



RESEARCH ARTICLE

ENFORCING CORPORATE SOCIAL RESPONSIBILITY (CSR): AN ASSESSMENT OF INSTITUTIONAL ACTIONS AGAINST MULTINATIONAL OIL AND GAS COMPANIES IN NIGERIA

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Manuscript Info

Manuscript History

Received: 25 September 2023

Final Accepted: 29 October 2023

Published: November 2023

Abstract

Enforcing Corporate Social Responsibility (CSR) has been largely controversial. This is largely due to questions of whether legitimate claims can arise social responsibility lacking in established legal rights and obligations. This paper assesses the nature of CSR framework in Nigeria to determine the possibility of a legal claim against governments or multinationals operating in Nigeria. The research achieves the outcome by evaluating the operations of the Nigerian Content and Monitoring Development Board (NCMDB) in relation to elicit the structural inadequacies in performing its functions with regards to enforcing CSR presumptions.

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Introduction:-

The problems associated with the enforcement of CSR compliance by multinational oil and gas companies are both institutional and legal. In fact, the general challenge is traced to the general absence of institutional framework and support needed to combat this problem.

This study in Section 2 explores the institutional inadequacies and determine the challenges with respect to enforcement of corporate social responsibility among oil companies in the Niger Delta Area of Nigeria.

It assesses whether companies on their own part compromises health and safety seeing a non-chalant government and its institutions who may not be ready to ensure that companies comply with its corporate social responsibilities.

It evaluates the problem to be encountered by Nigeria as a country as a result of lack of inspection by government agencies of cases of environmental degradation.

This research evaluates the lack of desire gaps by government institutions/agencies in Nigeria to constantly carry out its duties of inspection and investigation, creates an avenue for corrupt practices to set in Section 2 analyses the negative implications for implementation/enforcement and practice system for corporate social responsibility in the oil and gas sector in Nigeria. This journal article will also explain the solutions the lack of desire by government institutions/agencies in Nigeria to constantly carry out its duties of inspection and investigation and the desired change for Nigeria.

This will be followed by the conclusion and recommendations.

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The Nature Of Enforcement Of Corporate Social Responsibility In Nigeria

The nature of practice in corporate social responsibility among multinational companies in developing countries could be tricky. In Nigeria, with regards to corporate social responsibility, multinational companies may argue that it is not the fault of companies that proper steps to ensure corporate social responsibility was not taken but rather it is the fault of regulatory agencies in Nigeria.

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In Nigeria, there is always an excuse by authors for government institutions/agencies (with regards to inspection and investigation for case of oil spillage by MNCs in Nigeria for example) to make such a fine progress when such institutions has not even stood firmly for a good number of years to ensure that multinational oil companies always and regularly clean up oil spillage and reduce gas flaring in Nigeria to the barest minimum. For authors like Babajide and Kola, with regards to the Nigerian Content and Monitoring Development Board (NCMDB) not implementing the law in Nigeria, the issue lies with poor funding, poor instructional methods, lack of basic infrastructure and poor management, security, corruption, and bad economy in Nigeria as its cause¹.

Across the world, the job of inspectors is to identify risks that could cause death during their inspection. Managers of multinational companies on site may not see risks in the same way as inspectors. In the health and safety fields, for instance, there is evidence that inspectors on the ground tend to see risks in safety terms to a far greater degree than oil company's senior managers² who are thinking of profit making at the time.

According to Almond and Esbester in the UK the government reshaped how companies perceive inspection to be by attaching meaning to the concept of "risk-based regulation"³. Whereas in Nigeria, the problem is legitimacy in government⁴. A government that is corrupt, will care less with regards to legitimacy of its institution/agency like the Nigerian Content Development and Monitoring Board (NCDMB) to inspect oil rigs and sites in the Niger Delta Area of Nigeria.

In the case of SERAC v. Nigeria⁵, emanating from the activities of Shell Petroleum Development Corporation (SPDC) and the Nigerian Military Government in the 90s participation, it was alleged that the SPDC by their activities degraded the environment while also caused health problems among the Ogoni people⁶ in Rivers State of Nigeria.

In Nigerian Farmers v Shell (a case even though there were no death cases, but the degradation effect of the company activity negatively impacted on the environment), four Nigerian farmers from the Niger Delta Region sued Shell Royal Dutch in a court in Holland⁷.

According to them, the Royal Dutch Oil Company is responsible for the massive oil spills in the farms from 2004-2007. The Dutch Court ruled that the SPDC (Joint Venture Company between Nigerian government and Shell),

¹ V.F Babajide "Science Education in Nigeria: The Journal so far" (2015) 1(1) International Journal of Innovative Research in Education, Technology and Social Strategies 53-69; A.J Kola. "Importance of Science Education to National Development and Problems Militating Against its Development" (2013) 1(7) American Journal of Educational Research 225-229

² Robert Baldwin and Julia Black. "Driving Priorities in Risk-based Regulation: What's the Problem?" (2016) 43(4) Journal of Law and Society 565-595 at 576

³ Paul Almond and Mike Esbester "Regulatory Inspection and the Changing Legitimacy of Health and Safety" (2018) 12(1) Regulation & Governance 46-63

⁴ Osita Nnamani Ogbu "Combating Corruption in Nigeria: A Critical Appraisal of the Laws, Institutions, and the Political Will " (2008) 14(1/6) Annual Survey of International and Comparative Law 99-149 at 148

⁵ SERAC .v. Nigeria [2001] AHRLR 60

⁶ Daniel Omowe Shell Petroleum Development Company, The State and Development of Nigeria's Niger Delta A Study in Environmental Degradation (Africa World Press Inc, 2005)

⁷ 4 Nigerian Farmers .v. Shell 12/08 Reuters 2008 <<https://www.reuters.com/article/us-shell-nigeria-lawsuit/dutch-court-says-shell-responsible-for-nigeria-spills-idUSBRE90S16X20130130>> Accessed 27 May 2021

which is the Nigerian subsidiary, is responsible for oil pollutions and therefore should pay damages⁸. This case was instituted in a court abroad because in Nigeria, the institutional framework with regards to investigating corporate manslaughter cases like the Nigerian Content and Monitoring Development Board and the Nigerian police is still weak.

In the United Kingdom, Field & Jones recorded that in Mobile Sweepers (Reading) Limited 2012 case in March 2014, Mobile Sweepers (Reading) Limited pleaded guilty to the corporate manslaughter of Malcolm Hinton who was crushed under a road-sweeping truck he was repairing at the company's premises in 2012⁹. The director of the company was charged with gross negligence manslaughter, and he and the company were also charged with health and safety offences under Section 37 HSWA 1974¹⁰. The director pleaded guilty to breaches of health and safety and was fined £183,000. He was disqualified from being a company director for five years. The judge also issued a publicity order against the company them to publish the particulars of their conviction (their failings) in two local newspapers¹¹.

An investigation by the health and safety executives United Kingdom found a prop designed to take the weight of the hopper when it was in the raised tipping position could not be used due to poor maintenance¹².

Speaking after sentencing at Winchester Crown Court, HSE principal inspector Steve Hull said Mr Hinton's death was "wholly avoidable"¹³.

"Planned, preventive maintenance procedures should be in place for all work vehicles to ensure they are kept in good condition," he said¹⁴.

In Cavendish Masonry Limited corporate manslaughter case, an employee of Well Barn Estate in Moulsham, Oxfordshire by name David Evans and aged 23, died while he was erecting a wall at the in 2010. He died when the block fell off a concrete lintel and crushed him¹⁵.

The court found Cavendish Masonry Ltd guilty of corporate manslaughter.

The Health and Safety Executive said the death was "completely avoidable"¹⁶.

Health and Safety Executive (HSE) inspector Peter Snelgrove said Cavendish Masonry, based in Maesteg, south Wales, had not properly planned the moving of the heavy limestone with a crane¹⁷.

⁸ 4 Nigerian Farmers .v. Shell 12/08 Reuters 2008 <<https://www.reuters.com/article/us-shell-nigeria-lawsuit/dutch-court-says-shell-responsible-for-nigeria-spills-idUSBRE90S16X20130130>> Accessed 27 May 2021

⁹ Sarah Field and Lucy Jones "Are Directors Getting Away with Manslaughter? Emerging Trends in Prosecutions for Corporate Manslaughter" (2014) 35(5) Business Law Review 157-163

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¹¹ Sarah Field and Lucy Jones "Are Directors Getting Away with Manslaughter? Emerging Trends in Prosecutions for Corporate Manslaughter" (2014) 35(5) Business Law Review 157-163.

¹² BBC News Mobile Sweepers (Reading) boss fined over worker death Available at Mobile Sweepers (Reading) boss fined over worker death - BBC News [Accessed] 10th December 2022

¹³ BBC News Mobile Sweepers (Reading) boss fined over worker death Available at Mobile Sweepers (Reading) boss fined over worker death - BBC News [Accessed] 10th December 2022

¹⁴ BBC News Mobile Sweepers (Reading) boss fined over worker death Available at Mobile Sweepers (Reading) boss fined over worker death - BBC News [Accessed] 10th December 2022

¹⁵ BBC News Cavendish Masonry Fined for Corporate Manslaughter Available at Cavendish Masonry fined for corporate manslaughter - BBC News [Accessed] 11th of December 2022

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¹⁷ BBC News Cavendish Masonry Fined for Corporate Manslaughter Available at Cavendish Masonry fined for corporate manslaughter - BBC News [Accessed] 11th of December 2022

The Health and Safety Executive (HSE) inspector Peter Snelgrove granting an interview said that “the stone toppled because its shape was such that it was potentially unstable when freestanding, yet nothing was used to fix it in place”¹⁸.

“It needed to be sufficiently restrained before the lifting slings attaching it to the crane were removed”¹⁹.

However, in Nigeria, the Nigerian government agencies tend to rely entirely on, what multinational oil companies tell them. According to Shell Nigeria over 90% of the Niger Delta’s oil spillages are caused by Nigerians (villagers) sabotaging oil pipelines rather than pipeline burst, breach of duty of care (failure in maintenance and servicing) and failure to provide safe working machineries²⁰. The challenges in developing countries like Nigeria includes absence of mandatory disclosure information²¹ and health and safety checks by health and safety administrative team²² like in the UK.

For this reason, this writer believes that the Nigerian government agencies could be causing lack of investigation of companies in Nigeria for corporate manslaughter resulting from environmental degradation.

Supporting this writer, Almond and Esbester opine that the functional legitimacy of health and safety stems from the expansion of health and safety beyond the workplace²³, the emergence of a safety profession and the valorisation of expertise, and the inspection²⁴ and enforcement practices of regulators, are all explored in relation to the challenges and benefits that they provide in terms of demonstrating the effectiveness, efficiency, and expertise of those who ‘do’ health and safety²⁵.

In case of Nigeria, the solution could lie in reshaping how inspection exercise is perceived in Nigeria. The perception of inspection in Nigeria is not taken seriously by MNCs whom can give bribe to inspectors who visit MNCs occasionally. This is an example of unforeseeable ethical consequences of decisions²⁶.

Whenever rate of inspection seems to have fallen dramatically, the nature and quality of inspection should also be fundamentally reshaped via an increasingly procedural and economically rational “risk-based” policy context²⁷. This has had consequences for the transformative and symbolic value of inspection as a tool of regulatory practice²⁸. This shows how in both nations there is a great imbalance between the rights corporations hold and their accountability²⁹. It hinders enforcement of CSR especially in developing countries like Nigeria.

¹⁸ BBC News Cavendish Masonry Fined for Corporate Manslaughter Available at Cavendish Masonry fined for corporate manslaughter - BBC News [Accessed] 11th of December 2022

¹⁹ BBC News Cavendish Masonry Fined for Corporate Manslaughter Available at Cavendish Masonry fined for corporate manslaughter - BBC News [Accessed] 11th of December 2022

²⁰ Amnesty Nigeria: Petroleum, Pollution and Poverty in the Niger Delta 2009 London Amnesty International

²¹ This could be as regards providing safe working equipment to work with and safe working environment to work and live in.

²² We do not have this in Nigeria.

²³ Paul Almond and Mike Esbester Health and Safety in Action Health and Safety in Contemporary Britain (Palgrave Macmillan, Cham, 2019) 183-237

²⁴ Paul Almond and Mike Esbester Health and Safety in Action Health and Safety in Contemporary Britain (Palgrave Macmillan, Cham, 2019) 183-237

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²⁶ Jadranka Skorin-Kapov Business, Environment, Society Professional and Business Ethics Through Film (Palgrave Macmillan, Cham, 2019) 247-293

²⁷ Paul Almond and Mike Esbester “Regulatory Inspection and the Changing Legitimacy of Health and Safety” (2018) 12(1) Regulation & Governance 46-63

²⁸ Paul Almond and Mike Esbester “Regulatory Inspection and the Changing Legitimacy of Health and Safety” (2018) 12(1) Regulation & Governance 46-63

²⁹ Vanessa R Bishop, An International Analysis of Corporate Personhood: Rights vs. Responsibilities Senior Honors Theses (2015) 449

In terms of compliance, according to Benn et al, compliance adds value (as in this paper: enforcement) by providing improved relationships with regulators, the basis for a positive reputation as a good corporate citizen.³⁰ In the same vein, according to Hart, government institutions should have a distinctive critical attitude of acceptance towards a pattern of behaviour, which attitude of acceptance raises the said pattern to the level of public standard to which they conform³¹ (the villagers).

This position of Hart could pose a problem. For example, how effective are the government institutions? Are they corrupt? Will there be measures put in place so that corporate social responsibility practices (oil spillage or gas flaring for example) will not be ignored by companies? When according to this writer, the government through the institutions fails in any of these problems through its inspection duty; the result could be the continued failure by multinational oil companies in their corporate social responsibility.

In Russia which is an oil producing country and a rich country rated third in the world just after America and China, the issue is not about multinational oil companies practicing corporate social responsibility or not but it is a case of MNCs being afraid of the powers of the Kremlin³² and what the people at the Kremlin³³ will do to them when they fail to clean up oil spillage.

In other parts of the world like the United Kingdom (UK), the Health and Safety Executives are mandated to investigate corporate manslaughter cases and ensure that companies comply with their corporate social responsibility in a case of corporate manslaughter after a court judgment against a company.

The Desired Change For Nigeria

In Nigeria, due to the inability of the Nigerian National Petroleum Corporation (NNPC) (which is another type of government institutions/agency in Nigeria before the inauguration of the NCMD) to carry out inspection of oil company's facilities, training of staffs and staff supervision and how companies in Nigeria reduce environmental degradation, President Goodluck Jonathan in 2010 signed the Nigerian Content Act 2010 into law³⁴. This law created the Nigerian Content Monitoring Development Board (NCMD)³⁵.

According to Okusami, the Board is expected to perform the following functions, among others.

1. implement the Act's provisions and regulations made by the Minister; (ii) supervise, coordinate, administer,
2. monitor and manage the development of Nigerian content; (iii) assist local contractors and Nigerian companies.
3. to develop their capabilities and capacities; (iv) make procedures to guide the implementation and ensure compliance with the provisions of the Act; and (v) monitor and coordinate Nigerian content performance of all operators in accordance with the provisions of the Act³⁶.

Edo in his opinion stated that it needs to be said that there is need for an institutional framework³⁷ with functions. These functions can include checking companies' health reports, in checking compliance to corporate social

³⁰ Suzanne Benn, Dexter Dunphy, Andrew Griffiths, *Organizational change for corporate sustainability* (Routledge Studies in Organisational change and development) (3rd Ed. Routledge (Taylor & Francis Group) 2014) at 17

³¹ Herbert. L. A. Hart *The Concept of Law* (Oxford University Press, 1994)

³² Ariel Cohen *Domestic Factors Driving Russia's Foreign Policy*, The Heritage Foundation No 2084 November 19, 2007.

³³ This writer believes that Kremlin is an institution set up by the Russian government to oversee every political, legal, security and governmental affairs for Russians.

³⁴ Jude Okafor and Ernest Aniche "A Critical Appraisal of Enforcement of Nigerian Oil and Gas Industry Content Development (NOGICD) Act, 2010" (2014) 31 *Journal of Law, Policy, and Globalization* 82-94 at 86

³⁵ Jude Okafor and Ernest Aniche "A Critical Appraisal of Enforcement of Nigerian Oil and Gas Industry Content Development (NOGICD) Act, 2010" (2014) 31 *Journal of Law, Policy, and Globalization* 82-94 at 86

³⁶ D. Okusami, *An Overview of the Nigerian Local Content Act*. A Paper Presented at the Africa Energy Week Conference in Cape Town, South Africa on 29th September 2010 in Jude Okafor, and Ernest Aniche "A Critical Appraisal of Enforcement of Nigerian Oil and Gas Industry Content Development (NOGICD) Act, 2010" (2014) 31 *Journal of Law, Policy, and Globalization* 82-94 at 86

³⁷ Zephaniah Edo 'The Challenges of Effective Environmental Enforcement and Compliance in the Niger Delta Region of Nigeria' (2012) 14(6) *Journal of Sustainable Development in Africa* 260-276

responsibility by companies, government institutions should gain access to company's records and inspect its facilities/equipment to determine if it follows health and safety of all.

It is not only developing countries like Nigeria that needs government institutions to carry out its duties of ensuring that companies regularly carry out its corporate social responsibilities (for example cleaning up oil spillage regularly and reducing gas flaring). For example, the European Union by the Green Paper on promoting a European Framework for CSR 2001 encourage companies to consider environmental and economic considerations in their business approach³⁸. The framework encourages various stakeholders in EU economies to aim at quality and coherence of CSR practices, through developing broad principles, approaches and tools and promoting best practice and innovative ideas³⁹. This writer believes that the beginning of the desired change lies with having a framework that works which is a framework (The NCMD carrying out its duties of inspection and report under the law) for enforcement of corporate social responsibility, the villagers in Nigeria will have confidence in the law if they can be guaranteed clean environment and reduction in human right abuse giving effect to the law. This could be in the form of creating a ministry of health and safety in each state of Nigeria (which will be a watchdog for the Nigerian government, the multi-national oil companies and the Nigerian government institutions guaranteeing clean environment) empowering it to conduct health and safety checks on facilities and for what the villagers are protesting against companies as an avenue for The NCMD to improve in carrying out its duties of inspection and report under the law.

Since 2010, the Nigerian Content and Monitoring Development Board seems not to be working in Nigeria because no sufficient safeguard has been provided to ensure transparency in the implementation of the Act⁴⁰. This should have been the job of the Nigerian government through the Federal Ministry of Labour and Employment to demand yearly or monthly report of enforcement of corporate social responsibility from multinational oil companies in Nigeria, but this has been hindered by corruption from the Nigerian government.

Also, as part of transparency, the writer recommends that the Nigerian government should introduce a supervisory system whereby government institutions issue a signed paperwork to oil companies operating in Nigeria to ensure that companies constantly clean up oil spillage or reduce gas flaring for example. The signed document will be filed by oil companies to the state government for state recognition of their corporate social responsibility duties.

Thirdly, Amodu said that the challenge lies in lackadaisical enforcement by regulators⁴¹. This shows that government investigators lack the technical capacity⁴² to undertake inspections of company's facilities in Nigeria as they should. If this should be the case, then the Nigerian government should be eager to give support to the Nigerian police and the Nigerian Content and Monitoring Development Board in pursuit of corporate manslaughter cases in Nigeria. It is submitted that such an approach would have a highly beneficial impact on, among other things, corporate social responsibility.

In Nigeria, a solution could also be in employees of oil companies for example reporting of non-compliance within the organization and to government agencies as a start.

Fourthly, both the Nigerian government and government institutions during inspection can advise and remind companies that as concerned citizens of Nigeria, the villagers can monitor if companies are adhering to health and safety, keeping records of its compliance activities.

³⁸ B. Burkett, John Criag and Mathias Link Corporate Social Responsibility and Codes of Conduct: The Privatisation of International Law 2004. A Paper Presented at Canadian Council on International Law Conference October 6, 2008, in John Okpara, Samuel Idowu and Rene Schmidpeter (eds) Corporate Social Responsibility Challenges, Opportunities and Strategies for 21st Century Leaders. (Springer, 2013) P. 185

³⁹ European Commission Green Paper: Promoting a European Framework for Corporate Social Responsibility 2001. Available from <<http://www.europa.eu.int>> [Accessed 10 May 2015].

⁴⁰ Mercy.O. Erhun "The Role of the Nigerian Oil and Gas Content Act in the Promotion of Sustainable Economic Development" (2015) 5(16) Developing Country Studies 111-120 at 116

⁴¹ Nojeem Amodu "Regulation and Enforcement of Corporate Social Responsibility in Corporate Nigeria" (2017) 61(1) Journal of African Law 105-130 at 105

⁴² Azubuike. I. Smith and Ondotimi Songi "A Rights-based Approach to Oil Spill Investigations: A Case Study of the Bodo Community Oil Spill in Nigeria" (2020) 1(1) Global Energy Law and Sustainability 28-54 at 30

Conclusion:-

This paper concludes that Nigeria for example needs to change in its public administration to attain sustainable development.

With regards to the issue of corruption in Nigeria, this researcher suggests that the solution to the issue of corruption when it comes to inspection and investigation of environmental degradation caused by the activities of multinational oil companies in Nigeria, could lie in proper funding of government institutions to shun corruption and teaching health and safety at work as part of our children's teaching curriculum in/from secondary school to mention just a few.

Also, to make companies comply with their legal responsibility, in Nigeria there is need for an institutional framework which is one that will specify in clearer terms the responsibility of government institutions and companies in Nigeria with regards to the enforcement of corporate social responsibility. An example of this type of government institution for Nigeria is the Nigerian Content and Monitoring Development Board (NCMDB).

Being truthful to ourselves, if government institutions like the NCMDB, are carrying out its duties in a relaxed form, then the Nigerian government should be able to support them with The Nigerian police to carry out the lawful duties of inspection and investigation.

In Nigeria, the solution lies in the Nigerian government empowering the Nigerian Content and Monitoring Development Board and the Nigerian police and creating the office of Ministry of Health and Safety to carry out corporate manslaughter investigations. The Nigerian government will also need to fund these bodies adequately to make them independent, unbiased and enable them to carry out the jobs in the event of a death in the workplace or in the community (caused by oil spillage catching fire or gas flaring).

Secondly, in Nigeria, a solution could be in employees of oil companies for example reporting of non-compliance within the organization and to government agencies as a start. This can be an important tool for enhancing compliance⁴³. This is so because it is the employees that suffer cases of death at workplace. However, the government must live up to expectation of supporting government agencies like the Nigerian police and the Nigerian oil content and monitoring development board to investigate and inspect oil companies for cases of oil spillage or gas flaring for example. However, it is worthy to note that response by companies will not be immediate since Nigeria needs to work on having a mechanism in place for enforcement to take hold.

Giorgi et al suggest that the success of such response will be contingent on the degree of cultural consonance of firms' strategic responses and the dominant cultural context at that time⁴⁴. During the Deepwater Horizon explosion in the Gulf of Mexico⁴⁵ that claimed the lives of eleven oil workers, President Barack Obama only made an order for cleaning up of oil spills, remediation, and compensation of the State whose natural habitat were destroyed and to deceased family members (eleven oil workers that died). British Petroleum and Exxon Valdez had no choice but to pay billions of dollars. Two supervisors were even charged with Seaman Manslaughter⁴⁶.

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⁴³ Yuval Feldman and Orly Lobel Individuals as Enforcers: The Design of Employee Reporting Systems. Bar-Ilan University Public Law and Legal Theory Working Paper No. 15-10October, 2010 1-30 at 1

⁴⁴ Simona Giorgi, Massimo Maoret, and Edward Zajac. "On the Relationship Between Firms and Their Legal Environment: The Role of Cultural Consonance" (2019) Organization Science at 2

⁴⁵ Allison Fish "The potential application of 18 U.S.C S115 to offshore drilling disasters: A requiem for the Seaman's Manslaughter Act?" (2014) 39 Tulane Maritime Law Journal 241-263

⁴⁶ Kenya Smith "Incomplete Sentences: Hobby Lobby's Corporate Religious Rights the Criminally Culpable Corporate Soul and the Case for Greater Alignment of Organizational and Individual Sentencing" (2016) 17(1/9) Louisiana Law Review 75-108

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