SOCIAL ECONOMIC IMPERATIVES OF CORPORATE ENTITIES IN NIGERIA*

Abstract

The age long recognition by the law of the concept of Corporate Entity as an artificial person is no longer in doubt. What has emerged over time is how the law has defined the concept to serve specific purposes, business and non-business alike. This paper examined the concept on propriety or otherwise for entities to undertake such social ventures and their being equipped to play such role. This paper examined the meaning, etymology, features, types, social rationale, and legal framework on ground for them to deliver on social services. The findings from all perspectives shows that corporate entities have all the potentials, legal and social to carry out social economic responsibilities in Nigeria, voluntarily and legally.

---

* O. Ayuba GIWA, LL.M., Ph.D, Senior Lecturer, Faculty of Law, Delta State University, Oleh Campus, Delta State & Godwin Luke Umoru, LL.M., Ph.D, Law Lecturer, Institute of Public Administration & Extension Services, University of Benin, Benin City.

Introduction

In recent years corporate entities have been asked to play key roles in addressing issues that appear to go beyond their primary objectives, for instance corporate entities are increasingly being pressured to tackle issues like poverty, human rights, and climate change.[1] The legal propriety or otherwise for corporate entities to undertake such social ventures and their being equipped to play such a role is some how in doubt. This paper therefore examines, the meaning, etymology, features, types and legal framework on ground for them to deliver on social services; such legal analysis has the potential of bringing valuable insights to both policy and business management. Failure to take these corporate societal expectations into account may substantially weaken the chances of making meaningful progress in bridging the gap between the responsibilities of government and corporate entities.

Meaning of Corporate Entity

Etymologically, the concept of corporate entity can be defined as a non-human entity regarded by law to have the status of a natural person.[2] It is thus a legal structure authorized by the State law that allows a business to organize itself as a separate legal entity from its owners.[3] Girvin, S. et.al[4] in their definition states that a corporation is one incorporated by registration under the Companies Act, regarded in law as a person, just as human being is a person.

From the Common law perspective, there are two types of persons which the law recognized and these are the natural and artificial person. While the former is confined merely for human beings, the latter is generally referred to any being other than human which the law recognized as having rights and duties. One of the most recognized artificial persons happens to be the corporation, which legal scholars, particularly jurists, have all subscribed to as a legal person. Emiola[5] is of the opinion that corporations are derived broadly from two sources - recognition by the community and creation by the law of the state or community. While the first emerged from custom and common law, the second is by a conscious legislation. Also, the term "person" in connection with corporations performs different functions from those in connection with human beings.

---

[1] United NATIONS, 2006.
[2] See for instance section 38 of CAMA
[3] B.A.Garner (ed.), Black's Law Dictionary, 9th Edition, St. Paul, Minnesota: West Publishing Company, Minnesota, 2009, p.391.
[4] S.Girvin, et.al., Charlesworth's Company Law, 18th Edition, Sweet & Maxwell, London, 2010, p.3
[5] A.Emiola, Corporation Law, Emiola Pub. Ogbomoso, 2005,p.

Literally, corporations means an association of individuals, created by law or under authority of law, having a continuous existence, independent of the existence of its members with powers and liabilities distinct from those of its members.[6] A natural person consists of himself, but an artificial person or a legal person consists of its members who include natural and even artificial persons with common objectives and perpetual succession. Hornby, et al.[7] defined corporation as a "group of persons authorized to act as an individual (for example for business)". Black[8] refers to a 'corporation' as "an artificial or legal entity created by or under the authority of the law of a State." According to Sir Edward Coke in *Sutton Hospital's case*[9]

"... a Corporation aggregate of many is invisible, immortal, & resteth only in intendment and consideration of the Law; and therefore cannot have predecessor nor successor. They may not commit treason, nor be outlawed, nor excommunicate, for they have no souls, neither can they appear in person, but by Attorney. A Corporation aggregate of many cannot do fealty, for an invisible body cannot be in person, nor can swear, it is not subject to imbecilities, or death of the natural, body, and divers other cases."

This is why under the principle of corporate personality, a corporation is an artificial legal person. In like manner, Lord Thurlow, L.C., famously said that "corporation have neither bodies to be punished, nor souls to be condemned: they therefore, do as they like."[10] A corporation is also defined as a legal concept, a creation of law and "an artificial person or legal entity created by and under the authority of the law of State. It is an association of persons created by statutes as a legal entity."[11] Once registered, the company exists as a body corporate, distinct from its members. In the case of Continental Tyre & Rubber Co (Great Britain Ltd) v. Daimler Co. Ltd,[12] the leading company law judge of that time, Buckley L.J., stated:

"The artificial legal person called the corporation has no physical existence. It exists only in contemplation of the law. It has neither body, parts, nor

---

[6] D.T. Folorunsho, The Nigerian Company Law: The Criminal Liability of Bodies Corporate in Nigeria, Enugu Chenslo Pub. Enugu, 2005, p.21

[7] Hornby, et.al. Advanced Learner's Dictionary of Current English, 2nd Ed. p.216

[8] Black's Law Dictionary, 9th ed. 2012, p.1028

[9] (1612) 77 Eng. Rep.960

[10] Edward, the First Baron Thurlow, English Jurist and Lord Chancellor (1731-1803). Cited in Anita Ramasastry "Corporate Complicity: From Nuremberg to Ragoon: An Examination of Forced Labour Cases and their Impact on the Liability of Multinational Corporation, (2002) 20, Berkeley Journal of International Law 91,p.91

[11] Garner, ibid

[12] [1915] 1KB 813, CA, at p.916 per Kuckley L.J.

passions. It cannot wear weapons nor serve in the wars. It can be neither loyal nor disloyal. It cannot compass treason. It can be neither friend nor enemy. Apart from its corporators it can have neither thoughts, wishes, nor intentions, for it has no mind other than the minds of the corporators."

Also instructive is the definition of Hart[13] to the effect that "a corporation is a metaphysical entity, without a counterpart in the world of facts." In essence, a corporation cannot be seen with the naked eyes but only with the eyes of the law. It is not a question of being microscopic but cannot be located in concrete terms. Thus, corporations are now generally assumed too to qualify to have similar rights and benefits on the one hand and should shoulder duties, responsibilities and liabilities on the other hand as a natural person. However, a few rights are also attached to corporations by constitutional and statutory law, but they are few and far between compared to the rights of a natural person.[14] Certainly, a corporate entity shares many things in common with a natural person. Under the Interpretation Act[15] a "person" includes anybody of persons corporate or incorporate. But a juridical personality is not equivalent to a juristic personality. Juridical personality is acquired when the law accepts and recognizes the existence of unincorporated association.

One of the key legal features of a corporation is its legal personality and others are limited liability, transferable shares and centralized management under a board. Generally, corporate status typically empowers corporations to sue and be sued, own property, enter into contract, sign binding contracts, pay taxes in a capacity separate from that of its shares and even procreated through the process of one can term "subsidiarisation."[16] Corporations are conceptually immortal but they can "die" when they are "dissolved"[17] either by statutory operation, or by order of Court, or voluntary action on the part of the shareholders. Insolvency may result in a form of corporate 'death' when creditors force the liquidation and dissolution of the corporation by court order.[18] In some jurisdictions, corporation can even be convicted of criminal offences, such as fraud and manslaughter.[19]

---

[13] Hart, H.L.A., 'Definition and Theory in Jurisprudence', 70 Law Quarterly Review, 37, 1954,

[14] See for example, Chapter Four of the 1999 Constitution of the Federal Republic of Nigeria (As amended) on Fundamental Rights of Nigerian Citizens.

[15] Cap 192 Laws of the Federation of Nigeria, 2004

[16] Umoru, G.L., "Legal Perspective of Corporate Citizenship & Responsibility in Nigeria, a Ph.D. Dissertation, Ambrose Alli University, Ekpoma, June, 2014.

[17] Under Nigerian Law, the word used is "winding up" as expressed in sections 401-536 of the Companies and Allied Matters Act, Cap C20, Laws of the Federation of Nigeria, 2004 (hereinafter referred to as "CAMA").

[18] See for example the Business Corporations Act (B.C.)(SBC 2002), Chapter 57, part 10. See also section 401 of CAMA.

[19] Corporate Manslaughter and Corporate Homicide Act 2007.

It is premised on the above that Davies[20] had to state that the concept of corporate personality was inter-alia introduced to cater for circumstances that tends to accumulate all the debts and liabilities upon an individual. The doctrine therefore act as a shield and helmet to such individual(s) who owns all or substantial amount of shares of a company.

It must be recognized that whilst a corporate entity can be likened to a natural person, in reality, they do not always share the same characteristics. In fact, the natural person propels and serves as helping hand to the artificial corporate entity. This assertion received an affirmation of the Nigerian judiciary when Aniagolu, J.S.C. in Trenco Nigeria Company Ltd v African Real Estates Ltd[21] quoted Lord Haldane thus:

> My Lords, a corporation is an abstraction, it has no mind of its own, its active and directing will must consequently be sought in the person of somebody who for some purposes may be called an agent, but who is really directing mind and will of the corporation, the very ego and centre of the personality.

This in effect means that it has no mind of its own any more than it has a body of its own; its active and directing will must consequently be sought in the person of somebody who for some purpose may be called an agent or its officers.

However, viewed from a different dimension, Denning L.J. enunciated in Bolton (Engineering) Co. Ltd v Graham & Sons[22]

> "A company may in many ways be likened to human body. It has a brain and nerve center, which controls what it does. It also has hands, which holds the tools and act in accordance with the direction from the center. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company and control what it does ..."

---

[20] Davies, Ibid, p.37.
[21] (1978) 1 L.R.N., p.153.
[22] [1934] K.B.57

In late 18th century, Stewart Kyd defined a corporation thus:

> "a collection of many individuals united into one body, under a special denomination, having perpetual succession under an artificial form, and vested, by the policy of the law, with the capacity of acting, in several respect as an individual, particularly of taking and granting property, of contracting obligations, and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights, more or less extensive, according to the design of its institution, or the powers conferred upon it. Either at the time of its creation, or at any subsequent period of its existence"[23]

Theoretical Rationalisation of Corporate Entity

There are divergent theoretical rationalizations of the legal idea of corporate entity. None of them is said to be dominant. While each theory contains elements of truth, none can by itself sufficiently interpret the phenomenon of juristic person. Nonetheless, there are five principal theories that are used to explain corporate personality, namely, the fiction theory, realist theory, the purpose theory, the symbolist or bracket theory and the concession theory. Others emerging are, Contract theory, Institutional theory, Enterprise Theory and the Entity theory.[24]

From the jurisprudential theories of corporate personality, the main arguments lie between the fiction and realist theories. The fiction theory claimed that the entity of corporation as a legal person is merely fictitious and only exist with the intendment of the law. On the other hand, from the realist point of view, the entity of the corporation as a legal person is not artificial or fictitious but real and natural. The realist also contended that the law merely has the power to recognize a legal entity or refuse to recognize it but the law has no power to create an entity.

In most cases, the courts adopted the fiction theory as in Salomon v Salomon Co Ltd[25] being the locus classicus of corporations being legal personality. It is also observed that fiction theory provides the most acceptable reasoning in justifying the circumstances whereby court lifted

---

[23] A Treatise on the Law of Corporations, Stewart Kyd (1793-1794).
[24] DejiozeKa, J., "Corporate Entity", Book Manuscript, October, 8, 2007, p.6
[25] Supra

the corporate veil of corporation. If the entity of the corporation is real, then the court will not have the right to decide the circumstances where the separate legal entity of the corporation should be set aside. No human being has the right to decide circumstances under which entity of another human being should be set aside; only the law has such a privilege. Nonetheless, the realist's contention that the corporation obtained its entity as a legal person not because the law granted it to them but because it is generated through its day to day transactions which were later accepted and recognized by the law also seem acceptable.

This position perhaps is influenced by the postulations of the fictional theory of corporate personality as opposed to others. This theory believes that only human being may properly be called a person and regards the legal personalities of other than human beings comprising it, as fiction. It can however be argued that as an "artificial person" corporation has no life that is capable of being taken even though it has been stated that a corporation can be subject to an artificial death by winding up in line with the provision of Company Act of the appropriate jurisdiction and in the case of Nigeria, section 401 of the Companies and Allied Matters Act.[26]

It is submitted that the legal phrase "piercing the corporate veil" which is a colourful way to describe a judicial decision to treat a corporation as a fiction and make human individuals responsible for some wrong doing, seem to suggest that no corporation is really an entity to begin with. The suggestion is that when we pierce the veil, we find nothing but the fiction and corporation fiction is the reality. But again, if corporations really are entities, then even when it is legally appropriate to treat them as fiction, they nonetheless remain ontologically entities; yet legal fictions need not be ontological fictions.[27]

One of the conclusions one can draw from the above theories is that majority of the theories, including the emerging ones like corporate/company theories; contract theory; institutional theory and enterprise theory, contended that the legal entity of the corporation is artificial. For example, the fiction, concession, symbolist and purpose theories supported the contention that the existence of corporation as a legal person is not real. It only exists because the law of the State recognized it as legal person and it is recognized either for certain purpose or objectives. Such purpose or objective includes carrying out businesses in its name,

---

[26] CAP.C20 LFN, 2004.

[27] D.T. Folorunsho, Nigerian Corporate Law: The Criminal Liability of Bodies Corporate in Nigerian Law, Enugu Chenslo Ltd., Nigeria, 2005 p. 21.

owes it assets and bears its liabilities and not those of its members.[28] It can sue and be sued. This separation of the corporation and its members, which is sometimes, referred to by the phrase "the veil of corporation" means that the members are not liable for the company's debts.

Features of Corporate Entity

The first kinds of corporations were those of the ecclesiastical and lay corporations and they came into existence in the thirteenth century. The legal status of a corporate entity is activated from the date and time the incorporation of a company is registered as stated in its registered certificate. The first attribute is that the company becomes a legal personality and juristic person with all the rights and obligations of a natural human being except to the extent that an artificial person is incapable of exercising any of such powers. This is in line with section 37 of CAMA which provides thus:

> "As from the date of incorporation mentioned, in the certificate of incorporation, the subscribers of the memorandum together with such other persons as may, from time to time, become members of the company shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the powers and functions of an incorporated company including the power to hold land, and having perpetual succession and a common seal, but with such liability on the part of members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act."

The above is obviously not in complete consonance with the views expressed by Lord McNaughten in Salomon v Salomon & Co Ltd to wit:

> "The company is at law a different person altogether from the subscribers ... and though it may be that after incorporation the business is precisely the same as it was before, and the same person managers, and the same hands receive the profits, the company is not the agent of the subscribers or trustee for them. Nor are the

[28] Ferguson v Wilson (1866) L.R. 2 Ch. App 77, at 89

> subscribers, as members, liable in any shape or form, except to the extent and in the manner provided by the Act."

By virtue of being a legal personality, it can sue and be sued. The company as a legal person can take action to enforce its legal rights and can be sued for breach of its legal duties. Being distinct persons, they can exercise human rights against real individuals and the State and they themselves be responsible for human rights violation. According to Gower, the concept of corporate personality was inter-alia introduced to cater for circumstances which tend to accumulate all the debts and liabilities upon an individual. The doctrine therefore, acts as a shield and helmet to such individual(s) who owns all or substantial amount of shares of a company. Along this line of thought is that by Denning L.J. in Bolton (Engineering) Co. Ltd. v. Graham and Sons to wit:

> "A company may in many ways be likened to a human body. It has a brain and a nerve center, which controls what it does. It also has hands, which holds the tools and act in accordance with the direction from the center. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the Company and Control what it does..."

Another attribute of an incorporated company is that it has perpetual succession. Accordingly, going by Shakespearian's Hamlet one of the obvious advantages of an artificial person is that it is not susceptible to "the thousand natural shocks that flesh is heir to". It cannot become incapacitated by illness, mental or physical, and it has not (or need not have) an allotted span of life. This is not to say that the death or incapacity of its human members may not cause the company some considerable embarrassment; obviously it will if all the directors unfortunately died or are imprisoned or if there are too few surviving members to hold a valid meeting, or if the bulk of the members or directly become enemy aliens. But as Greer L.J. once said in Stepney Corporation v Osofsky[29] the vicissitudes of the flesh have no direct effect on the disembodied company. The death of a member leaves the company unmoved as members may come and go but the company can go on forever, except when it is wound up.

---

[29] (1896) 40 N.Y. Suppl.78(N.Y.S.C.) at 720

Where the company is a public corporation, its shares are transferable; this in effect means that with an incorporated company, freedom to transfer members' interests, both legally and practically can be readily attained. The company can be incorporated with its liability limited by shares and these shares constitute items of property which are freely transferable in the absence of express provision to the contrary and in such a way that the transferor drops out and the transferee steps into his shoes. Contrasting this with partnership, a partner has a proprietary interest which he can assign, but the assignment does not operate to divest him of his status or liability as a partner, as it merely affords the assignee the right to receive whatever the firm distributes in respect of the assigning partner's share.

Fourthly, one main fundamental feature of company law is that upon incorporation, a company is provided with a structure which allows for the separation of risk investment via the purchase of shares, in which many persons may participate in the management of the company, which is delegated to a smaller and expert group of people who partly constitute, and who are partly supervised by a board of directors. The separation of what is conventionally, but controversially termed "ownership" of the company (shareholding) from its "control" (management) is a feature of large corporations. They both share powers and this is provided for under section 63 of CAMA which divides powers between general meeting and board of directors. It stipulates that a company shall act through its members (shareholders) in general meeting or its board of directors through officers or agents appointed by or under authority derived from the members (shareholders) in general meeting or the board of directors. By virtue of section 64 of CAMA the Board of directors may: (a) exercise their powers through committees consisting of such members of the body as they think fit, or (b) from time to time appoint one or more of their body to the office of managing director and may delegate all or any of their powers to such managing director.

The above are hardly applicable to small business as it would constitute hindrance rather than a help; yet it is an important element in the efficient functioning of large companies. The legal implications of the above development were first explored in the United States by A.A. Berle and G.C. Means[30] who drew attention to the revolutionary change thus brought about in our traditional conception of the nature of property. In the context of their view point today, the great bulk of large enterprises at least in the

[30] A.A. Berle, & Means, G.C., The Modern Corporation and Private Property, Macmillan, New York, 1932.

United States, United Kingdom and even here in Nigeria, are in the hands not of individual entrepreneurs but of large public companies in which many individuals have property rights as shareholders and to the capital of which they have directly or indirectly contributed. According to Badaki ... However, whether this property brings profit to its "owners" no longer depends on their energy and initiative but on that of the management from which they are divorced and this is why when it becomes necessary, the court may unveil the cloak of incorporation in the circumstances discussed herein.

Another important feature of a company as a legal personality is its ability to source funds by means of loans for its business operation. At first sight, one would imagine that it would be easier for a sole trader or partnership than a limited liability company to secure loans since they can be personally held liable in the event of default in repayments. Indeed, the contrary is the case since a company is often able to grant a more effective charge to secure a loan. The ingenuity of equity practitioners, led to the evolution of an unusual but highly beneficial type of security known as the floating charge, that is a charge which floats like a cloud over the whole assets of the company from time to time falling within a generic description, but without preventing the mortgagor (the company) from disposing of those assets in the usual course of business until something occurs to cause the charge to become crystallized or fixed. This type of charge is particularly suitable when a business has no fixed assets, such as land or building, which can be included in a normal mortgage, but carries large and valuable stock-in-trade. The advantage of a holding charge also is that before any resolution is passed for voluntary winding up, the company must give notice of the resolution to the holder of a qualifying floating charge. This is to allow the holder of such a charge to appoint an administrator if he sees fit.

Also, corporate legal statutes typically empower corporations to sue and be sued; own property, enter into contract, have bank account in its own name; pay taxes in a capacity separate from that of its shareholders and even procreate (even though cannot marry) but through the process that can be termed 'subsidiarisation.'[31] A corporation can also insure itself against debt which can lead to insolvency just as natural persons can take up life insurance policy against any form of incapacitation or death.

[31] Umoru, G.L., ibid.

Corporations are conceptually immortal but they can "die" when they are "dissolved" either by statutory operation, order of court, or voluntary action on the part of the shareholders. For instance, when the period if any, fixed for its duration by the articles expires, or the event, if any, occurs, on the occurrence of which the articles provide that it is to be dissolved, and the company in general meeting passes a resolution (an ordinary resolution) to be wound up voluntarily. Insolvency may result in a form of corporate 'death' when creditors force the liquidation and dissolution of the corporation by court order. Corporation can also be convicted of criminal offences, such as fraud and manslaughter.

In general, the law will not go behind the separate personality of the company to the members. However, there are cases when the courts permits the corporate veil to be lifted or pierced and the law disregards the corporate entity and pays regard instead to economic realities behind the legal façade and this is the limit of legal status of a corporation.

Historical Background on the Concept of Corporate Entity

In the common law tradition, only a person could sue or be sued. This was not a problem in the era before the Industrial Revolution, when the typical business venture was either a sole proprietorship or partnership - the owners were simply liable for the debts of the business. Also, one of the features of a corporation however, is that the owners/shareholders enjoyed limited liability. The owners were not liable for the debts of the company. Thus, when a corporation breached a contract or a law, there was no remedy, because limited liability protected the owners and the corporation was not a legal person subject to the law and hence there was no accountability for corporate wrong-doing. This is more so because it was thought to be a mere concepts than a tangible thing. This may have influenced Karibe-Whyte, JSC when he defined "a corporation as an intangible being, existing only in the contemplation of the law."[32]

In order to resolve the issue posed by the Common law tradition, the legal personality of a corporation was established to include five legal rights - the right to a common treasury or chest (including the right to own property), the right to a corporate seal (i.e. the right to make and sign contracts), the right to sue and be sued (to enforce contracts), the right to hire agents (employees) and the right to make bye-laws (self-governance).[33] This is perhaps why Dias[34] had to credit John Maitland[35]

---

[32] Gani Fawehinmi v Nigerian Bar Association(No.2) (1989) 2 NWLR (Pt.105) 588, 633.

[33] Creation and History of the doctrine of legal Personality - http://en.wikipedia.org. Retrieved 20/8/2011).

[34] Dias, R.W.M., Jurisprudence 2nd Ed. (Butterworths, 1964) at p.280.

that corporation originated in response to the problem of conveyance of a piece of land vested in a parson in his official capacity for the benefit of the Church. In order to give effect to the transfer, the concept of corporate office was devised and recognized by the Common law.

History of Corporate Entity in Nigeria

In the common tradition, only a person could sue or be sued. This was not a problem in the era before the Industrial Revolution, when the typical business venture was either sole proprietorship or partnership - the owners were simply liable for the debts of the business. Regrettably based on the account of Orojo[36] on the history of Corporate personality in Nigeria which he traced back to the Joint Stock Company Act of 1855 that introduced the principle of limited liability companies as well as the role of Deed of Settlement as practised in the United Kingdom at the time. To stem the practice of going to England to settle contentious commercial disputes, the Companies Ordinance of 1912 was enacted but was only in force in the Colony of Lagos. However, with the amalgamation of the Southern and Northern Protectorates of Nigeria in 1914, the Companies Ordinance was amended in 1917 to cover the whole country (Companies Amendment and Extension Act of 1917). Both Acts were then repealed and replaced in 1922 by the Companies Act of 1922. The 1968 Companies Act repealed the 1922 Act and the 1968 Companies act was repealed by the Companies and Allied Matters Act (CAMA) which now regulates companies in Nigeria. The Company Act of 1968 is basically based on the United Kingdom Companies act, 1948 following the recommendation of the Jenkins Committee.[37] The Act which is a Federal law was first provided for under the Exclusive Legislative List of the 1979 constitution and remains so under the 1999 constitution (As Amended). Consequent upon some observed defects in the 1968 Companies Act, the Law Reform Commission was constituted in 1987 under the Chairmanship of his Lordship Hon. Justice Dr. Olakunle Orojo (Rtd) who with his colleagues on the Commission ushered in CAMA.

The Nigerian judiciary has at various times upheld the doctrine of corporate personality in relation to corporate administration structure, governance and control. For instance, in *Marina Nominees Ltd v Federal Board of Inland Review*[38] Aniagolu JSC stated thus: '... the truth however

[35] Maitland, "The Corporate Sole" in Collected Papers III at p.200.
[36] Orojo, C., Company Law and Practice in Nigeria, 3rd Edition, Mbeyi & Associates, Nigeria, 1992, at 17.
[37] Formed in Nov. 1959 to review and report upon the provisions and workings of the Companies Act 1948, Prevention of Fraud (Investment) Act, 1958 and Registration of Business Names Act, 1916.
[38] (1986) 2 NWLR (PT.20) at 61.

is that it is a company registered under the Companies Act having its full legal status on the principles enunciated in Salomon v Salomon and Co Ltd and must be subject to all incidents of incorporation.'

In another decided case of Habib Nigeria Bank Ltd v Ochete[39] it was stated that as from the moment of incorporation, the company metamorphosis into a different status of a distinct personality different from the plaintiff's wife as well as others behind it; this is precisely the effect of section 37 of CAMA. Also in ACB v. Emostrade Ltd[40] the Supreme Court also held that: 'what was needed to be proved as to the juristic personality of the plaintiff was whether there was evidence that it was only incorporated.' The implication of the above is that upon the production of the certificate of incorporation, the company is automatically clothed with corporate personality cloak.

Viewed from another direction, under the protection of minority rights, the doctrine further states that only a company can bring an action for any wrong done against it since it has its own name by virtue of its incorporation.[41]

The significance of the historical perspective of the concept of corporate entity is to establish the evolution of the concept of the artificial entity and show the legal dynamics that have culminated in the legal status being enjoyed by corporate entities irrespective of types today and the wider social economic dimension and implications or imperatives.

Types of Corporate Entity

From time immemorial, it was found necessary to continue the official capacity of an individual beyond his lifetime, or tenure of office. The common law lawyers accordingly had to create a second 'person' who, though not passing under the same name as the flesh and blood individual, enjoyed legal existence in perpetuity. This was what is known as corporation sole, and it is a personification of official capacity.

However, there are many types of corporations[42] and are classified in various ways, and the type of corporations under discussion is what

---

[39] (2001) FWLR (PT 54) 384

[40] (2002) FWLR (Pt 104)540

[41] Ramachand v Ekpeyhong(1975) 5 S.C.29

[42] The Law classifies a corporation either as a Corporate Sole (one person) or as a corporation aggregate (any other number). Corporation Sole is where one human being constitutes the corporation and has dual personality, one corporate and the other human or natural. Some traditional stools and the office of the Bishop etc are some of the examples in Nigeria. Corporation aggregate on the other hand is where the corporation consists of more than one person constituted into a single body. Business corporations under CAMA, registered association, political parties are some of the examples in Nigeria.

could be called 'business or trading corporate aggregate' which is a variant of corporate aggregate formed by interested investors by complying with the statutory provisions of the State like in the case of UK, the Company's Act of 2006 and in Nigeria, CAMA 2004 to cite just a few. The justification to focus on the business or trading corporation aggregate variant, stem from the theme of this paper which is aimed at the exposition of its capacity and suitability to discharge social services, so as to also help contribute positively towards cultural, social and economic development of not only their areas of operations but to the general development and well-being of the nation. This is especially so as nations are now finding it difficult to meet their social obligations in the midst of enormous wealth of corporations operating in their environment with their consequent negative effects occasioned by their operations.

Business entities corporations take variety of forms, according to their ownership and/or control or by reference to the duties or purposes for which they are created or promoted. These are public and private, ecclesiastical and lay domestic and foreign, public service and commercial, national and multinational.

Various theories on the legal personality of a corporation are in agreement that corporations are a grant and indeed, can only be granted by the State. What is perhaps unresolved, is that in spite of the various theories advanced, none has explained how the State itself acquired its legal personality and this brings us to the imperativeness of the classification of corporations into common law and statutory corporations.

According to Emiola, the legal personality of the State, the Crown, the Stool and Ecclesiastical Corporation, from time immemorial was recognized at the common law, having grown out of custom long before the idea of "grant" came up and the Crown began to confer corporation status by charter, or the Parliament by statute. This was through attributing to such inanimate objects the qualities of a natural person by Hoffman's rule of Attribution. Identifying with this line of thought, Badaki is of the opinion that:

"By this rule-based approach, it becomes advantageous to assimilate a corporation into the pre-existing framework of the law by pursuit of fiction and analogy with a natural person and overcome some of the problems which the law has sought to (solve) using either the agency or organic (alter ego) approach to organization."

An English jurist, also identified two categories of corporation at common law as corporation sole and corporation aggregate. By his assertions, corporation sole:

"Consists of one person only and his successors in some particular station, who are incorporated by law in order to give him some legal capacities and advantages particularly, which in their natural persons they could not have had. In this sense, the King is a sole corporation; so is a bishop, so are some deacons and prebendaries distinct from their several chapters; and so is every parson and vicar."

In effect, corporation sole is the continuous existence of an office and clothing the office with legal personality. Such office may grow by custom or simply recognized as such by law.

Corporation Aggregate on the other hand in the words of Blackstone, "consists of many persons united together into one society, and kept up by a perpetual succession of members, so as to continue forever." This account for Halsbury's definition of a corporation to include both body of persons (in the case of corporation aggregate and also "an office (in the case of corporation sole) which is recognized by the law as having a personality distinct from the separate personalities of the members of the body or the personality of the individual holder for the time being of the office in question." Along this line of thought is Pennington[43] who is also of the opinion that corporate sole existed by custom and at common law long before the Crown began to create other corporations by charter. For Salmond, corporation sole is the same as public office held in succession so as to constitute a single, permanent, and legal entity. Prof. MacGuigan[44] also categorized States among associations recognized by law as legal 'person.'

Business entities like corporations take variety of forms, according to their ownership and/or control or by reference to the duties or purposes for which they are created or promoted. These are public private, foreign, public service and commercial, national and multinational. These variants of corporate entities are commonly found in developing and developed states save Benefit Corporations found in the United States of America.

Benefit Corporation is a variant of Public Corporations that has emerged recently in some States in the US. It is an advocate of social economic

---

[43] Pennington, R.R., Pennington's Law, Butterworths, London, 1979.
[44] MacGuigan, M.R., Jurisprudence: Readings and Cases, University of Toronto Press, Toronto, 1966.

responsibilities of corporate entities. The social, economic, legal and political constraints inherent in compelling corporate entities to address social ills occasioned by their operations gave birth to this new type of corporations.

A Benefit corporation, or in short-hand a B corporation, is a class of corporation required by law to create general benefit for society as well as for shareholders. Benefit corporations are expected to create material positive impact on society, and to take into consideration how their decisions affect their employees, community, and the environment. Moreover, they are expected to publicly report on their social and environmental performances using established third-party standards.

The chartering of Benefit Corporations is an attempt to reclaim the original purpose for which corporations were chartered in early America. Then, states chartered corporations to achieve a specific public purpose, such as building of bridges or roads. Their legitimacy stemmed from their delegated charter, although they could still earn profits while fulfilling it.

Despite the classification of corporations, it is pertinent to note that over time, corporations came to be chartered without any public purpose, while being legally bound to the singular purpose of profit-maximisation for its shareholders. Advocates of Benefit Corporations just as those of social economic responsibilities of corporate entities are of the belief that undermining this singular focus has resulted in a variety of societal ills, including the thwarting of democracy, diminished social good, and negative environmental impacts. Since the passing of the legislation by Maryland in 2010, other states have followed such as Hawaii, Virginia, California, Vermont, and New Jersey. In addition as at November 2011, Benefit Corporation legislation had been introduced or partially passed in Colorado, New York, North Carolina, Pennsylvania and Michigan.

Benefit Corporation laws address concerns held by entrepreneurs who wish to raise growth capital but fear losing control of the social or environmental mission of their business. In addition, the laws provide companies the ability to consider factors other than the highest purchase offer at the time of sale in spite of the ruling on Revlon, Inc. v MacAndrews & Forbes Holdings, Inc.[45] Chartering as a Benefit Corporation also allows companies to distinguish themselves as businesses with a social

[45] (1986) 506 A.2nd 273

conscience, and as one that inspires to a standard they consider higher than mere profit-maximisation for shareholders.

Other types of corporations as above stated, are the ecclesiastical and lay corporations. They are both ancient and with religious inclinations. They are organized for spiritual purposes or for the purpose of administering properties of these religious bodies. Bishops, abbeys and monasteries and other religious leadership belong to this category. It follows therefore, those corporations which were formed for the maintenance or propagation of religion or for the support of public religious services of particular denominations, and incidentally, owing and administering real and personal property for religious uses are, therefore, called "religious corporations."

With regards to the lay corporations, going by the account of Emiola consists of laymen and exist for secular or business purposes. This is because in early times, only the ecclesiastics and private business operators were recognized as corporation. This classification or distinction was not recognized under the laws of the United State, presumably because the era of the two forms of corporations had been displaced by the emergence of corporations before America ever became a nation-state. It is important to state also that corporations formed for the maintenance or promotion of religion or for the support of public religious services of particular denominations and, incidentally, owning and administering real and personal property for religious uses are, therefore, called "religious corporations."

Rationale for Social Economic Responsibilities of Corporate Entity.

From above, the features of corporate entities are clear to wit: that the corporate entities are themselves artificial persons with rights and duties or obligations. They can exercise human rights against real individuals and the State and they themselves be responsible for human rights violation. They can sue and be sued, enter into contract, incur debts and have ownership over property. Generally, corporations do not have all the same rights as natural persons for example human rights or civil rights; this is why cannot hold political offices. However, in the United State,[46] Germany[47] and under the European Convention on Human Right,[48] corporate entities have all the rights of a natural person save voting right,

[46] Noble v. Union River Logging & Co., 147 US165(1893), accessed 2/3/2010 online http://lawsectionfindlaw.com/us/147/165.html.

[47] Article 9, par. 3 of the Basic of Germany declares that basic rights shall also apply to domestic and artificial persons and to the extent that the nature of such rights permit.

[48] "Legal Personality, accessed 2/3/2010 online http://en.wikipedia.org/wiki

political appointments and marriage. In Australia, it was however held that an incorporated entity is not entitled to privilege (as enjoyed by individual citizens) commonly referred as privilege against self-incrimination.[49]

Contrary to the commonly held views that corporate entities are already performing sufficient responsibilities, this paper nevertheless contends that the approach to fill in the gap is for some corporate entities to undertake social economic responsibilities. In Nigeria for example, relatively few corporations construct roads, build hostels and schools, award scholarships, donate scientific equipment to schools, build ICT centres and sponsor sporting activities. Some writers as Omotola[50] and Olisa[51] have argued that some Multi-national corporations have made efforts at accelerating developments in communities of their operations, but such contributions can be likened to taking a cup of water from an ocean to wet a desert. Indeed, such contributions to society are in line with the thinking of Dodd,[52] who in his rejoinder to Berle's theory argued that business is permitted and encouraged by the law primarily because it is of service to the community rather than as a source of profits to its owners. He pointed out that we cannot look to the stakeholders who in many cases have not seen the premises of the corporations from which they derive their profits to exercise the responsibility of the corporation, rather, it is the manager who must recognise that growing feeling in the industry requires him to give to the employees of the firm a measure of economic security.[53]

A US Supreme Court in A.P. Smith Manufacturing Co v. Barlow[54] explained the rationale why in the 19th century public interest was not taken into consideration in the interpretation of the object clause of corporations. The erudite Judge pointed out that there has been a transfer of significant wealth to corporate hands, and with the imposition of heavy burdens of taxation on individuals, they have been unable to keep pace with increased philanthropic needs, thereby justifying recourse to corporations to assume the modern obligations of good citizenship in the same manner as humans do. Indeed, the survival of corporations is dependent upon

[49] Pretorius v Venture Stores Retails Ltd. (1992) ATPR, 141-166.
[50] Omotola, J.A.(ed), Law and Development, University of Lagos Press, Lagos, 1987, p.59.
[51] Olisa, M.M., "National Oil Coys - Quo Vadis?", NNPC Law Journal, (1981), p.87
[52] Dodd E.M. (Jnr), Corporate Social Responsibility, SAGE Publications, London, 2012,p.102.
[53] Dodd, A. "For Whom are Corporate Managers Trustees?" Harvard Law Review, Vol.114, (1932) p.76
[54] (1953) 13 N.J. 145,98 2d 581

ongoing community support from employees, customers, creditors, government regulators. Consequently, more and more people, including business leaders, believe that corporate entities do have social economic responsibility and must be held directly accountable for their actions by the society, both immediately, and in the long term. It has become more apparent that the accepted view of the role of corporate entity in a society is evolving and necessarily so. This is especially true of Nigerian banking industries, whose collapse has adversely affected not only the shareholders but also all the stakeholders including customers and workers of the collapsed banks. Even the US is not spared of the bankruptcy of multi-national companies such as Enron and Worldcom whose names have become commonplace in discussions of corporate fraud.

Corporate ethic and the role of business in society are now under public scrutiny perhaps more than ever before in modern history, particularly in the developing and developed nations of the world. Activities of civil society organizations in recent years have contributed to the pressure on corporate entities to be more responsive in giving back to the communities of their operation as well as the society. This is attributed to the fact that corporation must not only build their business philosophy on profit maximization, but also on the need to give back to the society at large. This in effect means that there should be no separation between business and society.

In addition, a wide range of stakeholders is now being protected by the law. For example, in section 279(4) of CAMA, company directors are to have regard to the interest of the employees in general as well as the interest of its members at large. This is much relaxing than the earlier position. Even at that, Emiola[55] aptly pointed out that the requirement "having regard" is a far cry from imposing a duty on the director beyond merely "giving consideration" to the interest of the employees. By virtue of section 279(4), the position has not altered significantly save only by virtue of section 39(3) which provides thus:

> "Notwithstanding the provisions of subsection (1) of this section, no act of a company and no conveyance or transfer of property to or by a company shall be invalid by reason of the fact that such act, conveyance or transfer was not done or made for the furtherance of any of the

[55] Emiola, A op.cit,p.146

> authorized business of the company or that the company was otherwise exceeding its objects or powers."

According to Thomas,[56] a corporate entity which acts in responsible manner may simply be paying society back for the social costs of doing business, cost for which the such entity rarely receive an invoice.[57] There is also an argument that gifts made to other subjects, within the community in which business entity operates will obviously enhance the entity's image and give it competitive advantage.

As earlier stated, even in the U.K. the legal problems concerning objects clauses are monumental, as new companies in U.K. no longer have to register objects under section 30 of the Companies Act 2006 and that even if they do, the ultra vires doctrine has been abolished against third parties. It is only relevant in an action against a director for breach of duty. Some legislature in some jurisdictions imposed obligations on companies to specifically have regard to the interests of other stakeholders apart from shareholders in decision making. Even section 279 of CAMA enjoins directors to include the interest of companies' employees and their member. In the United Kingdom, Government approach is the by creating a policy framework which encourages and enables responsible behaviour by business and this is through two very important changes in the UK Companies Act of 2006 by its Article 172 on "Duty to promote the success of the company." Article 172 provides thus:

> "A director of a company must act in the way he considers, in good faith, would most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to the likely consequences of any decision in the long term, the interests of the company's employees; the need to foster the company's business relationships with suppliers, customers and others; the impact of the company's operations on the community and the environment."

The enhanced business review is another key example that builds on the growing consensus that it is good business sense for business entities to embrace wider social economic responsibilities. For this purpose, Article

---

[56] Thomas, B., "Corporate Citizenship: the new Business Imperative", RMIT University Journal, Australia, 1999, p.34.

[57] Hood, J., "Do Corporations Have Social Responsibilities? The Heroic Enterprises & Corporations, Free Press, Vol.48, Issue II, London, 1996, p.246

417 of UK Companies Act 2006 demands that the contents of directors' report should contain business review on the main trends and factors likely to affect the future development, performance and position of the company's business; and information about the environmental matters including the impact of the company's business on the environment, employees, and social and community issues.

It is in recognition of all the above arguments that even Friedman,[58] has shifted grounds.

In Nigeria, other scholars such as Musa,[59] Atsegbua,[60] Ekpu[61] have all in different viewpoints maintain that it is desirable for corporate entities like corporations operating in the country to behave responsibly by observing approved standards of operations in all their operations.

Going biblically and theologically, traditions are quite clear that we are our brother's keepers that we have a duty to assist those in the community who are in need of help. As faithfully made to understand, the God of Israel has a special concern for the poor. Indeed, a clear sign of Israel's fidelity to the covenant is the care that the community has (or does not have) for the vulnerable, which are represented by the widow, the orphan, and the stranger in the land. Israel is encouraged to see these people as under the special protection of God and exhorted to care for them as God would.[62]

It is a well-known fact that many of the corporations that exist, especially in developing nations like Nigeria, either refuse or neglect to meet their social responsibilities. This is despite clear evidence of the negative effect of their operations on the communities in particular and the society. To these, Okafor et al[63] advised the inclusion of codes into contracts for enforceability.

The social economic imperatives of corporate entities underscored the statement of Lagos State Governor, Babatunde Fashola, SAN, at the commissioning of the Lekki-Ekpe Express Way built under "Build, Own and Transfer" (BoT) by a business entity in Lagos 2010 when he remarked that "it is recognized all over the world that in public expenditure, tax

---

58 Op cit, p.281.
59 Musa, J.A. "Social Responsibility of Companies in Nigeria," ABU Law Journal, (2005) p.53.
60 Atsegbua, L.A., Petroleum Law; The Acquisition of Oil Rights in Nigeria, Keustine Nigeria Publishers Ltd, Benin City, (1993), p.107.
61 Ekpu, A.O.O., "Environmental Impact of Oil on Water: A Comparative Overview of the Law and Policy in the United States and Nigeria," in Denver Journal of International Law and Policy, (1975), Vol.I, p.60.
62 See, for example, Deut. 10:17—18; Isa. 10:1—4; Jer. 22:1—5; Zech. 7:9—10.
63 Okafor, E.E., Hassan, A., Doyin-Hassan, Op. cit, 113

payers money alone will never be enough for government to deliver on all things that her citizens demand or require."

Legal Status of Corporate Entity for Social Economic Responsibilities.

With regards to the legal status of corporate entities to carry out social economic responsibilities, it is pertinent to state that until recently directors of corporate entities gave recognition only to shareholders under the concept of shareholders theory. This position was stressed in Hutton v. West Cork Railways Co where it was stated inter alia: "... the law does not say there are to be no cakes and ale, but there are to be no cakes and ale except such as are required for the benefit of the company ... Charity has no business to sit at boards of directors qua charity."

This legal position was upheld in a plethora of cases. A strict interpretation of the duties of Directors under section 279 of CAMA when the issues concern a corporate gift may be in all fours with the decision in the above cases. However, in the Common law case of Re Lee, Behrens & Co Ltd[64], Eve J, postulated three validity tests which must be passed before the company's money could be expended on a charitable cause. These tests: (1) that the gift must be reasonably incidental to company's business; (2) the transaction should be bona fide and (3) the gift must be for the benefit and promotion of the prosperity of the company. Although the Lee Behrens test was relied on to strike down proposed payments (as being ultra vires) in Parke v Daily News[65] and Re W & M Roith[66] it was finally rejected by Pennycuick J. In the Lee Behrens case, Eve J. created some confusion by purporting to make his three-pronged test applicable to both express and implied powers, yet he did not properly distinguished between the doctrine of ultra vires and breach of fiduciary duty, as evidenced by his statement: '... authority from the shareholders in a meeting convened for that purpose would have ratified the transactions.' This cannot be the law, because as an act deemed to be ultra vires is void ab initio and incapable of being ratified by even 100 percent of the shareholders.

As it is well known, objects clause is a provision in a company's constitution stating the purpose and range of activities for which the company is carried on. In UK company law, until the reforms in the Companies Act 1989 and the Companies Act 2006, an object clause restricted or circumscribed the capacity, or power, of a company to act.

---

[64] (1883) 23 Ch.D.654
[65] (1962) Ch.927
[66] (1967)1 ALL. E.R. 427

The legal position was that any contract entered into beyond the power, or ultra vires, would be deemed void ab initio.

The legal problems concerning objects clauses are now largely historical artifacts. New companies in U.K. by virtue of section 30, no longer have to register objects under the Companies Act 2006, and that even if they do, the ultra vires doctrine has been abolished against third parties under section 39. It is only relevant in an action against a director for breach of duty.

Apart from the strict legal obligations of a corporate entity, there has been a debate on the pros and cons giving liberal interpretations to obligations as contained in the object clauses of corporate entities so as to enable directors of corporations carry out some "social (economic) responsibilities." One of the critics of the liberal interpretation is Milton Friedman, probably the most influential proponents of the classic view, a well known U.S. economist who wrote in the 1970s an article in the New York Times titled, "The Social Responsibility of Business is to Increase Its Profits." In his pivotal book, "Capitalism and Freedom," he called the doctrine of "social responsibility" as "fundamentally subversive doctrine."

Some others believe that corporate philanthropy is charity with other peoples' money. Section 39(1) of CAMA states that power of directors must be exercised to facilitate the realisation of corporate objects. Indeed by virtue of the same section 39(1), the courts are empowered to prohibit the doing of any act that is in breach of the object of the company and for that purpose can grant an injunction restraining a director, shareholder or officer of the company from committing an ultra vires act. Under section 171 of the reviewed Companies Act of 2006 of U.K., failure to observe the limits of their constitutional powers of directors are actionable; this is notwithstanding that the ultra vires doctrine has been abolished. This has now made it imperative for corporate entities to monitor and ensure their adherence to law and ethical standards. They are expected to embrace responsibility for the impact of their activities on "human rights, employee rights, and the challenges of environmental protection and community development as their core values. Such internal policy is expected to form as a corporate self-regulation integrated into a business.

Expected Duties of a Corporate Entity

The above features and rights come also with some duties attached to a corporate entity. On the expected duties of a corporation entity, it is instructive to note that section 24(d) of the Constitution of the Republic of Nigeria, (CFRN) expressly provided for the duties of a citizen to include making of positive and useful contribution to the advancement, progress and well-being of the community he resides.[67] Such duties are also achievable by corporations in Nigeria through instrumentation of legislative law, notwithstanding the provisions in the Companies and Allied Matters Act (CAMA)[68] and the Companies Income Tax Act (CITA).[69] Under section 24(f) of CFRN, citizens are required to declare their income honestly to appropriate and lawful agencies and pay their taxes promptly. A corresponding provision in CAMA is section 331(1) & (2) which provides that every company shall cause accounting records to be kept to show and explain transactions of the company, obviously for tax assessment and Capital Gain Tax. Other taxes expected to be paid by corporations include Education Tax, remittance of Pay As You Earn (PAYE) of their employees to appropriate tax authorities; Companies Income Tax; Nigerian Social Investment Trust Fund, Withholding tax and Tax Treaties. With respect to section 331(1) & (2) of CAMA, this provision is commonly abused through what is now termed "financial engineering" or "book building" and tax avoidance tactics which is legal and mostly through tax evasion which is illegal.[70] It is in recognition of this that the Executive Secretary of Nigerian Accounting Standard Board had to sponsor the Financial Reporting Council (FRC) Bill to the National Assembly 2008.[71] Gladly enough, the bill has been passed into law.[72] The failure of corporate entities in Nigeria to carryout social economic responsibilities prompted the sponsorship of bills in 2008 to the National Assembly for the creation of Corporate Social Responsibility (Establishment) Commission. It aims at the enforcement of Corporate Citizenship. The CSR bill seeks to make a 3.5% donation of company's gross profit to government to spend on general CSR practices such as community investment and philanthropic activities.

What some corporations often plead as defences in explaining their commitments to their stakeholders, are their legal contributions towards

---

67 Section 24(d) of the 1999 CFRN

68 1990 ACT CAP C20 L.F.N, 2004.

69 Note: The current tax rate in any year of assessment for a company in Nigeria is 30% of profits accruing in, derived from, brought into or received in Nigeria.

70 Inland Revenue Commissioners v. West Minister (1931)A.C. p1.

71 Vanguard, 13th April, 2011, p.21

72 President Ebele Jonathan assented to the Financial Reporting bill – NTA 9pm news of 21st July, 2011.

national developments, payments under the Education Trust Fund (ETF) Act of 1993 now TETFund and the 13% derivation principles of 1999 for oil producing States in Nigeria. These they claim are far over 30% of their gross profits. They however, fail to realize the decline in the derivation principles from 100% in 1953 to 13% in 1999.[73] Indeed, such payments according to Emiola,[74] are contributions towards "social goals" by companies in the oil sectors only and not "legal obligations" as it is in developed economies. Indeed, taxation is what some developing countries adopt. As a matter of fact, such corporate initiatives in Nigeria are not altogether widespread even with the exception of some telecommunication and financial companies. Besides, since we are not living in an ideal world, and if there are laws or regulations covering things such as the minimum wage, health and safety and disclosure to investors, it therefore, becomes pertinent that there should be law on overall disclosure of environmental impact, or laws covering supplier relationships and on community impact.

The discharge of the social economic responsibilities of corporate entities appears to be lacking in Nigeria, hence the Federal Government through the Petroleum Industry Bill is now proposing that the sum of N90b be set aside out of the Oil Companies profit. This is expected to come in the form of 10% equity participation and 1% of total asset to serve as protection of oil and gas facilities located in the region.[75]

It is pertinent to state that in spite of the social economic responsibilities of corporate entities as discussed above, they are not without some limitations.

Conclusion

In submission, even though business organisations are primarily profit maximizing entities; however, with the changing structure of the business environment, the role of business organisations has changed dramatically for them to answer to social ills. According to Jacoby,[76] the shift is due to public disenchantment with the unrealised hope from sources where social justice was expected. Today, business organisations are intrinsic part of social life. This is why Sunder[77] has proposed a broader definition on the

[73] In 1999, actual Derivation was 7.25% up to December, 2001.Sources: The Niger Delta Bill of Rights submitted to the United Nations.
[74] Emiola, A., Company Law, Emiola Publishers, Ogbomoso ,2005,p.18
[75] The Guardian, February 23, 2011, p.1
[76] Jacoby, N. "The Corporation as Social Activist" in The Unstable Ground: Corporate Social Policy in a Dynamic Society, 2004, p.225
[77] Sunder, P. "Corporate Social Responsibility – An Idea whose Time Has Come" Pandit's Workshop, Delhi, India March 23,2004.

role of business organisations, describing them as being a "set of contract among shareholders, employees, customers, managers, suppliers, auditors, etc." This definition therefore, means that business organisations have a social responsibility in the conduct of their operations. Hence, business organisations are social agents contracting with other agents as a part of chain, their aims therefore goes beyond simple profit maximization. It is assumed that organisations construct the business environment and agents are the members of the society. Therefore, each individual either voluntarily or involuntarily should play the role of an agent. This is more so especially as successes of modern business system has led many to believe that the corporation or company possesses unused capacity to achieve other societal goals and ought to be able to play greater role in social affairs.

The importance of social economic responsibility in Nigeria by corporate entities, like all other third world countries, need not be over-emphasized if the country is attempting to close the gap among its counterparts let alone the advanced countries of the world.