CSR, the Nigerian House of Representatives approved an amendment to the Financial Reporting Council (FRC) Act 2011,¹¹⁹⁸ in a 2021 bill¹¹⁹⁹ that aimed at compelling firms to include, among other things, the use of CSR in their corporate policies.

The FRC was originally established with the mandate of protecting investor and stakeholder interests. Providing advice on financial reporting and corporate governance concerns, ensuring the integrity and dependability of financial reports, and harmonising the operations of key professional and regulatory authorities are all key aspects of its mission. It is also responsible for promoting the highest standards among auditors and other financial reporting professionals. If the bill succeeds,¹²⁰⁰ another aspect of CSR will become mandatory, yet still ignoring other vital non-financial parts of CSR, as presented and identified in Table 8.2.

Table 8:2CSR-related Government Institutions in Nigeria¹²⁰¹

Regulatory Commission	Function	CSR for environmental sustainability Deficit
Nigeria Upstream Regulatory Commission	Technical and commercial regulation of upstream petroleum	Lack of sufficient CSR reporting on financial accountability. Host community involvement is questionable. The level of stakeholder engagement is questionable. Does not align with research facilitating and partnership strategy. It is based on the

¹¹⁹⁶ Jette Knudsen and Jeremy Moon, *Visible Hands: Government Regulation and International Business Responsibility* (Cambridge University Press 2019)

¹¹⁹⁷ David W Hess, “Social Reporting and New Governance Regulation: The Prospects of Achieving Corporate Accountability through Transparency” (2007) 17 *Business Ethics Quarterly* pp.453-476

¹¹⁹⁸ Financial Reporting Council Act 2011 Section 8(1)

¹¹⁹⁹ The Financial Reporting Council of Nigeria Act, (Amendment) Bill, 2021, available at <https://www.proshareng.com/admin/upload/report/15170-Draft%20Amended%20Financial%20Reporting%20Council%20Amended%20Bill%202021-proshare.pdf> accessed April 8, 2022

¹²⁰⁰ “A Long Awaited Amendment” (*Public hearing commences on the amendment of the Financial Reporting Council act*)

<https://www.proshareng.com/news/Business%20Regulations,%20Law%20&%20Practice/Public-Hearing-Commences-on-the-Amendment-of-the-Financial-Reporting-Council-Act/61097> accessed April 8, 2022 ,

¹²⁰¹ Designed by the researcher.

Regulatory Commission	Function	CSR for environmental sustainability Deficit
		command-and-control approach to legal enforcement.
National Oil Spill Detection and Response Agency (NOSDRA)	General Environmental remediation	Not Multistakeholder compliant
Nigeria nuclear regulatory authority (NNRA)	Regulates radioactivity and radioactive exploration in the environment	Not Multistakeholder compliant
Nigerian Content Development & Monitoring Board (NCDMB)	Framework for promoting the participation of Nigerians	Not aligned to environmental sustainability
Nigeria Extractive Industries Transparency Initiatives (NEITI)	Aims at transparency and accountability by imposing reporting and disclosure obligations on all oil and gas	Not host community-focused Not Environmental sustainability-focused
National Environmental Standards and Regulations Enforcement Agency (NESREA)	An environmental regulator and environmental operator	Not Multistakeholder compliant

The research thus advocates the establishment of a dedicated body that can implement the mandatory aspects of CSR as outlined in Table 8.1., thus endorsing the case for a proposed CSR Commission.

8.3.1 The Case for a Voluntary CSR Framework

Nigeria is a developing country that is institutionally weak, with ineffective governance, weak enforcement agencies, and a culture of corruption.¹²⁰² Because of these endemic flaws, companies are less likely to participate in CSR activities and less likely to make those actions public and transparent.

However, these loopholes in the system have not deterred some corporations from engaging in CSR obligations and duties.¹²⁰³ It has been argued by some that establishing elaborate regulatory systems is counter-productive and prevents businesses from functioning at peak efficiency.¹²⁰⁴ From this perspective, imposing legal responsibilities could likely hamper voluntary activities, placing businesses

¹²⁰² Emmanuel Adegbite, "Good Corporate Governance in Nigeria: Antecedents, Propositions and Peculiarities" (2015) 24 *International Business Review* pp.319-330; See also Aruoriwo Chijoke-Mgbame and Chijoke Mgbame, "Discretionary Environmental Disclosures of Corporations in Nigeria" (2018) 15 *International Journal of Disclosure and Governance* pp.252-261, and Chapter 4r of this thesis.

¹²⁰³ For example, see the case study of Seplat in Chapter 6 of this work.

¹²⁰⁴ Marinko Skare and Tea Golja, "The Impact of Government CSR Supporting Policies on Economic Growth" (2014) 36 *Journal of Policy Modeling*. pp. 562-577

on the defensive.¹²⁰⁵ Perhaps this could be linked to the CSR bill's rejection, and it being labelled as 'too ambitious'.¹²⁰⁶ Furthermore, logic supports the fact that legislation cannot cover every conceivable future situation containing complex issues needing to be resolved.

As previously argued, with reference to the actual application of the PIA in Nigeria, procedures may adapt slowly to environmental changes. The bureaucratic structure of hard legislation may also be an impediment to the successful implementation of CSR policies. Government regulation has been identified as too rigorous with enforcement criteria not relevant to specific enterprises, thereby raising their expenses.¹²⁰⁷ A recent empirical study¹²⁰⁸ on the impact of corporate governance structures on CSR reporting practices of enterprises operating in both developing, and developed nations (Egypt, Germany, and the United States) concluded that wide variations in CSR reporting approaches are to be expected. One size does not fit all.

The enforcement of mandatory CSR rules is questionable since it is unlikely to be successful in increasing CSR activity in the long run. The Host Community Trust Fund has arguably been created to support the charitable, philanthropic model of CSR, rather than to ensure embedded and long-term contributions to the community.¹²⁰⁹ Companies, for example, may pay the mandated 3% contribution to CSR programmes to avoid punishment, or utilise it as a public relations device, without monitoring the status or success or failure in the sustainability of projects begun in the community. CSR needs to go beyond simple expenditure to effectively improve socially and environmentally responsible strategies. A deeply entrenched CSR policy will improve an Oil and Gas licensee's social legitimacy, enabling the operational aspects of its activities in the field to be more sustainable both socially and environmentally.¹²¹⁰

¹²⁰⁵ Minna Halme and Juha Laurila, "Philanthropy, Integration or Innovation? Exploring the Financial and Societal Outcomes of Different Types of Corporate Responsibility" (2008) 84 *Journal of Business Ethics*.pp. 325-339

¹²⁰⁶ Ijeoma Nwagwu, "The CSR Bill and Doing Business in Nigeria" (*Businessday NG* March 23, 2016) <https://businessday.ng/analysis/article/the-csr-bill-and-doing-business-in-nigeria/> accessed April 5, 2022

¹²⁰⁷ Carol Adams, "The Ethical, Social and Environmental Reporting-Performance Portrayal Gap" (2004) 17 *Accounting, Auditing & Accountability Journal*,p. 731

¹²⁰⁸ Dina El-Bassiouny and Noha El-Bassiouny, "Diversity, Corporate Governance and CSR Reporting" (2019) 30 *Management of Environmental Quality: An International Journal* pp.116-136.

¹²⁰⁹ Inferred in Research: see Chapter 7

¹²¹⁰ *Ibid*, Nomikos

8.4 Stakeholders for an Effective Partnership

Concerted efforts to increase indigenous involvement in the Nigerian oil sector started in 2001 with a workshop organised by the National Petroleum Investment Management Services (NAPIMS).¹²¹¹ In 2010, The Nigerian Content Unit, a division of the Department of Petroleum Resources, conducted a Nigerian indigenous content research study.¹²¹² The report¹²¹³ from that research, similar to that of the United Nations (UN) recommendation for Nigeria, suggested that "oil firms be required to assume – and accept – a primary role for achieving the goals that have been established."¹²¹⁴ According to the report's findings: ¹²¹⁵

"Two pillars must be built to support upstream oil and gas local content policies. In both cases, the government and the oil firms are to blame. Government policy will significantly influence the promises that oil firms are prepared to make".

Thus, organisations considering implementing a CSR policy must answer the question "To whom are we responsible?" 'To stakeholders' was the typical response to this question, implying that identifying stakeholders is critical for managing a CSR policy.¹²¹⁶

According to Freeman,¹²¹⁷ "a stakeholder in an organisation is (by definition) any group or person who may impact or is affected by the attainment of the organisation's goals." The research adopts this definition because of its "landmark" position in stakeholder theory.¹²¹⁸ It has been quoted innumerable times as the

¹²¹¹ Toyin Falola and Jessica Achberger (eds), *The Political Economy of Development and Underdevelopment in Africa* (Taylor and Francis 2013) p.57

¹²¹² The research was commissioned by the Norwegian Agency for Development Cooperation (NORAD) and the Norwegian Ministry of Petroleum and Energy (NPE). It was overseen by the Nigeria National Petroleum Corporation (NNPC), the Former Department of Petroleum Resources (DPR), the National Petroleum Investment Management Services (NAPIMS), and the Office of the President's Advisor on Petroleum and Energy.

¹²¹³ Per Heum and others, 'Enhancement of Local Content in the Upstream Oil and Gas Industry in Nigeria – A Comprehensive and Viable Policy Approach' SNF Report No. 25/03 (2003);. Also referred to in this paper as "the INTSOK Report"

¹²¹⁴ Elimma C Ezeani and Chinwe Nwuke, "Local Content and the Marginal Fields Programme: Challenges for Indigenous Participation in the Nigerian Oil Industry" (2017) 15 OGEL 1 <http://www.rgu.ac.uk/staff-and-currentstudents/library/library-policies/repository-policies> accessed April 21, 2022

¹²¹⁵ Ibid, p. 64

¹²¹⁶ Tom Donaldson and Lee Preston, "The Stakeholder Theory of the Corporation: Concepts, Evidence and Implications" (1995) 20 *Academy of Management Review* pp.65-91

¹²¹⁷ Edward R Freeman, *Strategic Management: A Stakeholder Approach* (Pitman-Ballinger 1984) p. 46

¹²¹⁸ Max B E Clarkson, "A Stakeholder Framework for Analysing and Evaluating Corporate Social Performance" (1995) 20 *Academy of Management Review* pp.92-117; and Donna Wood, "Corporate Social Performance Revisited" (1991) 16 *Academy of Management Review* p.691

starting point in providing a more focused perspective on stakeholders, in which categorisations other than the difference between 'can impact' and 'affected' are appreciated. Clarkson¹²¹⁹ distinguishes between primary and secondary stakeholders to narrow the unlimited number of stakeholders that could be involved in or impacted by a project. The dividing line in Clarkson's view is that a primary stakeholder group is critical to the organisation's existence, while a secondary stakeholder group is not.

Following the UN report, academic research analysis and the INTSOK report recommendations, this research identifies three significant stakeholders in the Nigerian environment and specifically narrows the parties proposed in figure 8.1. below. These stakeholders have been identified based on their direct power, legitimacy and urgency in oil and gas projects.¹²²⁰

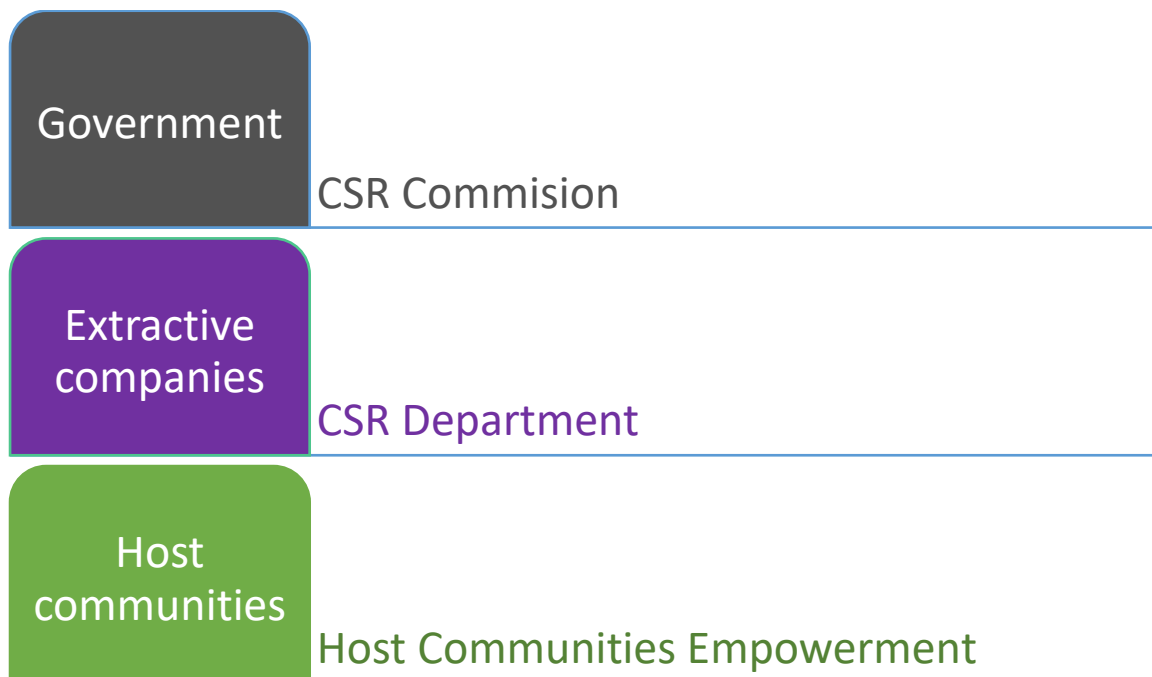


Figure 8:1 Proposed stakeholder strategy¹²²¹

¹²¹⁹ Ibid, Clarkson

¹²²⁰ Ronald Mitchell, Bradley Agle and Donna Wood, "Toward a Theory of Stakeholder Identification and Saliency: Defining the Principle of Who and What Really Counts" (1997) 22 Academy of Management Review pp. 853-886

¹²²¹ Research inferred; The figure summarily captures the details of the discussions in this chapter

8.5 A Strategy Proposal for the Nigerian Government

The Nigerian federal government is divided into legislative, executive, and judiciary branches. The National Assembly, president and courts, including the Supreme Court, are all assigned powers under the Nigerian Constitution. The constitution establishes a division of powers and a balance of power between the three branches to prevent the government from repeating previous errors.¹²²²

The National Assembly, with its two houses (the House of Representatives and the House of Senate), is responsible for legislating. In 2007 The Nigeria National Assembly presented a Corporate Social Responsibility Bill (CSRB); a pioneer attempt by the government to set up a commission to develop, implement, and monitor CSR activities.¹²²³ The bill was aimed at centralising the regulation of CSR in Nigeria, rather than having aspects of CSR spread across several regulatory agencies.

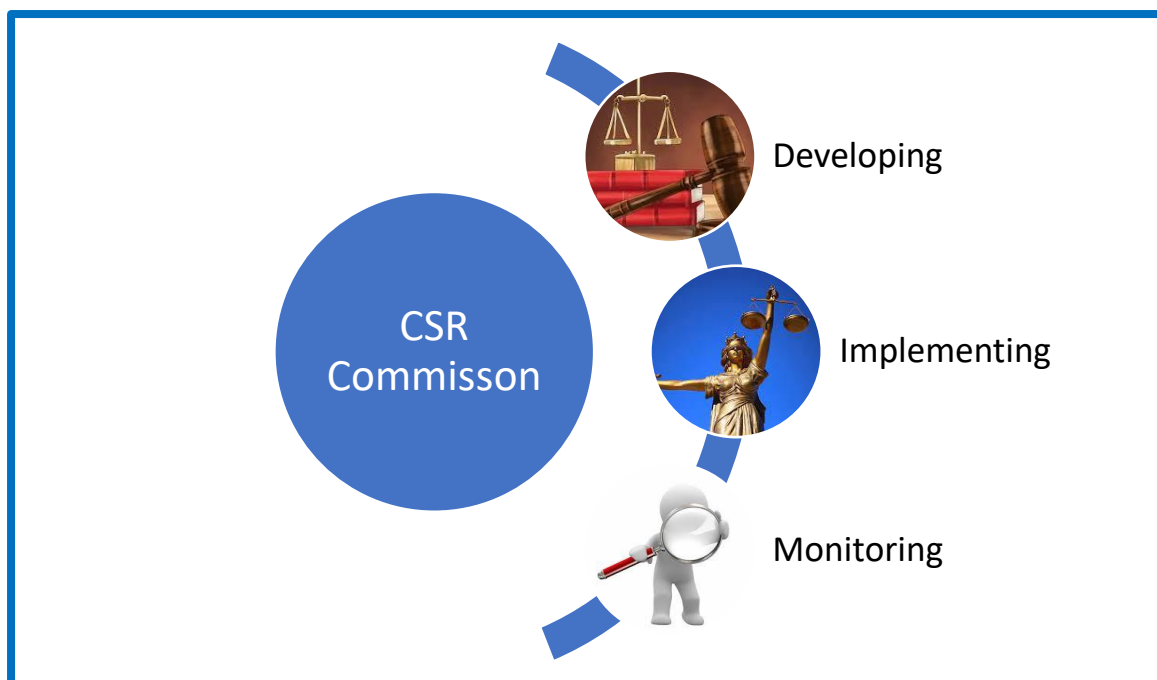


Figure 8:2 CSR Bill framework¹²²⁴

¹²²² Niki Tobi, "Judicial Independence in Nigeria" (1981) 6 International legal practise <https://heinonline.org/HOL/LandingPage?handle=hein.journals/ilp6&div=26&id=&page=> accessed April 5th 2022

¹²²³ This bill was titled the Corporate Social Responsibility Commission (Establishment, etc) Bill 2007.

¹²²⁴ CSR Bill

Mirroring Carroll's charitable commitments,¹²²⁵ the CSR Commission was tasked with developing regulations to incentivise corporations to engage in CSR and penalise companies that failed to do so.¹²²⁶ The Bill recommended that corporate CSR programmes should include the social, cultural, and educational requirements of host communities. Corporations were also obligated to address environmental concerns and integrate local employment and indigenous raw material procurement content.¹²²⁷ The bill suggested a 3.5% fee on corporations' total annual revenues as the source of financing for CSR activities in Nigeria.¹²²⁸

This research will proceed to critically analyse the bill; the intention here is to revisit the CSR Bill, draw relevant lessons from it, and advocate the establishment of a Commission. With some amendments, this revised bill could lead to its acceptability by the Nigerian extractive industries sector, whether MNOCs or NOCs.

8.5.1 CSR Commission for Environmental Sustainability

It should be noted that the Bill was not targeted at the Niger Delta, but at the whole of Nigeria. The fact that it was enacted for the entire country was considered problematic based on its supposed implications for other states. The question that arises from this is why should the proposed CSR Commission be applicable only to Delta State? Could not the entire country benefit from a CSR Commission for the extractive industries? The Global Reporting Initiative (GRI), for example, is industry-specific, but not specific to the oil and gas industries, since it includes all extractive industries. The NEITI has noted the challenges of segregating regulations for oil and gas companies and is now looking to expand the scope to include the mining sector. The research thus proposes a CSR Commission with the main objective of improving CSR partnerships, as opposed to imposing punishments, sanctions and fines on oil and gas companies. The proposed

¹²²⁵ Archie B Carroll, "Carroll's Pyramid of CSR: Taking Another Look" (2016) 1 International Journal of Corporate Social Responsibility

¹²²⁶ CSR Bill sec 5(1)(l).

¹²²⁷ Ibid sec 5(1)(f)(m)(n)

¹²²⁸ sec 5(1)(i)

framework is articulated in Table 8.3 below which provides further analysis of current approaches to CSR and the areas of proposed amendments.

Table 8:3CSRBill Research: Suggested Amendments¹²²⁹

CSR Bill Section	CSR Bill Provision	Research Interpretation of the CSR provisions	Research Suggested Amendments
S6(1)	.....every company shall be liable.	<i>For both Big and Small companies.</i>	<i>Companies should be liable based on share capital, profit, and operation costs.</i>
S5(2)	.....default shall be guiltily liable to an offence not less than Naira 100,000.00 for every day of non-compliance.	<i>Both Big and small companies have to pay the same fine.</i>	<i>More prominent companies should be persuaded. Smaller companies should be assisted to comply.</i>
S5(2)	After six months of incorporation, companies in breach shall not be allowed to operate.	<i>The commission can choose to close down a company for breach.</i>	<i>The commission should use its expertise to assist and facilitate compliance.</i>
S7(1)(2)	Every officer involved in non-compliance shall be guilty of a Naira100,000.00 fine.	<i>Employees are directly liable for the offence of the company or executives.</i>	<i>This section should be removed from the framework.</i>
S9(1)	The company shall be held to a standard of care.	<i>The company is liable for the acts of its employees. S9(1) contradicts section S7(1)(2).</i>	<i>This is a standard clause that is adaptable.</i>
S10(ii)	CSR report to contain details of three years net profits.	<i>Duplication of the function of NEITI.</i>	<i>The commission should focus on non-financial reporting and collaborate with NEITI.</i>
S11	False reporting is liable to conviction by the court plus an amount not less than the amount to execute the false claim.	<i>Double penalty for default of CSR defaults.</i>	<i>A penalty for paying the sum to execute the false claim would be enough to achieve the mandate.</i>
S12	After six months of the Act coming into operation, the company's failure to establish the policy shall lead to termination of the company.	<i>The penalty of not implementing the procedures within six months would lead to the striking of the company from the list of registered companies.</i>	<i>The implementation period should be extended. The penalty for non-implementation should be assisted implementation, compliance or explanation of compliance failure.</i>
S.15	The board of a company may decide on a CSR policy approved by the company's policy committee through a registered trust or society etc.	<i>The Bill vests the power to make CSR policy on the board.</i>	<i>The research proposes that the CSR department should be in charge of all CSR-related matters.</i>

Several regulatory measures might also be used to better manage a sensitive topic such as CSR in Nigeria. Academics have presented alternative approaches for guaranteeing effective regulation in every sector of society. These include

¹²²⁹ Inferred from the research

approaches based on incentives as well as those based on consensus.¹²³⁰ In fact, Nigeria has effectively implemented an incentive-based strategy in other areas of the Nigerian oil business. The Nigerian Liquefied Natural Gas (Fiscal Incentives and Assurances) Act 1990¹²³¹ offered financial incentives that assisted the creation of the Nigerian Liquefied Natural Gas Project and the Oso Condensate Project, two related gas utilisation projects in Nigeria.¹²³² In China, a strategy of incentives as well as one of rewarding companies are used to encourage CSR activities¹²³³

A sanctions-based command and control strategy is likely to be unsuccessful in generating a conducive climate for CSR. The absence of public consultation and inputs during the drafting of the CSR Bill was another reported problem. As a result, it was not universally supported.¹²³⁴ Ultimately civil society groups and MNOCs totally rejected the proposed legislation as overtly harsh. Again, residents of the Niger Delta argued that a CSR fund of only 3.5% was too low, given the region's infrastructural problems.¹²³⁵ To date, the CSR Bill has remained unenacted. The lack of government support has been cited as a reason for this. Re-introductions of the measure failed again in 2012.¹²³⁶ In this context the researcher has designed, below, a Figure detailing the aspirational remit of the Proposed CSR Commission.

¹²³⁰ Robert Baldwin, Martin Cave and Kirsten Lodge, *Understanding Regulation: Theory, Strategy, and Practice* (Oxford University Press 2012)

¹²³¹ Nigerian Liquefied Natural Gas (Fiscal Incentives and Assurances) Act 1990

¹²³² Paul S Tamuno, "Corporate Social Responsibility in the Niger Delta: Past, Present and Future Challenges" [2022] *Journal of African Law* 1

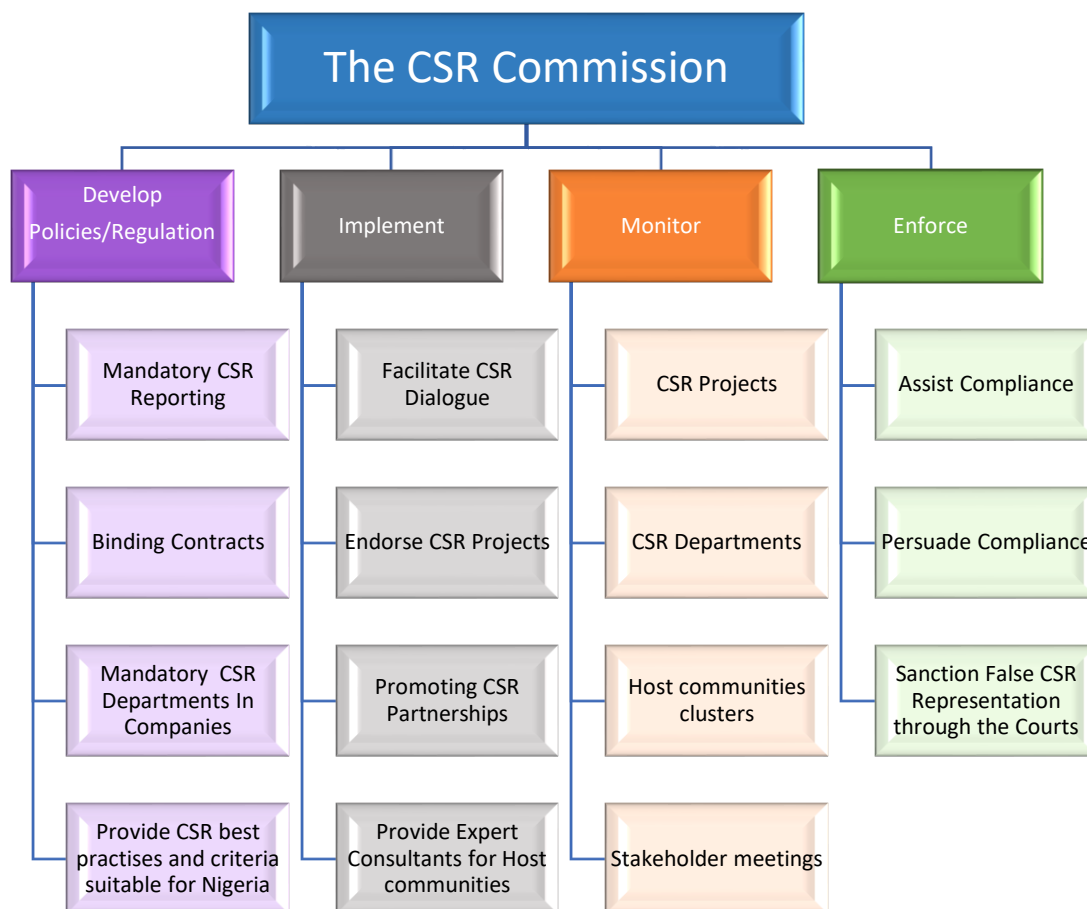
¹²³³ The annual CSR awards by the People's Daily see <https://www.prdaily.com/awards/corporatesocial-responsibility-awards/2018/winners/> accessed 22 August 2021.

¹²³⁴ Chima Mordi, Iroye Samuel Opeyemi, Mordi Tonbara, and Stella Ojo, "Corporate Social Responsibility and the Legal Regulation in Nigeria" (2012) *LXIV Economic Insights – Trends and Challenges* 1

¹²³⁵ *Ibid*

¹²³⁶ *Ibid*

Table 8:4An Effective Partnership Remit for the Proposed CSR Commission¹²³⁷



Although both the CSR Bill of 2012 and the PIA facilitate CSR advancement, they adopt the command-and-control sanction-based approach through prescribing harsh punishments and, in certain cases, dual punishments for the same crime.¹²³⁸ The proposed framework for the CSR Commission, illustrated above, would, in the researcher’s view, be much more effective for handling a nuanced and delicate matter such as CSR in Nigeria. The researcher believes, in line with other cited research, that the sanctions-based strategy may fail to create a climate conducive to CSR in Nigeria.¹²³⁹

¹²³⁷ Inferred from the research

¹²³⁸ See Table 8.3

¹²³⁹ Ibid, Table 8.3

Looking further, and in line with the framework proposed by this research, a good example of a useful approach to CSR is the Philippines CSR Bill adopted by all 209 lawmakers in 2020.¹²⁴⁰ In this Bill CSR was described as:

A voluntary commitment to sustainable development by collaborating with key stakeholders to enhance their lives to benefit the company, the sustainable development agenda, and society.

To encourage companies to engage in CSR activities, the Bill allowed quoted corporations to retain annual earnings above the level of 100% of paid-in capital, to be utilised for growth or corporate social responsibility initiatives. Organisations can spend money, that would otherwise have been paid in taxes, to be used more effectively without the overheads associated with bureaucracy.¹²⁴¹

In addition, the Philippine Department of Trade and Industry (DTI) recognised and rewarded¹²⁴² those businesses that provided excellent, creative, and world-class CSR-related services, initiatives and activities. This collaboration with the DTI is a clear example of a CSR Commission partnering with and monitoring other bodies with CSR-related roles to facilitate CSR contributions. Local governments were also required to provide whatever help is necessary for businesses to carry out CSR initiatives and projects, although admittedly this provision is vague because it does not articulate the role of the local governments. However, it still represents a welcome attempt to facilitate CSR partnerships. The CSR Commission could also enhance and strengthen the ability, for example, of companies to acquire and maintain a social licence to operate (SLO) and ensure sustainability by giving key stakeholders procedural power, such as ensuring:¹²⁴³

- 1) Access to environmental information,
- 2) Public participation in environmental law making,

¹²⁴⁰ Cervantes FM, "Corporate Social Responsibility Bill Gets Final House Nod" (*Philippine News Agency* May 20, 2020) <https://www.pna.gov.ph/articles/1103485> accessed April 12, 2022

¹²⁴¹ Ibid

¹²⁴² The Bill does not state the reward but mentions the DTI will recognise and award those businesses that provide excellent, creative, and world-class CSR-related services, initiatives and activities see The republic of the Philippines House of Representative Quezon city 19th congress notes available at https://hrep-website.s3.ap-southeast-1.amazonaws.com/legisdocs/basic_19/HB00800.pdf accessed January 01, 2023

¹²⁴³ Jędrzej Górski, "Social Licence to Operate (SLO) in the Extractive and Energy Sectors - Introduction" OGEL 1 <https://www.ogel.org/article.asp?key=3856> accessed April 12, 2022

3) Partnerships to secure national and internal CSR funding.

Similar to the role of the DTI in the Philippines, the research proposes that the CSR Commission could also partner with extractive companies to secure loans. The World Bank and other regional development banks have already established these protocols.¹²⁴⁴ It has invested billions of dollars towards developmental projects. Again, other funding models are available in the UK,¹²⁴⁵ such as social and sustainable development capital. These organisations work similarly to the World Bank and national and regional development banks. They require companies to demonstrate the case for the investment and disclosure of the applicant's environmental, social, financial and governance reports.

Although the proposed CSR Commission might be prone to the setbacks of other legislation in Nigeria, it would forcefully address the impediment of the fragmented nature of CSR in Nigeria, where several CSR functions are distributed across various government agencies and parastatals. The CSR Commission might also be a useful approach to consolidate the previous attempts to vest CSR potential in the Financial Reporting Council Act 2011.

8.6 A Strategy Proposal for Oil and Gas Corporations

Appointing CSR Committees and Chief Sustainability Officers (CSOs) are two of the most common methods of instituting board expertise in sustainability-related problems in contemporary sustainable management systems.¹²⁴⁶ Literature suggests that there has been a somewhat mixed understanding surrounding the appointment of CSOs and CSR Committees.

One school of thought sees them as ceremonial and a cosmetic device to symbolise a commitment to sustainability issues.¹²⁴⁷ The opposing school of thought is that

¹²⁴⁴ See Chapter 3 of this thesis

¹²⁴⁵ For example see Local Government Association, "Financing Green Ambitions" (*Local Government Association* May 4, 2022) <https://www.local.gov.uk/publications/financing-green-ambitions> accessed January 1, 2023

¹²⁴⁶ Patrick Velte and Martin Stawinoga, "The Ethical, Social and Environmental Reporting-Performance Portrayal Gap" (2004) 17 *Accounting, Auditing & Accountability Journal* p.731

¹²⁴⁷ Colin Lindblom, 'The implications of organizational legitimacy for corporate social performance and disclosure' (Critical Perspectives on Accounting Conference, New York, 1994)

in a company with CSR values and culture, the appointment of a CSO would be of crucial importance towards achieving its CSR goals.¹²⁴⁸

Empirical research conducted among 419 firms regarding the influence of corporate sustainability officers on performance, indicates that employing an expert CSO is not connected with future sustainability performance until the CSO has been in place for four years. Even then, this association is only seen in higher-performing organisations. This might point to the difficulties of enhancing performance in organisations that have already established high sustainability performance, since these firms are more likely to have strong sustainability departments and support people working on sustainability projects. Equally, a skilled CSO may have a more difficult time securing support and resources (both external and internal) for lower-performing organisations in order to effect change.¹²⁴⁹

CSOs are senior executives in the company's top management team who are specifically responsible for CSR concerns.¹²⁵⁰ The primary objective of a CSO is to enhance the working conditions and safety procedures in the supply chain and promote goods and services that meet social and environmental criteria.¹²⁵¹ The authority of a CSO may also fluctuate significantly among organisations, due to the fact that they may take on varying degrees of responsibility within the corporate hierarchy.¹²⁵² In this regard, it is believed that a CSO's credibility and capacity to explain and instill sustainability concerns and procedures are probably enhanced by their experience and competence in the field. Because of this, researchers predict that the appointment of CSOs with sustainability experience would undoubtedly lead to an increase in the future sustainability performance of a business.¹²⁵³ In this context the GRI conducts periodic training.¹²⁵⁴ The training

¹²⁴⁸ Manuel Castelo Branco, "Corporate Social Responsibility: Theoretical Perspectives" (2006) 69 *Journal of Business Ethics* pp.112-132

¹²⁴⁹ Gary Peters, and others, "The Influence of Corporate Sustainability Officers on Performance" (2019) 159 *Journal of Business Ethics* pp. 1065–1087

¹²⁵⁰ Ruchunyi Fu and others "Chief Sustainability Officers and Corporate Social (Ir)Responsibility" (2020) 41 *Strategic Management Journal* p.656

¹²⁵¹ Robert Strand, "Strategic Leadership of Corporate Sustainability" (2014) 123 *Journal of Business Ethics* p.687

¹²⁵² Rebecca Henderson, *Leading Sustainable Change* (Oxford University Press, 2014)

¹²⁵³ Gary Peters, and others, "The Influence of Corporate Sustainability Officers on Performance" (2019) 159 *Journal of Business Ethics* pp.1065–1087

¹²⁵⁴ Global reporting "GRI - Professional Certification Program" (<https://www.globalreporting.org/>) <https://www.globalreporting.org/reporting-support/gri-academy/professional-certification-program/> accessed April 26, 2022

is for professional sustainability experts, whether in a corporate or consultancy setting. A CSO who lacks such expertise may have trouble expressing a clear connection between a company's principles and its desire to implement substantial changes in the CSR policies of the business, which would lead to better engagement with stakeholders.

Internationally, participation in the appointment of CSR committees and CSOs is generally optional. In Europe, the job is forward-thinking; engaging mostly with the big picture by implementing and monitoring mid-to-long-term sustainable goals.¹²⁵⁵ Corporations in Scandinavia are more likely than companies in the United States to have a post devoted to sustainability in their top management.¹²⁵⁶ The top two companies on Corporate Knights, the Global 100 ranking of the world's most sustainable enterprises, are Scandinavian.¹²⁵⁷

The World Business Council for Sustainable Development report also indicates that the adoption of the role of the CSO is becoming a global trend.¹²⁵⁸ CSOs are often referred to by different titles such as 'VP Corporate Citizenship', 'Director of Corporate Citizenship', 'Policy and Advocacy Manager' etc. This research advocates and adopts the term "CSR Managers", based on their role

In addition to CSOs, CSR committees advise Boards of Directors on social and environmental issues and support them in their duties. Sustainability-related knowledge on the board is becoming more important since companies are now considered accountable for making money and satisfying shareholders as well as caring for the interests of other non-shareholder stakeholders such as the environment and host communities.¹²⁵⁹

Similar to the role of the CSO, the formation of the CSR Committee is plagued with contrasting opinions. On the one hand, some researchers argue that it has

¹²⁵⁵ Arménio Rego and others, "Corporate Sustainability: A View from the Top" (2015) 143 *Journal of Business Ethics* pp.133-157

¹²⁵⁶ Robert Strand, "The Chief Officer of Corporate Social Responsibility: A Study of Its Presence in Top Management Teams" (2013) 112 *Journal of Business Ethics* pp.721-734

¹²⁵⁷ Corporate Knights "The 100 Most Sustainable Corporations of 2022" (*Corporate Knights.com* April 12, 2022) <https://www.corporateknights.com/rankings/global-100-rankings/2022-global-100-rankings/100-most-sustainable-corporations-of-2022/> accessed April 26, 2022

¹²⁵⁸ Ibid, Corporate Knights

¹²⁵⁹ Bikki Jaggi and others, "The Factors Motivating Voluntary Disclosure of Carbon Information: Evidence Based on Italian Listed Companies" (2018) 31 *Organization & Environment* pp.178-202

no real impact on promoting CSR goals.¹²⁶⁰ Instead it is seen simply as a portrayal of positive performance. In contrast, other researchers contend that it constitutes a very real commitment that enables effective planning, oversight and organisational structure to contribute toward meaningful CSR.¹²⁶¹

Although CSR committees were established as a vehicle for sustainable governance, the functions and efficacy of such committees in relation to CSR performance still requires significant study.¹²⁶² The 2018 UK Companies Governance Code, for example, states that the Board of Directors must ensure that stakeholder interests and perspectives are represented in the Annual Report,¹²⁶³ while allowing boards to manage sustainability issues in their own way. As a result, the creation of CSR committees is left to individual enterprises. This may explain why CSR committees are successful in some businesses but not in others.¹²⁶⁴

This approach is similar to the Indian CSR Committee system. The India Corporate Law Act¹²⁶⁵ does not make the 2% contribution compulsory, but leaves it up to the CSR Committee to determine how it is spent on CSR activities and to provide a separate report on this. In line with several other regions, it makes CSR reporting mandatory.

Again, through examining research from the Financial Times Stock Exchange (FTSE) 350 share index, it has been established that corporations having CSR committees also have decreased greenhouse gas emissions.¹²⁶⁶ A sample of UK, French, German, and Spanish organisations further highlighted a favourable relationship between companies having a CSR committee and their CSR performance ratings.¹²⁶⁷ Similar to the CSO recommendation for trained experts

¹²⁶⁰ Stuart L Hart, "A Natural-Resource-Based View of the Firm" (1995) 20 *Academy of Management Review* pp.986-1014

¹²⁶¹ Amama Shaukat and others "Board Attributes, Corporate Social Responsibility Strategy, and Corporate Environmental and Social Performance" (2016) 135 *Journal of Business Ethics* pp.569-585

¹²⁶² Mohamed Elmaghrabi, "CSR Committee Attributes and CSR Performance: UK Evidence" (2021) 21 *Corporate Governance: The International Journal of Business in Society* p.892

¹²⁶³ The UK Corporate Governance Code 2018 see <https://www.frc.org.uk/getattachment/88bd8c45-50ea-4841-95b0-d2f4f48069a2/2018-UK-Corporate-Governance-Code-FINAL.PDF> accessed April 27, 2022

¹²⁶⁴ Ibid, Elmaghrabi.p.892

¹²⁶⁵ Indian: Companies Act 2014 S. 135

¹²⁶⁶ Swarnodeep Homroy and Aurelie Slechten, "Do Board Expertise and Networked Boards Affect Environmental Performance?" (2019) 158 *Journal of Business Ethics* pp.269-292

¹²⁶⁷ Elisa Baraibar-Diez and Maria Odriozola, "CSR Committees and Their Effect on ESG Performance in UK, France, Germany, and Spain" (2019) 11 *Sustainability* p.5077

under the GRI, renowned empirical research¹²⁶⁸ has demonstrated that the CSR committees that adopt the GRI demonstrate superior performance in their respective organisations. In chapter 3, this research has demonstrated the value of the role of the GRI standard in major global oil and gas companies.

Based on the above discussions, this research advocates a specific department and specific leaders to handle CSR initiatives in order to ensure their effectiveness in the Nigerian oil and gas industry. The culture of the companies undoubtedly has an overall impact on their CSR performances.¹²⁶⁹

8.6.1 Proposal for CSR Managers and a Department for Environmental Sustainability

As noted previously, the job title and role of CSR managers and departments can take various forms. For example, a project liaison committee is set up in various oil and gas communities in Nigeria.¹²⁷⁰ In Shell, they are known as Corporate Relations Departments. They also engage with the government in countries where they operate.¹²⁷¹

Roles at senior management levels have expanded due to Corporate Social Responsibility (CSR) trends, which have increased the obligations of executives, and raised the bar for society's standards regarding what it expects from company owners. To rationalise and account for these expanding goals and the expectations of this research, a broad and more constant approach to CSR management in oil and gas companies is strongly advocated, to ensure effective multistakeholder partnerships.

Throughout this research, it has been frequently observed that common problems associated with CSR initiatives at the organisational level include CSR activities not being backed by consistent action in practice or in the field, and CSR engagement being sporadic, demonstrated by a lack of clear engagement policies.¹²⁷² These issues do not only apply to Nigeria, but are global.¹²⁷³ An

¹²⁶⁸ Nazim Hussain and others, "Corporate Governance and Sustainability Performance: Analysis of Triple Bottom Line Performance" (2018) 149 *Journal of Business Ethics* pp.411-432

¹²⁶⁹ See S.8.6 of this research

¹²⁷⁰ *Ibid*, Mamudu

¹²⁷¹ Shell: 'Annual Law Report: Powering Progress' (2021)

¹²⁷² See Chapter 2 of this work.

¹²⁷³ Ki-Hoon Lee and others, "Small and Medium Enterprises and Corporate Social Responsibility Practice: A Swedish Perspective" (2016) 23 *Corporate Social Responsibility and Environmental Management* pp.88-99

organisation's cultural values and commitments need to be fostered to increase productivity and build a long-term positive attitude.

While the formation of a committee is a positive step, it does not cover all areas of CSR as set out in the proposed CSR framework. It does not, for example, make provision for lower-level CSR expert team members, solely dedicated to CSR. The framework in Figure 8.5 provides for the role of CSR coordinators who constantly undertake activities such as responding to emails, where the stakeholders can directly contact the team. The role of technical support also improves the visibility of CSR initiatives through frequent updates of the CSR website.

Moving further from the job role and composition of the members of a CSR department, it is useful to examine the GRI approach, which is to work with organisations to help them improve and promote sustainable practices. In Nigeria, corporate organisations outside the extractive industry, such as Zenith Bank, embrace their membership of the GRI. Perhaps this is one area that oil and gas companies could emulate to ensure that their CSR department is a member or partner of the GRI initiatives.¹²⁷⁴

Certain challenges might occur from incorporating a CSR department in every organisation. The most prominent, as identified in the research, is embedding the culture of CSR in Nigeria. The eventual success of the department will inevitably rest on the general attitude of the firm.¹²⁷⁵ Regardless of the company's size, certain functional groups or locations may be more difficult to integrate and take longer to adopt sustainable efforts.¹²⁷⁶ This might be due to a range of factors, including a lack of resources, inadequate knowledge, and diversity within senior management. The capacity to explain the benefits of sustainability to various stakeholders is crucial. The skillset of a CSR Coordinator would be highly valuable in mitigating these challenges.¹²⁷⁷

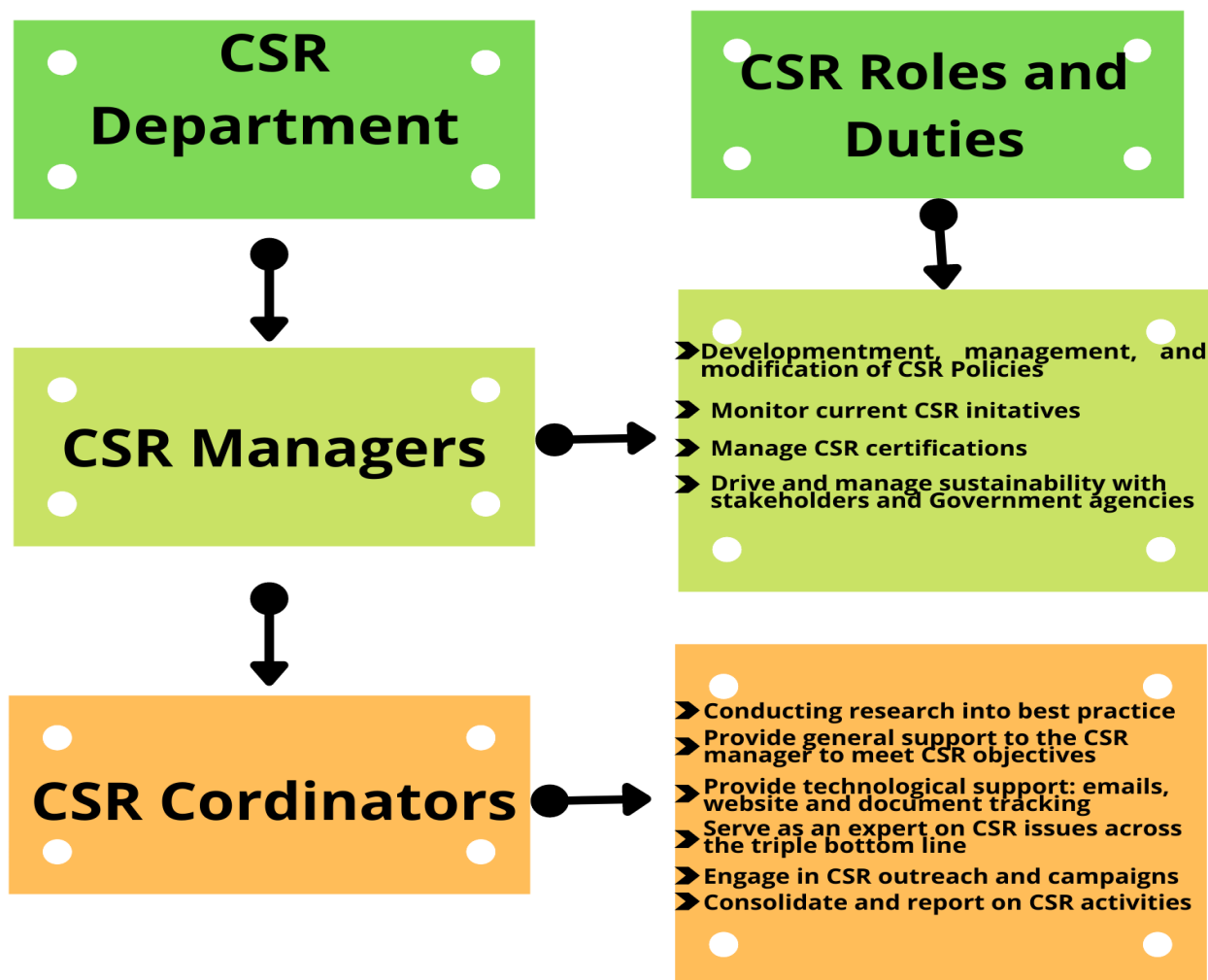
¹²⁷⁴Global reporting "Member and Commercial Partner Directory" (*globalreporting.org*) <https://www.globalreporting.org/reporting-support/member-and-commercial-partner-directory/> accessed May 3, 2022

¹²⁷⁵ Research inferred, based on discussion on CSR in and host community engagement in Ch.7 of this work

¹²⁷⁶ "Defining the Role of Chief Sustainability Officers (Csos)" (2018) https://docs.wbcsd.org/2019/01/Defining_the_Role_of_Chief_Sustainability_Officers.pdf accessed May 3, 2022

¹²⁷⁷ See Figure 8.5 below

Table 8:5 Proposed CSR Department framework¹²⁷⁸



Establishing a CSR Department can thus improve the CSR culture of the organisation. It creates a formal environment for planning, control and regular actions relating to CSR activities. Although local oil and gas companies such as Seplat Energy (SE) adopt CSR practices through their CSR Committee,¹²⁷⁹ the question arises: is this approach enough to help integrate CSR into the organisational culture in Nigeria?

The CSR Committee in SE works with the board to oversee the company's sustainability and ESG performance, policies, and practices; including climate-

¹²⁷⁸ The duties in the framework have been compiled through this research as well as examinations of job roles for CSR coordinators. See: <https://uk.indeed.com/Corporate-Responsibility-Coordinator-jobs?vjk=098fff24af768363> accessed April 30, 2022

¹²⁷⁹ Seplat 'Annual Report: Powering Nigeria's Energy Transition' (2020) <http://ar2020.seplatpetroleum.com/> April 30, 2022 p. 64

related issues. The committee is in charge of determining the impact of climate change on local communities and ensuring that SE has taken the necessary steps to mitigate those effects.¹²⁸⁰

In Shell, the organisational representation for CSR is through the CSR Committee, which contains one chair and two committee members at the global level. The level of information on the website and the Annual Report however makes it impossible to ascertain what the CSR organisational management structure at the national level actually is. Compared to regions like India,¹²⁸¹ it should be stressed that the composition of the CSR Committee at Shell is at the minimum level.

8.7 Role and Guidelines: Host Communities

Host communities are the most affected by the oil and gas industry's operational activities in terms of environmental, social, and economic impacts.¹²⁸² Before the passage of the PIA, there were two types of host community development projects or "host community-led initiatives":¹²⁸³

- 1) The first category is voluntary, and it involves operators (of oil mining leases) preparing and instituting community development initiatives that are primarily managed under (Global) Memorandums of Understanding (MOU), negotiated between individual operators and the respective host communities. The host state government sometimes nurtures these MOUs.
- 2) The second broad group includes government-led efforts, particularly those of the Niger Delta Development Commission (NDDC). The NDDC Act mandates that oil/gas producing (including gas processing) enterprises in the Niger Delta must pay an annual NDDC fee equivalent to 3% of their annual budget.

¹²⁸⁰ Ibid, Seplat Report

¹²⁸¹ Ibid, India's Company Act, Section 135

¹²⁸² Obi CI, "Oil Extraction, Dispossession, Resistance, and Conflict in Nigeria's Oil-Rich Niger Delta" (2010) 30 Canadian Journal of Development Studies / Revue canadienne d'études du développement p.219

¹²⁸³ "The Petroleum Industry Act (PIA) – Host Communities Development" (*deloitte.com*2022) https://www2.deloitte.com/content/dam/Deloitte/ng/Documents/energy-resources/PIA_Tax_Newsletter_Host%20Communities%20Development.pdf accessed April 12, 2022

With the passage of PIA, settlors are obliged to establish a host community development trust ('HCDT' or 'Trust') to benefit their respective host communities and deposit 3% of their preceding fiscal year's operating expenditure to the trust's fund. The expenses relating to the interruption of petroleum operations caused by the host community's activities are deducted from the settlor's contribution to the trust's fund.

The implication is that all voluntary host community development projects should be administered under HCDTs. Host community projects maintained by government parastatals such as the NDDC and the accompanying taxes paid by businesses will remain in effect. It is unclear whether the PIA will challenge the current MOU strategy.

Ideally, the researcher would have liked to propose a new framework for the MOU, but, arguably, the oil and gas companies would not welcome such a duplication since the PIA and the MOU essentially have the same mission and level of commitment to host communities.

Thus, the research advocates a guidance note to clarify provisions that could be misconstrued. Guidance notes are often used to backup major legislation which is not generally comprehensible to a layperson, or potentially the subject areas impacted by the legislation. Significant examples are immigration laws, which come with associated guidance notes to ensure that the legislation or application process is not open to interpretation outwith what it is intended for.¹²⁸⁴ The UK Pollution Prevention and Control Act 1999 has a detailed guidance note subdivided into various sections.¹²⁸⁵ Major international organisations such as the Global Reporting Initiative (GRI) also use guidance notes to give detailed advice on using the guidance rules.¹²⁸⁶ The use of guidance or more detailed chapter-specific explanatory notes might help solve the ambiguities around host communities' involvement, as illustrated in Table 8-7 below.

¹²⁸⁴ The attached link is a portal for immigration guidance at various levels

<https://www.gov.uk/topic/immigration-operational-guidance> accessed January 01, 2023

¹²⁸⁵ Department for Environment F& RA, "Integrated Pollution Prevention and Control: Sector Guidance Notes" (GOV.UK April 26, 2017) <https://www.gov.uk/government/collections/integrated-pollution-prevention-and-control-sector-guidance-notes> accessed April 20, 2022

¹²⁸⁶ "Why Report?" (GRI - How to use the GRI Standards 2022) <https://www.globalreporting.org/how-to-use-the-gri-standards/> accessed April 20, 2022

Table 8.7: Identified Areas to be included in the Guidance Notes for the PIA¹²⁸⁷

PIA Section	Provision	Recommended areas for clarification	Proposed Interim Recommendation	Proposed Guidance Notes for the PIA
S.235(4)	..... In consultation with HC, the settlor shall set up the trust to appoint and authorise a Board of Trustees (BOT).	No defined rules for making such selections.	Settlers may need to consult recognised community development groups and state and local governments and depend on their expertise in dealing with host communities to make BOT nominations. Appointments to the BOT may also be based on consultation with host community advisory groups.	A clear and functional mechanism for representative appointments from the host communities to the board of trustees is sought from the Commission.
S.242(2)	The settlor shall, in consultation with HC, determine the BOT to include persons of professional standing who shall come from the host communities.	Is this a residential or Indigenous member?	As it concerns HC in the Nigeria culture, the residential HC member rule should be applied to avoid hostility.	The term 'residential' should be used to create a distinction. The clause should state that an indigenous member would be used in the absence of a residential HC member.
S.242(5)	The Board of Trustee (BOT) shall have a secretary appointed by the secretary.	Is the secretary from the HC, Oil companies or a government agent.	The secretary should be from the HC since the BOT are all HC, and the role is to keep book of records.	The guidance note should include the appointment of a secretary, 'an indigenous host community member.'
S.247(2)(b)	The Executive part of the managerial team could be from any part of Nigeria.	This reflects a team of executives on the management team for HC without the expertise to lead HC development.	No margin for interpretation.	Not applicable.

¹²⁸⁷ Compiled by researcher. Legalisation provides that courts should take guidance notes into account see Elliot v Dorset County Council UKEAT/0197/20/LA

Based on the involvement of host communities as outlined in the PIA, the composition of the HCDT shows that the settlor is the oil and gas company, and that the Board of Trustees consists of representatives of the Host Communities. However, at the management level, the secretary's designation is not specified; the executive team could be a professional from any part of Nigeria.¹²⁸⁸ Thus, the actual involvement of Host Communities in the HCDT is marginal at best. Why should the executives of the managerial team be from any part of Nigeria without the expertise and required qualifications for host communities' representation? In addition, the secretary is likely to come from any part of Nigeria.

The advisory committee and the non-executive management are the only contact point for the host communities' member. In terms of increasing the acceptability of the partnership initiative between host communities and oil companies, it is questionable that the community does not have the right to elect their members into upper-executive membership. One way to make this work is to ensure that the management team, both executive and non-executive, are from the host community. But first, the executive team has to be set up. It would then set up the advisory committee. The advisory committee would then elect their members for the non-executive team. Perhaps this would ensure that the grassroots aspirations of the people are brought before the settlors and the commission.

The case for an indigenous versus residential distinction of host communities is derived from the earlier study of the Nigerian Oil and Gas Industry Content Development (Local Content Act) 2010.¹²⁸⁹ It provides for the appointment of Nigerians in managerial and expert roles. The Niger Delta has benefited from many educational initiatives such as NDDC international scholarships schemes, meaning that it has potentially a wide variety of suitable professionals for executive and managerial positions. The involvement of local indigenes improves the chances of the host communities' acceptance of the PIA provisions, and their active participation in the roles designated to them under the act, will in turn improve the legitimacy of the social license to operate.

¹²⁸⁸ PIA S.247(2)

¹²⁸⁹ Ibid S.247(2)

8.8 Conclusion

Without doubt a CSR problem exists in Nigeria. For every proposed bill for CSR that is rejected, another one is passed. The legislation on CSR is not centralised and is distributed among different agencies, acts and institutions. There still exists ambiguities in the GMOU when examined in light of the PIA. One clear takeaway from this analysis is that government and its official organs are at the core of all action or inaction in Nigeria.

This statement has been corroborated by the 2011 United Nations Environmental Programme (UNEP) recommendations for Ogoniland and Nigeria.¹²⁹⁰ The INTSOK report¹²⁹¹ also clearly emphasises the role of the government's input in helping to achieve the voluntary commitments they make.

The current approach to CSR still appears to be fragmented. The level of partnership is not adequate. When this is the case, numerous problems are bound to occur, for example; host communities' agitation, potential loss of social license to operate, lack of trust, corruption, and difficulty in implementing policies. To this end, it cannot be overemphasised that an effective partnership is needed to help create a healthy level of checks and balances between the three core identified stakeholders. Only when this happens will there be genuine environmental sustainability in the oil and gas-producing areas.

The mandatory CSR recommendations in this research do not mean a call for the creation of new laws. They are a set of proposals for the creation of tried and tested roles and approaches to ensure more legitimacy amongst key stakeholders and to improve the implementation of existing laws. Mandatory initiatives also improve the scope of voluntary improvements within the extractive industries. The Nigerian PIA makes it mandatory to allocate a percentage of operating costs to CSR activities. Endorsing companies and facilitating CSR partnerships and dialogue will propel companies to engage in more CSR activities, thus providing for better reports on CSR engagements.

¹²⁹⁰ Ibid UNEP 2011

¹²⁹¹ Ibid The INTSOK report

Who will benefit? Two key stakeholders which have been sadly neglected by the Nigerian policymakers. The environment, which does not have a voice and the host communities, who do have a voice, but whose voice is frequently disregarded.

9 CHAPTER NINE: CONCLUSION AND RECOMMENDATIONS

9.1 Introduction

This chapter attempts to integrate responses to the central research question and the reasons for the findings that have been made. Additionally, the thesis agrees that an effective CSR partnership is far from being attained in Nigeria and other developing regions. To enhance the role of CSR in achieving environmental sustainability, the Nigerian government has developed the Host Communities Development Trust (HCDDT). The HCDDT effectively terminates the use of the Memorandum of Association in Nigeria, the CSR strategy previously used by the oil and gas industry to enhance stakeholder engagement and partnership. This research has synthesised the relevant existing policies and global regulations to develop a framework to improve the role of CSR in enhancing environmental sustainability. The literature review in chapter 2.7 established the necessity for a re-aligned strategy that encourages CSR in environmental sustainability. The partnership framework, which has been set out in chapter 8 of this thesis, thus achieves the aims and objectives of this research by creating a framework strategy for enhancing environmental sustainability.

The concluding chapter of this thesis aims to identify the study's limitations, propose areas for future research, and provide recommendations for potential reforms.

9.2 Limitations of the thesis and areas for further research

The limitations and areas for further research are outlined in the paragraphs below:

9.2.1 Limitation in methodology

Chapter 1 of the thesis stated that the research adopted the use of the socio-legal methodology as a strategy to achieve the identified aims and objectives. The socio-legal research methodology has been successfully utilised to critically examine the operation of policies in the formal context and in analysing historical and contemporary contexts of what environmental sustainability and corporate

social responsibility mean. One area in which the research does not engage the key elements of socio-legal research, is in the analysis of the experiences of those affected by the impact of existing laws and policies. This could have been achieved through interviews and observation of meetings between oil companies and host communities. However, the research adopted secondary data analysis to achieve the same objectives. Secondary data analysis relies on data produced by other agencies, bodies or researchers. The secondary data produced by the UNEP, GRI, and other NGOs were used mainly because they provided more in-depth research than the thesis would have achieved through independent interviews. This is not to say that adding interviews or questionnaires from key stakeholders would not have made for a stronger argument or discussion.

This could be an area for further research. This could include, for example, an independent observation and interrogation of the process of fund allocation under the PIA. This could be analysed alongside the partnership proposed by the research.

9.2.2 Limitations of applicable stakeholders

In the context of the oil and gas industry, the classification of stakeholders is very broad.¹²⁹² They have been identified as including, but are not limited to: the oil and gas company, host communities, governments (both local and national), financial institutions, investors, consumers, suppliers, regulatory authorities, non-governmental organisations, and the environment. Not all of these stakeholders have been included in the framework for effective partnership. However, direct stakeholders have been used in proposing and creating partnerships for this research. The direct stakeholders have been identified as the oil companies, the host communities and the government. The UNEP feedback recommendation¹²⁹³ lists these three parties as the major stakeholders, and other researchers have highlighted these, as described in this thesis. A true test for identifying the key stakeholder in such a partnership would include determining who is most affected by the oil and gas activities and those indirectly affected by oil and gas activities.

¹²⁹² Person, "Key Stakeholders in Midstream & Downstream Activities of the Oil & Gas Industry: Legal Guidance" (*LexisNexis* June 3, 2022) <https://www.lexisnexis.co.uk/legal/guidance/key-stakeholders-in-midstream-downstream-activities-of-the-oil-gas-industry> accessed June 14, 2022

¹²⁹³ Ibid UNEP 2011

Hence the research advocates for such partnerships between the major stakeholders.¹²⁹⁴

9.2.3 Limitation of applicable jurisdiction

Environmental sustainability has been identified as a universal problem. Transboundary pollution explained how pollution and the impact of oil and activities is global.¹²⁹⁵ This would mean that exhaustive research would cover more application areas. The applicable areas in this research have been restricted to major oil-producing areas worldwide and in particular to the Niger Delta region of Nigeria in order to provide more in-depth analysis and more focused research.

Nevertheless, further research could be conducted on smaller companies in oil-producing areas to determine their level of partnership engagement with host communities and government interactions.

9.2.4 Recommendation to establish a CSR commission for environmental sustainability

The role of CSR is broad and incorporates the social, economic and environmental attributes. This research has focused mostly on the non-financial aspect of CSR as it concerns environmental sustainability and finds that the role of CSR is distributed among several government ministries and agencies. In respect of this, the thesis recommends that the federal government establish a CSR Commission to promote CSR and encourage oil and gas companies to adhere to international guidelines and principles.

One major gap that the research identified is the lack of uniformity of CSR initiatives and roles in Nigeria. CSR functions have been distributed amongst several government parastatals, agencies and ministries, making the financial aspects of CSR a secondary issue. CSR is a broad subject area that needs a centralised regulating body to establish standards and create learning and development for advancing it. The Institute of Corporate Responsibility and

¹²⁹⁴ Ibid

¹²⁹⁵ Melissa Denchak, "Fossil Fuels: The Dirty Facts" (*Natural Resources Defense Council (NRDC)* June 1, 2022) <https://www.nrdc.org/stories/fossil-fuels-dirty-facts#:~:text=Global%20warming%20pollution,and%20lead%20to%20climate%20change.> accessed June 14, 2022

Sustainability (ICRS) has been established as a professional group for defining standards, adopting a code of conduct, and generating learning and development opportunities for the industry.¹²⁹⁶ The EU has a centralised strategy for adopting CSR, in which the EU Commission supports CSR and urges businesses to follow international norms and principles. In particular, the EU's strategy is found in their directives for non-financial reporting¹²⁹⁷ as well as their strategy for CSR policy documents.¹²⁹⁸

The first plan for the CSR Commission is to work with the presidency and other relevant bodies such as the Minister of the Environment and Minister of Justice, to ratify and domesticate treaties for environmental sustainability. Domesticating treaties,¹²⁹⁹ conventions, protocols, pacts, accords, etc., would ensure greater participation at the national level.

There is no provision for domestication before treaty enforcement in certain nations such as France, Switzerland, and the Netherlands.¹³⁰⁰ In France, when treaties are approved, they are made public and take precedence over the country's laws.¹³⁰¹

If an international agreement is ratified in Nigeria, it does not instantly become legislation; a constitutional prerequisite exists before any international treaty may become law. No treaty between Nigeria and any other nation will become law unless and until it is voted into law by the National Assembly, as stated in Section 12 of the 1999 Constitution of the Federal Republic of Nigeria.

In respect of this, the proposed CSR Commission, the Ministry of the Environment and other relevant authorities ought to work together with the executive arm of government to ensure that ratified treaties are codified into the local laws. While this call for national action is important, international collaboration and increased

¹²⁹⁶ (*Institute of Corporate Responsibility and Sustainability*) <https://www.icrs.info/> accessed July 5, 2022

¹²⁹⁷ The European Parliament and of the Council Directive 2014/95/EU regards disclosure of non-financial and diversity information by certain large undertakings and groups

¹²⁹⁸ Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions: A renewed EU strategy 2011-14 for Corporate Social Responsibility COM/2011/0681 final

¹²⁹⁹ Malgosia Fitzmaurice, "Treaties" (*Oxford Public International Law*) <https://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1481#law-9780199231690-e1481-div1-1> accessed July 5, 2022

¹³⁰⁰ Its worth noting that treaties are ratified only after parliament has given its consent in most of these countries

¹³⁰¹ The 1958 French Constitution Article 55

multilateralism are essential to address global dangers such as climate change that threaten environmental sustainability.¹³⁰²

Additionally, the CSR commission can help companies secure aid and loans and develop best practices. Finance and the lack of prerequisite knowledge of CSR practices have been identified as a significant encumbrance to the implementation of CSR's progress. Countries with a high gross domestic product (GDP) have been seen to have better CSR involvement than poor and developing countries.

Long-standing knowledge exists that funding for environmental and climate change initiatives is limited.¹³⁰³ However, in recent years, a strong argument has emerged that trillions of dollars of funds are waiting to be "unlocked" to support the global environmental agenda.¹³⁰⁴ These funds can be difficult to access, requiring a lot of transactional paperwork, collateral, and expert feedback on project milestones. The CSR Commission would use its expertise to advise companies and aid them to source and secure these funds. These funds are inclusive and not limited to; the World Bank Group, the International Monetary Fund, the World Trade Organization, the United Nations Conference on Trade and Development, Clean Development Mechanisms, the Global Environmental Facility, and the Green Climate Fund at the international level and at the local levels. Funds could be sourced from the local and federal governments, as well as financial institutions such as banks, development institutions and private equity firms.¹³⁰⁵

Such collaborative partnerships between government and oil companies to facilitate, partner and aid in securing CSR funding can also be linked to sourcing good practices. The research has identified the most outstanding global initiatives and practices, such as the GRI, UN Global Compact and the IOGP.

¹³⁰² "Financing for Sustainable Development Report "(*un.org*2021)
<https://www.un.org/sustainabledevelopment/wp-content/uploads/2022/03/2021-Report.pdf>
accessed July 5, 2022

¹³⁰³ Paul j Ferraro and Subhrendu k Pattanayak , 'Money for Nothing? A Call for Empirical Evaluation of Biodiversity Conservation Investments' [2006] 4(4) PLoS Biol 105

¹³⁰⁴ "2014 Joint Report on Multilateral Development Banks' Climate Finance" (*World Bank*)
<https://documents.worldbank.org/en/publication/documents-reports/documentdetail/653481468190738889/2014-joint-report-on-multilateral-development-banks-climate-finance> accessed July 5, 2022

¹³⁰⁵ Clark Robyn and others, 'Bridging funding gaps for climate and sustainable development: Pitfalls, progress and potential of private finance' [2018] 71(1) Land Use Policy Elsevier Ltd <https://doi.org/10.1016/j.landusepol.2017.12.013> accessed 5 July 2022

Summatively, the commission's functions shall be to advise the government and other stakeholders on all CSR-related matters to achieve the broader goals of CSR for environmental sustainability. Based on its roles, the CSR Commission should fall under the presidency. In Nigeria, establishments with the same mandates are under the office of the presidency. The Commission would be headed by an executive secretary with knowledge and experience in CSR, governance and public relations.

A manager would head each department in the CSR commission. The managers could be linked to different industries to ensure that the framework for a CSR Commission is not limited to extractive industries alone. Apart from the extractive industries, others such as such as transport, trade and commerce etc., could benefit from the framework.

9.3 Summary of Findings

The research is based on the premise that the environmental aspect of the sustainable development goals has been neglected, especially in developing regions' oil and gas producing areas. Since the Rio Declaration in 1992, companies have engaged in collaborative efforts to meet the larger aims of sustainable development. This highlights the greater role of business in society and how firms can successfully use the role of CSR to boost their efficacy, legitimacy, and responsibility in their areas of operation. Governments worldwide continue to push for environmental sustainability through their legal and judicial frameworks while simultaneously attempting to attract investment and combat corruption at the national level,¹³⁰⁶ within oil businesses and in civic society.

The general nature of environmental law, regulations, and policies reinforces the dispute between the interests of the affected and organised interests.¹³⁰⁷ In lieu of this, the study agrees that the interests of oil companies must be considered in

¹³⁰⁶ joint team from the OECD and the PBL Netherlands Environmental Assessment Agency, 'OECD Environmental Outlook' (2001) < <http://www.oecd.org/env/indicators-modelling-outlooks/modellingworkbehindtheoecdenvironmentaloutlookto2050.htm> > accessed 11 September 2020.

¹³⁰⁷ Bruce A Ackerman and William T Hassler, *Clean Coal/Dirty Air: Or, How The Clean Air Act Became A Multibillion-Dollar Bailout For High Sulphur Coal Producers And What Should Be Done About It ... Coal Producers* (1st edn, Yale University Press 1981) page 166

order to ensure compliance with such environmental laws and policies.¹³⁰⁸ Thus, developing an effective CSR framework for environmental sustainability is a difficult task in today's world; involving the validation and accommodation of multiple stakeholders.¹³⁰⁹ More precisely, the process of establishing the goals must include the oil and gas business, the government, and the host communities.¹³¹⁰ As a result, it can be deduced that to establish an appropriate framework/policy for corporate social responsibility, the interests of all stakeholders must be in place to prevent jeopardising the interests of any stakeholder. The thesis also acknowledges that major strides have been made to enhance such CSR partnerships. Although this global guidance and these initiatives are built on a foundation of a wealth of resources, they will fail unless they are tailored and adopted at the national level.

The main arguments of this thesis may thus be summed up in the statements above. In the same way, each chapter contains discrete findings, results and conclusions that collectively summarise the overall objectives of the thesis.

Chapter one outlines the purpose and goals of this thesis and states the issue that it aims to answer. It discusses the research topics, methodology and literature review and explains how the results of this thesis will add to the ever-changing concept of CSR and improve the realisation of environmental sustainability.

Chapter Two: The Concept of Environmental Sustainability

This chapter's study critically explores definitions of the environment, sustainability, and the roots of the concept of environmental sustainability; from its inception to the present, in order to arrive at an acceptable definition. It distinguishes environmental sustainability from other similar ideas and goes into deeper detail regarding the obstacles and benefits of attaining it. Finally, it focuses on the links between environmental sustainability and the oil and gas sector, which

¹³⁰⁸ Sheldon Kamieniecki, *Corporate America and Environmental Policy* (Stanford Law and Politics/Stanford University Press 2006) page 197

¹³⁰⁹ David Vogel, 'The Hare and the Tortoise Revisited: The New Politics Of Consumer And Environmental Regulation In Europe' (2003) British Journal of Political Science Vol 33 Iss 4 page 557-580

¹³¹⁰ Neil Gunningham, Robert A Kagan and Dorothy Thornton, *Shades of Green* (Stanford Law and Politics 2003) page 20

has long been acknowledged as the primary source of CO2 emissions and a key contributor to environmental sustainability issues.

The most salient feature in the definition of environmental sustainability is that big oil producers increasingly recognise the importance of adopting UN environmental sustainability plans, initiatives, and frameworks. In their commitment to attaining ES, Sinopec, Royal Dutch Shell, PetroChina, BP Plc, and ExxonMobil embrace the main stakeholders (society, shareholders, academics, policymakers, and, of course, the environment, which has no voice) in their approaches.

Among 6 identified challenges of environmental sustainability, the issue of coherence and collaboration is one area the research addressed later in chapter 8.

Chapter 2 established the groundwork for the next chapter, which identifies and analyses global and regional environmental sustainability efforts.

Chapter three: Global and Regional Initiatives for Environmental Sustainability

This chapter analyses environmental sustainability initiatives at the global and regional levels in an effort to pinpoint the best trends for evaluating these activities. It achieved this objective by analysing both the theoretical and practical application of key strategies available for the implementation of environmental sustainability.

The big picture of the global and regional entities critically surveyed in this chapter undoubtedly shows a modest but steady improvement in institutional capacity, as the prominence of environmental issues in the overall development policies of many regions, governments, cities and the commercial sector continues to grow.

This institutional framework must be able to provide incentives and signals that are unequivocal, clear, and directed at the variety of players accountable for achieving the underlying goals and objectives necessary for environmental sustainability.

Chapter Four: Regulatory Framework for Environmental Sustainability in Nigeria

The research focuses on the Nigerian legislative and judicial interventions which have been put in place to guarantee environmental protection and sustainability.

This appraisal's main goal was to understand and outline the Nigerian oil and gas industry's governance structures in relation to environmental sustainability. It is patently obvious throughout the chapter that Nigeria's environmental governance structures are inadequate to address the scope of the nation's environmental challenges. It was determined that the institutional and legislative frameworks for environmental governance were wide and, to a certain extent, clear. However, it must be emphasised that the relevance of governance systems, in which the institutional, governmental, and legal requirements of environmental management are taken into account, should be recognised as the shared responsibility of a wide range of stakeholders, not only shareholders. Many experts believe that Nigeria's environmental management system would be successful, fruitful, and long-lasting if such an approach to good governance is adopted.¹³¹¹

Therefore, it is submitted that to enhance the strategy for environmental sustainability in Nigeria, a multistakeholder framework that helps to facilitate and incentivise implementation is needed, rather than the command and control approach that to date has featured in all layers of the Nigerian environmental governance system.

Chapter Five: Corporate Social Responsibility (CSR) And Environmental Sustainability

This chapter brings certainty to the use of the concept of corporate social responsibility within the corporate world, and the research critically appraises the fundamental concepts and theories of CSR to clarify its meaning and its link to achieving environmental sustainability.

The definitions of CSR in this chapter reflect the notion that companies have taken on a new role in society; one in which they must be responsive to societal expectations and motivated by the pursuit of environmental sustainability, which means they must now make strategic decisions to achieve these goals. As a result,

¹³¹¹ Ibid Ogunkan p.220

corporations will be forced to adopt new processes and technologies, but they must do so within a broader and more principled framework founded in corporate social responsibility. This framework must include the concepts of sustainability, shared value creation, and the premise that companies must recalibrate their position in society to benefit society as a whole.¹³¹²

The research has highlighted the importance of environmental CSR in the undertakings of oil and gas companies based on this notion. The research will continue in this vein in chapter 6, where it will critically evaluate the various approaches of multinational oil companies towards achieving environmental sustainability through CSR.

Chapter Six: Corporate Social Responsibility: A Review Of The Oil And Gas Industry

The populations in oil-producing countries are becoming more politically vocal and concerned about the environmental, and health and safety risks associated with oil and petrol production. Governments, nongovernmental organisations (NGOs), and local communities are actively studying methods to enhance oil and gas production management, limit the risk of environmental impacts, and provide restitution should harm occur.¹³¹³ Oil and gas corporations have had to adjust to this changing political and social context by implementing sophisticated corporate social responsibility (CSR) initiatives.¹³¹⁴ Learning from some of the industry's high-profile mishaps, oil and gas businesses have begun to implement environmental and social performance criteria that frequently surpass what is legally required in host nations. The problems of maintaining links with external stakeholders and integrating stakeholder concerns into company goals are fundamental to this process. This research examined oil and gas company Annual or Sustainability Reports to determine their approaches to environmental sustainability. This analysis found that leading oil and petrol corporations attempt to align their reporting to worldwide norms and efforts. Unfortunately, many reports have used general terms without sufficient disclosure in accordance with

¹³¹² ¹³¹² Ibid, Andre

¹³¹³ David B Spence, "Corporate Social Responsibility in the Oil and Gas Industry: The Importance of Reputational Risk" (2011) 86 Chicago Kent Law Review
<https://scholarship.kentlaw.iit.edu/cklawreview/vol86/iss1/4/> accessed December 22, 2022

¹³¹⁴ George Frynas, "Corporate Social Responsibility in the Oil and Gas Sector" (2009) 2 The Journal of World Energy Law & Business 178

Global Reporting Initiative (GRI) guidelines. Sustainability and stakeholder engagement are significant topics. Annual oil and gas reports tend to focus on technology and progress. Sustainable technology can help achieve environmental sustainability goals but reporting on stakeholder participation is also important.

Pragmatically, large firms may prefer to cushion their activities and report less on their negative environmental effect than on their technical breakthroughs. Based on GRI recommendations, a true commitment to addressing the negative repercussions of their activities would show stakeholders that the Oil and Gas sector cares about the environment and shares the worries of many stakeholders about environmental sustainability. Stakeholder involvement and rejecting 'greenwashing' may make consumers feel more involved in the company's environmental efforts, but it will also strengthen its reputation and social standing, which in turn will defend its economic model.

Although it is obvious that these documents may lack accuracy and reliability, it should also be recognised that the demand for and use of Sustainability Reports is increasing globally, and that they remain the most institutionalised reference for companies' disclosure regarding their environmental sustainability credentials.¹³¹⁵

Chapter Seven: Host Communities in The Oil and Gas Industry

This chapter identifies host communities as the final stakeholder required to ensure the multistakeholder strategy. In accordance with IPIECA rules for oil and gas companies, host communities should be explicitly characterized as communities that produce oil or have petroleum facilities/installations in their territory.

Although there are different methods for engaging stakeholders, most stakeholders strongly oppose the indirect approach through NGOs. This leads to the researcher's determined opinion that the direct engagement technique, employing business specialists in the field of CSR, should be proposed.

According to the study analysis in S.7.6.1 above, the Canadian government appears to be on its way to making the same errors as the Nigerian government.

¹³¹⁵ Jedrzej George Frynas, "Corporate Social Responsibility in the Oil and Gas Sector" (2009) 2 Journal of World Energy Law & Business 178

They must both recognise the critical role of host communities in shaping their own destinies.

Finally, the level of stakeholder involvement with host communities is a dependable and critical determinant of whether oil and gas corporations and host communities will cohabit peacefully. When firmly in place, this enables smooth operations and avoids destructive violent clashes, which have harmful and long-term implications - undermining the goal of attaining environmental sustainability.

Chapter 8: An Effective Multi-Stakeholder Strategy: Optimal Roles for Government, Corporations and Host Communities

In earlier chapters, three primary CSR stakeholders were identified: governments, companies, and host communities. Global experts agree that the contributions and feedback of these main stakeholders were used in selecting, organising, and developing the 17 SDGs. These goals are inextricably tied to the notion of environmental sustainability, as exemplified by goals 3, 6, 7, 13, 14, 15, and 17. To achieve environmental sustainability, organisations are increasingly making CSR an integral part of their entire company plans. The Nigerian PIA demands a portion of operational expenditure to be allocated to CSR initiatives. Endorsing firms and promoting CSR relationships and communication will encourage corporations to engage in more CSR activities, resulting in improved CSR engagement reports.

To this end, the chapter answers the primary question of the thesis by creating a framework for an effective multistakeholder strategy to encompass and emphasise CSR goals for environmental sustainability in Nigeria.

The multi-stakeholder strategy proposed in the research presents a unique set of stakeholders distinct to Nigeria's cultural setting. Firstly, it suggests the creation of a 'CSR Commission' with the sole responsibility of promoting CSR as the most effective stakeholder platform for the government. Secondly, it proposes that in all oil and gas companies, a CSR department with GRI specialists, a manager, and CSR coordinators should be created. Lastly, it argues that the PIA requires a separate guidance policy note to enhance the meaningful participation of host communities.

The study does not recommend implementing the framework as a piecemeal effort, but as part of a formal collaborative partnership in order to maximise its success.

9.4 Recommendations

This thesis has investigated CSR and the types of partnership under CSR, both voluntarily and mandatory, concerning, in particular, its role in achieving environmental sustainability in Nigeria. It is imperative to emphasise that the purpose of this thesis is not to obliterate the existing legislation, policies or strategies currently in place. This thesis provides clear suggestions as an alternative strategy to improve the existing CSR framework towards the goals of environmental sustainability.

The results of this research have identified certain key issues with CSR activities in a developing nation such as Nigeria. All the stakeholders in the oil industry have a role to play. Thus, it is impossible to place all the responsibility on one stakeholder. Consequently, the recommendations are divided between the governing body, the oil industry, and the host communities.

9.4.1 Recommendation for a multi-stakeholder synergy for environmental sustainability

The thesis has identified that one of the factors that undermine CSR and environmental sustainability, is a lack of trust on the side of the host communities. They feel left out of important decisions. The oil and gas companies argue that the host communities are to be blamed for significant mishaps in their communities. One way to bridge this is for intense collaboration between the core stakeholders identified in this research. Government, host communities and oil and gas companies must involve each other at every stage. The multi-stakeholder framework proposed in chapter 8 of this thesis expressly explains that for oil and gas companies to achieve their CSR mandate, they need to work closely with host communities and relate to them in a manner they can understand. They need to improve the level of communication, have a CSR coordinator under the CSR department that is charged with responding to host community inquiry, and facilitate host community outreach programmes to mention but a few.

In planning or executing any initiatives for host communities, the host communities themselves should be significantly represented at all levels. This was

highlighted in the level of engagement in the PIA, where host communities' involvement in executive positions remains unclear.

9.4.2 Recommendation for Host Communities' Empowerment

Community members must be able to grasp and apply complicated risk and hazard information to mitigate catastrophe consequences.¹³¹⁶ The knowledge of the community should be the foundation of any local involvement. Without the help of people at all levels, technological advancements would remain only aspirational.

The UNEP feedback report for Ogoniland in Nigeria, referenced in several places in this thesis, identified that the host communities are generally unaware of the implications of initiatives set up by oil and gas companies. It is important that apart from the scholarships and funding for host communities, the residential indigenes of these communities should be educated using pictures and simple language to help them understand the concept of environmental sustainability. This training must be recurring (maybe once or twice a month) and pitched at a level that a layperson picked off the streets could answer questions about the impact of oil and gas activities in their immediate environment.

Other ways to empower host communities have been linked to providing gadgets that help host communities assess the level of contamination in their water, soil and air. This way, they can be actively involved and reduce contamination. However, the UNEP feedback report identified a limitation to empowering host communities,¹³¹⁷ where they knowingly drank from a contaminated source. There was a 'do not drink sign' near the source. When asked why they ignored the sign, they said they had no alternative. Occurrences like these undermine the possibility of empowering host communities with technological advancement. Government and oil companies must ensure that haphazard CSR projects are not implemented through their recommended representatives. Empowerment must be aimed at training and providing for the host communities through the proposed CSR Commission.

¹³¹⁶ Ibid

¹³¹⁷ Ibid

9.4.3 Recommendations for CSR Department within Corporations

Corporations in Nigeria and other parts of the world have CSR departments linked to human resources, administration, business development or public relations departments. Sometimes it is a separate unit reporting directly to top management. Nigeria and developing countries must prioritise CSR in their companies, especially in the extractive sectors. A CSR department with a budget, long and short-term goals and objectives, demonstrates the company's desire to promote and participate in CSR.

The Role of CSR is broad and needs specialisation. CSR actions that need specialisation include environmental sustainability strategy, which is ever-evolving. The CSR managers in the department can work with the government to learn best practices, access funding and gain endorsement to carry out initiatives such as; recycling, waste management, water management, and renewable energy etc.¹³¹⁸

Staff representing the firm in the community need specific training and a skill set which is more suitable than the training received from human resources and administrative duties. These trainings have been identified to include the GRI certification programmes that help the department understand what would constitutes good CSR report and how to produce it.

9.4.4 Recommendation for Cultural Change within Host Communities

For host communities to be resilient, a cultural change is needed. If they continue to engage in the manner in which they have expressed themselves and interacted with the government and oil and gas companies, they are likely to lose out on all the benefit that is due to them. The PIA 2021 makes it clear that if host communities damage oil and gas infrastructures or conduct themselves in a manner that disrupts oil and gas operations, they will lose out on their community development funds. Empirical research undertaken has linked a general lack of

¹³¹⁸ "Top Sustainability Consultants Revealed" (*Environmental Leader RSS* January 14, 2013) <https://web.archive.org/web/20131006160850/http://www.environmentalleader.com/2013/01/14/microsoft-kpmg-ey-lead-sustainability-survey/> accessed July 6, 2022

awareness to the attitude of host communities.¹³¹⁹ Host communities must make a conscious effort to participate in the things that concern them.

Host Communities must maintain participation in the PIA Advisory Committees and Management Committees and follow the procedures for raising and voicing issues in these forums. A reorientation is required, especially for the young, so they do not resort to violence. In contrast to the 'get rich fast' mindset, residential indigenes must understand that education is critical in their growth process, in accessing available funds and attaining jobs of high calibre within oil and gas firms.

9.5 Conclusion

The thesis set out to answer the core question of how we can promote the goals for environmental sustainability through a multistakeholder strategy in oil and gas-producing areas. To this end, the thesis analysed the core concept of environmental sustainability, the role of corporations towards environmental sustainability, the role of global and regional governance and the role of host communities in environmental sustainability. In particular, it critically examined the Nigerian governance system and approach to environmental sustainability.

The findings show that CSR is relevant and that the government of Nigeria is making attempts to advance the goals for CSR. However, the PIA is still in its early stages and cannot be open to excessive interpretation. The thesis has only analysed and evaluated the legislation conceptually, based on the history, culture and trend with similar legislations.

The thesis largely agrees with existing research in CSR and environmental sustainability literature and with the conclusion that an enhanced form of collaboration and partnership is needed to improve CSR's ever-evolving role in meeting environmental sustainability challenges.

The thesis adds to the body of knowledge in CSR in developing countries by identifying the gaps in current strategies and also by proposing a framework that

¹³¹⁹ Ibid Chapter 6 of the thesis

helps address the issues that if resolved, could lead the future of CSR in achieving environmental sustainability.

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Appendices

Appendix 1: List of Greenhouse Gases, Impacts and Governance

Source (Compiled by researcher)¹³²⁰

Air Emissions	Explained	Mode of release	Impact	Regulatory initiatives	Application to the research
Methane (CH ₄)	A major component of natural gas	Caused by gas released during the production and delivery of fossil fuels, mostly due to gas venting and leaks. ¹³²¹	Linked to climate change	<ul style="list-style-type: none"> ● Global Methane Initiative (GMI)¹³²² ● The Intergovernmental Panel on Climate Change (IPCC) 	<ul style="list-style-type: none"> ● GMI is a public-private partnership that enables Partner Countries to begin methane recovery and usage projects. ● Global emission statistics show that most countries have increased their emissions¹³²³

¹³²⁰ Compiled by researcher from various sources

¹³²¹ 'EIA - Greenhouse Gas Emissions - Methane Emissions' (*Eia.gov*, 2020) https://www.eia.gov/environment/emissions/ghg_report/ghg_methane.php accessed 10 April 2021.

¹³²² The Global Methane Initiative (GMI) is an international public-private collaboration aimed at lowering challenges to methane recovery and usage as a renewable energy source. GMI works to reduce methane emissions in three main industries: oil and gas, biogas, and coal mining see Global methane initiative, 'Global Methane Emissions And Mitigation Opportunities' (Global methane initiative 2020) <https://www.globalmethane.org/documents/gmi-mitigation-factsheet.pdf> accessed 10 April 2021.

¹³²³ 'EIA - Greenhouse Gas Emissions - Methane Emissions' (*Eia.gov*, 2018) https://www.eia.gov/environment/emissions/ghg_report/ghg_methane.php accessed 10 April 2021. In 2010, China enacted legislation forcing coal plants to either trap methane emissions or turn methane to CO₂. Methane pollution, on the other hand, rose by 50% between 2000 and 2015, according to a Nature Communications report released in January 2019 see Scot M Miller and others, 'China's Coal Mine Methane Regulations Have Not Curbed Growing Emissions' (2019) 10. Nature Communications <https://www.nature.com/articles/s41467-018-07891-7> accessed 10 April 2021. In March 2020, Exxon called for stronger controls, which included leak monitoring of release elimination, suppression, and methane emissions from industries. Conversely, the US Environmental Protection Agency overturned an earlier strengthening of methane pollution standards for the US oil and gas sector in August 2020 see Joseph Guzman, 'Exxon Calls For Tighter Regulations Of Methane' (*Thehill.com*, 2020) <https://thehill.com/changing-america/sustainability/energy/485670-exxon-calls-for-tighter-regulations-of-methane> accessed 10 April 2021.

Air Emissions	Explained	Mode of release	Impact	Regulatory initiatives	Application to the research
Carbon Dioxide (CO ₂)	It is a natural greenhouse gas, found in petroleum and natural gas. It is safe in small quantities but dangerous when it builds up in large quantities ¹³²⁴	Atmospheric release of CO ₂ is through the burning of fossil fuels, including gas flaring, refining, and particularly vehicle and engine use ¹³²⁵	Linked to climate change and global warming.	<ul style="list-style-type: none"> The Intergovernmental Panel on Climate Change United Nations Framework Convention on Climate Change (UNFCCC) 	After the 'Paris agreement' ¹³²⁶ within the UNFCCC, and a registered membership of almost all the countries in the world. ¹³²⁷ Both UNEP ¹³²⁸ and EPA ¹³²⁹ have recorded an increase in global warming. It can therefore be said that more participation at a national level is needed.
Particulate matter (PM)	It is a mixture of nitrogen dioxide, sulphur, and other substances dissolved in the air ¹³³⁰	mainly comes from but not limited to diesel and petroleum engines. ¹³³¹	Linked to climate change and affects the lungs ¹³³²	UNFCCC	
Sulphur dioxide (SO ₂)	It is a colourless gas from the oil and gas industry ¹³³³	It is released into the atmosphere through the burning of coal and oil ¹³³⁴	Linked to climate change and affects the lungs ¹³³⁵	UNFCCC	
Hydrocarbons (Volatile Organic Compounds) Black Carbon	occur in gasoline, coal, and natural gas	They are released through storage in the refinery, widespread usage, as well as the associated disposal process	Leukaemia and cancer have been attributed to long-term exposure.	There are only trace amounts of hydrocarbons in the atmosphere, testing is time- and resource-intensive. ¹³³⁶	

¹³²⁴ Airthings 'What Is Carbon Dioxide? How It Affects Your Health & Why You Should Measure | Air things' (*Airthings.com*) <https://www.airthings.com/en-gb/what-is-carbon-dioxide> accessed 10 April 2021.

¹³²⁵ 'Air Pollutants - Earthworks' (*Earthworks.org*, 2019)

https://www.earthworks.org/issues/air_contaminants/ accessed 10 April 2021.

¹³²⁶ Ibid

¹³²⁷ UNFCCC 'What Is the United Nations Framework Convention on Climate Change?' (*unfccc.int/*)

<https://unfccc.int/process-and-meetings/the-convention/what-is-the-united-nations-framework-convention-on-climate-change> accessed 11 April 2021.

¹³²⁸ UNEP, 'Emissions Gap Report 2019' (UNEP 2021) page XIII

<https://wedocs.unep.org/bitstream/handle/20.500.11822/30797/EGR2019.pdf?sequence=1&isAllowed=y> accessed 11 April 2021.

¹³²⁹ US EPA 'Global Greenhouse Gas Emissions Data | US EPA' (*US EPA*, 2019)

<https://www.epa.gov/ghgemissions/global-greenhouse-gas-emissions-data> accessed 11 April 2021.

¹³³⁰ BLF 'Types of Air Pollution - British Lung Foundation' (*blf.org.uk*)

<https://www.blf.org.uk/support-for-you/air-pollution/types> accessed 11 April 2021.

¹³³¹ Ibid

¹³³² Ibid

¹³³³ Ibid

¹³³⁴ Ibid

¹³³⁵ Ibid

¹³³⁶ 'Hydrocarbons Pollutants - Air Quality' (*Reigate-banstead.gov.uk*) https://www.reigate-banstead.gov.uk/info/20333/air_quality/570/pollutants -

Air Emissions	Explained	Mode of release	Impact	Regulatory initiatives	Application to the research
		and unintended spills.		Resulting, in only a few countries attempting to reduce the impact at the state level ¹³³⁷	

Appendix 2: CSR-Related Government Commissions in Nigeria

Source (compiled by researcher)¹³³⁸

Regulatory Commission	Function	CSR for environmental sustainability Deficit
Nigeria Upstream Regulatory Commission	Technical and commercial regulation of upstream petroleum	CSR reporting
National Oil Spill Detection and Response Agency (NOSDRA)	General Environmental remediation	Not Multistakeholder compliant
Nigeria nuclear regulatory authority (NNRA)	Regulate radiative and radioactive exploration in the environment	Not Multistakeholder compliant
Nigerian Content Development & Monitoring Board (NCDMB)	Framework for promoting the participation of Nigerians	Not for environmental sustainability
Nigeria Extractive Industries Transparency Initiatives (NEITI)	Transparency and accountability by imposing reporting and disclosure obligations on all oil and gas	Not host community-focused
National Environmental Standards and Regulations Enforcement Agency (NESREA)	An environmental regulator and environmental operator	Not Multistakeholder compliant

[air_quality/2#:~:text=The%20term%20'hydrocarbons'%20is%20often,\(VOCs\)%20are%20a%20subgroup.&text=In%20addition%2C%20certain%20VOCs%20are,from%20vehicle%20exhausts%2C%20and%20benzene.](#) accessed 11 April 2021.

¹³³⁷ At the point of this report based on the observation and study of 8 EU member states, there were no clear policies and a few countries had some draft in process of being passed into law see Milieu Ltd –Law & Policy Consulting under Service Contract with DG Environment, 'Regulatory Provisions Governing Key Aspects Of Unconventional Gas Extraction In Selected Member States 070307/2012/630593/SER/ENV.F1' (2012) page 7

<https://ec.europa.eu/environment/integration/energy/pdf/Final%20Report%2024072013.pdf> accessed 11 April 2021.

¹³³⁸ Compiled by researcher from various sources