TRANSNATIONAL CORPORATIONS AND CORPORATERESPONSIBILITY: ENVIRONMENTAL LAW AND HUMAN RIGHTS DAMAGE IN NIGERIA

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ABSTRACT

The emergence of transnational corporations as strong and independent non-state actors based on their trans-border identity and increasing influence has led to numerous calls for regulation from scholars, NGOs and other international organizations. This however led to the adoption of the concept of corporate social responsibility that seeks to increase the accountability of corporation not only to their shareholders which have been their traditional response in terms of profit making, but also to the stakeholders who are affected by the actions (externalized costs) of TNCs.

With CSR becoming a household policy framework for TNCs, other regulatory framework began to emerge especially from the international legal perspective. These regulatory mechanisms came in form of soft laws which were voluntary and non-binding in nature. Such as the OECD and ILO guidelines, UN Global Compact, UN Norms for Business, ATCA and other regional frameworks emphasizing the personhood of TNCs in international law. However what made these frameworks important was that it emerged as a form of international standard which was set by international law, United Nations and other International Organizations.

Therefore this thesis tries to demonstrate that despite the presence of regulatory frameworks, CSR policies of TNCs have varied from one country to another especially among the developing nations and this variation has been linked to the strength of the regulatory framework in a particular country.

Moving further, this thesis has demonstrated that despite the acclaimed successes of CSR in some developing countries, it has not been the same everywhere due to the strength/weaknesses of the regulatory frameworks in a particular country and thus leading to the adoption of Nigeria where CSR policies have failed as a case study. Examining TNCs and CSR in Nigeria has thus led to this thesis to conclude that despite the acclaimed sustainable development CSR is meant to provide, this has not been the case. This is due to the fact that CSR in Nigeria has been a cosmetic approach used in covering environmental degradation and human rights complicity of TNCs and this has been achieved through weak regulatory framework in Nigeria. Therefore this thesis was able to conclude that the consequences of weak regulatory framework are environmental degradation and human rights violation. The thesis therefore formulates policies that can be used in addressing negative CSR approaches such as punitive measures for states under the ICC for complicity in environmental degradation and human rights violation and also threat of credible punitive measures for TNCs.

Keywords: CSR variation, TNCs, Environmental Law, Human Rights,

ÖZ

Uluslar arası şirketlerin sınırlar arası kimliğine ve artan etkisine dayalı güçlü ve bağımsız devlet dışı aktörlerin ortaya çıkması akademisyenlerin, sivil toplum örgütlerin ve diğer uluslararası kuruluşların birçok kez yönetmelik için çağırmalarına yol açtı. Ancak bu durum kurumsal sosyal sorumluluk kavramının sadece kendi hissedarlarına kâr açısından geleneksel yanıt olana değil, ama aynı zamanda da uluslar arası şirketlerinin (dış kaynaklardan destekli maliyetler) eylemlerden etkilenen paydaşlar için de yol açtı.

Uluslar arası şirketler için KSS bir ev politika çerçevesi olma ile diğer düzenleyici taslak, özellikle uluslararası hukuk açısından ortaya çıkamaya başladı. Bu düzenleyici mekanizmaları doğada gönüllü ve bağlayıcı olmayan yumuşak yasalar (soft laws) şeklinde geldi. Örnek OECD ve ILO kuralları, BM Küresel İlkeler Sözleşmesi, İşletme için BM Normları, ATCA ve uluslar arası hukuk'ta UAŞ'nın kişiliğini vurgulayan diğer bölgesel taslaklar. Ama bu çerçeveleri önemli yapan uluslar arası hukuk, BM ve diğer uluslar arası kuruluşlar tarafından kurulan uluslar arası standart form olarak ortaya çıktı.

Bu nedenle bu tez düzenleyici taslakların varlığına rağmen UAŞ'in KSS politikaları ülkeden ülkeye, özellikle gelişmekte olan ülkeler arasında, değiştiğini ve bu farklılıklar belli bir ülkedeki düzenleyici taslakların gücü ile bağlantılı olduğunu göstermeye çalıştı. Bu tez KSS'nin başarılmasına rağmen bazı ülkelerde düzenleyici taslakların gücü veya güçsüzlüğünden dolayı diğer ülkelerde aynı başarıya ulaşamamıştır. Bu sebeplerden dolayı Nijerya, KSS yasalarını uygulamada vaka çalışması olarak başarısızlığa uğramıştır. Nijerya'da UAŞ ve KSS'yi inceleyerek KSS'nin sürdürülebilir kalkınmayı sağlamasına rağmen, durum farklı olmuştur.

Nijerya'da KSS'nin kozmetik yaklaşım olması, çevresel bozulma ve UAŞ'in insan hakları içeren suç ortaklığında kullanıldı ve bu Nijerya'da zayıf düzenleyici taslak ile elde edilmiştir. Bu nedenle bu tez, zayıf düzenleyici taslağın sonuçları çevresel bozulma ve insan hakları ihlali olduğunu sonucuna başardı. Bu yüzden, tez negatif KSS yaklaşımları ele almak için politikalar hazırladı. Örneğin, Uluslar arası Ceza Mahkemesi altındaki olan ülkeler için çevresel bozulma ve insan hakları ihlali için cezai önlemler uygulaması ve ayrıca UAŞ için güvenilir cezai önlemler ile tehdit edilmeli.

Anahtar kelimeler: Kurumsal sosyal sorumluluk, Ulus-aşırı şirketler, çevre hukuku, insan hakları ihlali

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TABLE OF CONTENTS

LIST OF TABLES

LIST OF ABBREVIATIONS

ATCA …….Alien Tort Claim Acts

CBOs……..Community Based Organizations

CSR……Corporate Social Responsibility

FDI…….Foreign Direct Investment

ILO……International Labor Organization

OECD……Organization for Economic Cooperation and Development

NCP……...National Contact Point

NDDC……Niger Delta Development Commission

NGOs…….Non-governmental organizations

OPEC……Organization of Petroleum Exporting Countries

SPDC…….Shell Petroleum Development Company of Nigeria

TNCs/MNCs……..Transnational Corporations/Multinational Corporations

UDHR……Universal Declaration on Human Rights

UNGC……United Nations Global Compact

WBCSD…… World Business Council on Sustainable Development

WSSD…… World Summit on Sustainable Development

Chapter 1

INTRODUCTION

1.1 Background of Study

Transnational corporations have assumed the role of essential actors in the world market and their global reach is one that cannot be underestimated as corporations have emerged as stronger non-state actors at the collapse of the Cold War and have rigidly positioned themselves as strong decision and decentralized policy makers in world affairs. This new paradigm has prompted both negative and positive reactions as well as development of concepts such as corporate social responsibility/accountability; all which has made corporations emerge as the 21st century indirect policy maker whose actions have direct impact on states as well as individuals. Nonetheless, this is as a result of their cross-border/nationality status and also their economic power which has transcended to other spheres of societal life such as social, political and developmental aspects of the society.

Despite their influence in the global arena which is a direct product of globalization, corporations have been subject to various attacks from various stakeholders in the society ranging from non-governmental organizations, environmental and human rights activists, governmental agencies to the ordinary citizens. These attacks however can be traced to their supposed role in the erosion of state sovereignty and lack of accountability, unsustainable use of natural resources and raw materials and

uncaring attitude about the global commons (environmental degradation/hazards), human rights complicity all which are seldom linked to their drive for profit.

The concerns and condemnations led to measures by which corporations could convincingly change the perspectives of the global populace of their role as being liberators of human mind for innovation and creativity, put differently this criticisms led to policy change. This desire for change also emerged concurrently with the advent of NGO's calling for a sporadic change in the attitude, accountability and governance of TNC's all which birthed the term corporate social responsibility/accountability which has been the trope of the civil societies and Non-governmental organizations over the last two decades. This has also created mechanisms by which TNC's can be made accountable such as the development of international soft laws and norms which have remained standards by which TNC's responsibility and accountability is being measured and also there has been the provision of United Nations Norms, Regional Charters and even National Tort laws which have taken the role of a global police in monitoring and sometimes condemning the activities of TNCs.

Despite these set of rules and norms which have either emerged as a result of self-regulation from TNCs or from non-governmental organizations and international organizations, there has still been excessive complaint about the activities of transnational corporations especially in the third world/developing countries which has been their major source of raw materials. These complaints have seldom ranged from complicity in human right abuses, torture, environmental damage and even corruption.

1.2 Statement of the Problem

For over a decade now, there have been efforts by scholars to create a linkage between transnational corporations, corporate responsibility, sustainable development, human rights violations and environmental damages. These terms have seldom been used by CBOs and NGOs in describing the activities of transnational corporations in the developing countries; however the bane of the problem is that corporate social responsibility in most developing countries has not worked well as most advocates have anticipated which is as a result of lack of accountability, which therefore translates to environmental degradation and human rights violation and thus creates a need for a new regulatory framework. Also there has not been a concise examination of CSR programs and its methods of policy implementation.

The second fold of this problem is from an academic in which there hasn't been so much of literature on the linkage of corporate social responsibility as a whitewash or decoy for continuous environmental degradation and human rights violations. Therefore there exist a real life problem which has to deal with corporate social responsibility as a tool of sustainable development, the problem of regulation, environmental degradation and human rights violations, problem of distribution of resources and equity. While the academic problem points to the fact that there is the lack of concise analytical linkage from scholars of the role of CSR as a promoter of environmental degradation and human rights violation, also there is the need for more regulatory mechanisms which are going to have both obligatory and voluntary status. Finally there is a need for researchers to provide more policy oriented mechanisms that gives states/NGOs more power over the implementation of CSR by TNCs.

Analyzing further into the case study, it is essential to note that the emergence of transnational corporations' activities in the Niger Delta region in Nigeria has led to calls from civil societies, indigenous groups and environmentalists for sustainable economic development of the area through corporate responsibility and also for the protection of the human and environmental rights of the indigenous group of the region, as opposed to the profit-oriented view of the Nigerian government and a few elites. This here simply identifies two important elements of responsibility; the first is the responsibility of the state and the second is the responsibility of corporations. What has been witnessed over the years in the Niger Delta region of Nigeria has been short-term development in exchange for profit making on the path of TNCs, environmental degradation with loss of bio-diversity and high records of human right abuse such as rape, torture and unlawful detention.

These acts by transnational corporations in collaboration with incumbent governments have over the years endangered the right to sufficient food and passable standard of living for the indigenous groups inhabiting the Niger Delta region of Nigeria. Interestingly, these transnational corporations have been able to carry out their questionable activities with the complicity of the government due to the fact that there is a vacuum created by international human right law. Put succinctly there exist no hard law that is binding on them and this gives them ample power and opportunity to carry out their questionable acts.

The presence of a legal lacuna therefore creates a problem of corporate responsibility, environmental and human right protection and accountability as it gives TNCs the opportunity to act according to their own discretion.

What has been mostly observed in the developing countries is that they do not have the willpower, to enforce strict standards on transnational corporations due to many reasons such as the fact that most governments as in the case of Nigeria are always at the receiving end of negotiations due to their belief in foreign direct investment as a tool in transfer of technology and technical know-how, and the promise of development, thereby causing them to ignore the concerns for environmental and human right protection of the indigenous groups.

1.3 Objectives of the Study

The main objective of this study is to investigate the impact of transnational corporations' corporate responsibility on sustainable development in the Niger Delta region of Nigeria. Specifically the study is out to:

- Determine how corporate social responsibility as a policy is implemented.
- Determine whether it matters if governments are involved in the regulation of CSR?
- To examine the role of international law and how it regulates the activities of transnational corporations
- To examine the different CSR policy implementation methods in developing countries and examine why some of these policies have worked in some countries and why they have failed in others.
- Having examined the above, the study would adopt Nigeria as a case study due to the influx of FDI in Nigeria, thereby leading to a concise analysis on the issue of sustainable development in the Niger Delta region where transnational corporate responsibility has become an important policy tool and this thesis aims to demonstrate that where the regulatory framework is weak, there are certain consequences

- By using the Nigerian case, which has been known for accommodating a large number of TNCs, we want examine the consequences of regulatory framework and to do this we are going to analyze first international law, regional frameworks, national law and then look at what the consequences are for Nigeria.

1.4 Significance of Study

Although numerous scholars have written about the impacts of transnational corporations' activities in the developing countries, and their impacts on human right violations, there hasn't been so much focus on how CSR is used as a form of cosmetic approach to access resources and cover up environmental degradation and human rights violations which have often be traced to the activities of transnational corporate entities. Also, this research study would explore the different CSR approaches adopted by transnational corporations, most especially in the extractive industry in developing countries around the world and would also examine the factors that contributed to its success or failure.

These CSR approaches have been categorized and typified into different models such as Type A, (Poor Regulatory Framework with Community assistance which is just carried out by the TNCs alone) Type B, (Weak Regulatory Framework with Community development), Type C, (average Regulatory Framework with Community development which involves Partnership with government agencies) Type D (Strong Regulatory framework which involves partnership with NGOs/community members).

With the assessment of the policy models on a universal scale, the research would then proceed to examine these models and how they have been translated by TNCs in Nigeria as a policy tool and also examine its successes and shortcomings in the case of Nigeria. Put differently this study would be focusing on the content of the activities of transnational corporations and would therefore relate them to the regulatory framework which allows them to go ahead with their activities.

This research would help develop ways and mechanisms by which transnational corporations can be more accountable in the context of international legal framework. Future researchers who are also interested in caring out research on the subject of transnational corporations and corporate responsibility human rights and environmental law would be beneficiaries of the outcome of the findings of this thesis.

1.5 Scope of the Study

This study examines regulations of corporations and the implementation of their CSR policies in the developing countries; it explores the reasons behind the successes and failures of CSR approaches of transnational corporations and also examines the effects of weak or strong regulatory framework on CSR approaches and their prospective outcomes in countries where it has been applied.

In the context of Nigeria, due to the huge number of TNCs most especially in the extractive sector that are influencing corporate social responsibility, this study would examine if this CSR methods or policies have been adopted as a form of cosmetic method of disguising the real impacts of the activities of TNCs. This focus is largely based on the fact that Nigeria is an emerging economy with growth and a low

regulatory framework, and also there are diverse numbers of corporations working in the Niger Delta which also gives the room for a comparison perspective.

1.6 Research Questions

In the view of the aforementioned, the thesis explores the following:

- Whether obligatory or not, is there policy variation in CSR by transnational corporations? Also are TNCs held accountable equally, between countries and within countries?
- How has TNCs employed/interpreted CSR, is there any variation or oversight in the interpretation of CSR implementation?
- What is the relationship between the state of Nigeria and TNCs in the design and implementation of CSR and what difference does it make that the regulatory mechanism is weak?
- What are linkages between human right and environmental law in Nigeria?

1.7 Research Hypotheses

This study is guided by the following research hypotheses stated in null form.

H_0: CSR does not work in countries with weak regulatory framework

H_1: Whether there is a strong or weak regulatory framework, it does not have a significant influence on the outcome CSR

$H_{0:}$ Strong regulatory framework promotes sustainable development

$H_{1:}$ Weak regulatory framework promotes short-term development

H_0: Strong regulatory framework on environment promotes good environment

$H_{1:}$ Weak regulatory framework on environment promotes environmental degradation

$H_{0:}$ Strong regulatory framework on human rights promotes observance of human rights

$H_{1:}$ Weak regulatory framework on human rights promotes violation/abuse

1.8 Research Methodology

The basic method chosen here is to focus on the documents of the corporations which are available, the documents of the Nigerian government and any other necessary material which relates to the implementation of CSR and the impacts of these policies. Also due to the fact that the research work is highly empirical in nature this creates the need for the use of secondary data to achieve the objectives of the study. The secondary data would be obtained through the library research. Secondary data are obtained from relevant books, journals, Internet, seminar papers, unpublished works, magazines and newspapers. Data collected would be presented basically with the use of table in other to easily interpret the results.

This is due to the fact that pictorial representation enhances clarity. The hypotheses would also be subjected to a series of tests which would suggest the consequences of the impacts of TNCs activities on Nigeria which not only aims to contribute to literature on TNCs but also to theories used in explaining the phenomenon of TNCs and lastly this research through empirical means seeks to contribute towards policy making of the Nigerian government on TNC issues.

1.9. Summary of Analysis

Due to the incessant rise in transnational corporations which are conceived on bilateral investment treaties, trade agreements, domestic liberalization and resort to international private arbitration, the universal influence of transnational corporations has extensively amplified their ability to operate at a speed and level that neither international organizations nor states can contest (Oatley 2006). Transnational corporations have often posited that the securing of rights and the protection of

environment is usually under the jurisdiction of states or inter-governmental organization such as the United Nations and their own sole responsibility is to their shareholders whose major need is the utmost maximization of profit by these corporations.

This has led to several dissenting opinions (Anderson 2002, Clapp 2003, Morgera 2009,) on whether corporate responsibility is enough or accountability should be the major aims of these corporations. Put differently since these responsibilities are short-term measures of temporarily keeping their host communities happy and angry at the end, scholars (Omoweh 1998, Collingsworth 2002, Frynas 2005, Zalik 2006) have therefore called for not only responsibility but accountability.

To buttress this, Frean (2004) posits that the idea of corporate responsibility without accountability was a sham, due to the fact that it was created because states' actions seemed inadequate but of recent there have been calls on government to resume back their duties to their citizens.

1.10 Organization of the Study

Chapter one serves as the introduction to the study. It contains the statement of problem, objectives of the study, research questions, research hypotheses, and significance of study, scope and limitations of the study, research methodology and summary of the study. Chapter two serves as literature review and method of analysis, it focuses on transnational corporation, notion of corporate responsibility, linkages between human right and environmental law which includes the history of environmental law and human rights, role of international law over multinational corporations' activities in general context, and their corporate responsibilities in

Niger Delta Nigeria. Chapter three focuses on the case of Nigeria, weak regulatory framework, and CSR: consequences for the environment. Chapter four focuses on the case of Nigeria, weak regulatory framework and CSR: consequences for Human Rights. While chapter five serves as the summary, recommendation and conclusion of the study.

Chapter 2

LITERATURE REVIEW AND METHODS

2.1. A Historical overview of TNCs and CSR as Twain Bodies

Over 75,000 multinational corporations (MNCs), 750,000 subsidiaries, and a huge amount of suppliers all over the world dominate the world's economic growth today. Examining their emergence, some of the researches on this trend observed that multinationals partake of the world's exports which has moved from a quarter in the 1980s and by 1995 to a third; in 1997 trans-border mergers and acquisitions resulted in Fifty nine percent of the sum of foreign direct investment thereby accumulating large industrial prowess in extra-large corporations at the expense of destroying a healthy competition. The latter part of the twentieth century, saw to the shift in role of MNCs as they were thus involved in over 60 per cent of global trade, mainly as vertical trade in the corporations dominated production, distribution, and sale of goods from the periphery (Morgera, 2009, pp. 23).

Nevertheless, Rigaux (1991) posits that "the idea of transnationality comes into play when it is being applied to an independent corporate system, and this understanding, the transnational corporation is one single corporation even if it is composed of corporations with separate identities under the corporation law of the states in which they operate". Two schools of thought are prevalent on the issue of transnational corporations. The first school of thought creates a picture of global and emerging business activities, which possesses well trained and qualified employees, making

use of cutting edge technology to subdue logistical problems and to contribute to the development of the human race.

On the other side is the increasingly persistent image of multinational corporations as the benchmark of recent larger-than-life attitude, greedy and powerful corporations which have enough acumen to control national governments and at the same time engaging in social command of consumers and unrestrained exploitation of people in the periphery. Both versions have elicited the importance of the huge size and economic impacts of TNCs (Anderson, 2002, pp. 23).

It is an established fact that transnational corporations are principal entities which hold a large amount of power and influence, at times accumulating more assets than their host states which make them distinctive amid the actors in the international arena. Though they do not have the capacity to make or promulgate laws due to their status as non-state actors, nevertheless, transnational corporations have been able to accrue authority and clout in the economic, social and legal sphere of the international arena due to their huge trans-jurisdictional and economic power.

TNCs rise in influence and authority has simultaneously collided with increasingly popularized connection with human right violations. Nonetheless TNCs have constantly and continuously rejected their participation or culpability in human right violations and they have been able to sustain this stance of blamelessness in international law by adopting the position of bystanders. This bystander position/approach is however deliberate because it inherently culminates in non-existence of culpability (Stephens, 2002, pp. 45).

The normative attribute of transnational corporations is that they are driven by the desire of profit maximization for shareholders. Nonetheless, the bureaucratization of transnational corporations provides a constituent which allows it bearable to overlook or excuse ethically wrong behavior, manners or activities in case of an occurrence. However, the fact that transnational corporations have recognized the merits of being more liable and responsible in the global sphere over the years, this acknowledgement is usually conceived out of the fact that in the contemporary global system profits can only be garnered by corporations when they are more responsible and answerable (Shane, 2006, pp. 107).

Most importantly, part of what appeals TNCs to developing countries are negligent environmental regulations and what resembles acceptance of human rights violations. MNCs have amplified the speed of man-made environmental degradation and attendant damage to humans. Indigenous groups are usually affected ruthlessly; the sustainability of their lifestyle becomes unattainable as natural resources are destroyed by MNCs (www.law.northwestern.edu). Also with the advent of globalization, transnational corporations have been able to extend their frontiers in to the developing world market without obstacles due to the locational advantage and removal of bottlenecks from overseas investments (Haufler, 1997, pp. 140)

In the globalized world however, there has emerged a fundamental tension from some quarters which has been predicated on whether there is a need for some form of supranational regulatory framework to cope with globalization which entails transnational interactions and global corporate governance. However it is instructive to note that international law in this field is relatively under-developed as it basically

privileges TNCs in designing and implementing its own vision of corporate social responsibility. The pervasive nature of globalization has however exposed the more negative aspect of corporate activities which has led to an enormous increase in the calls of CSR (Parker 1998, Korten 2011).

It is pertinent to note that the notion/concept of corporate social responsibility has existed for decades, taking up ideas of corporate philanthropy, protection of human rights, and observance of labor principles amid a number of the more significant values. The phrase itself, however, has only been more known in the last twenty years, and has developed to include environmental, ethical, and governance mechanisms. The extended definition of CSR is principally attributed to the union of numerous vital events and a sequence of negative corporate behaviors. This includes environmental disasters, such as Chernobyl and Bhopal, having demoralizing consequences on huge populations and getting across international borders (Peyser, 2010, pp. 3).

Right from the 1970s, the most favored reaction to the probable misdemeanors of transnational corporations on issues of human rights has been the adoption of voluntary codes. Several facts has revealed that regulation in the field of TNCs in relation to human rights has been quite different as opposed to the approach adapted in the other aspects of human right most especially through the use of protocols and treaties. Prior attempts to standardize the activities of TNCs took place in the United Nations especially in 1974 whereby a commission on Transnational Corporations (UNCTC) was established and was assigned to draft a universal code of conduct (Reinisch, 2004, pp. 44).

The issue of human rights was initially not included due to the fact that the code of conduct was to specifically address questions on dispute settlement, transfer of technology international trade, treatment of foreign businesses, taxation and jurisdiction, however, after sometime, human rights became parts of the subjects to be addressed.

Regardless of the fact that UNCTC was available for thirteen years and was able to come up with some drafts, by 1992, the UNCTC could not continue and this led to the code of conduct been discarded (Weissbrodt and Kruger, 2003, pp. 97).

2.2. Corporate Responsibility and Regulation

The World Business Council on Sustainable Development's characterization of CSR, endorsed by many corporations, refers to stakeholders but centers on their economic connection to the corporation. The WBCSD describes CSR as "the dedication of the corporate sector in contribution to sustainable economic development of employees, indigenous groups, host communities and their host state to help improve the standard of living" (WBCSD, 2000, pp. 5).

The notion of corporate responsibility is predicated on the prospect that companies ought to not to take actions on the desires of their shareholders alone, but rather have responsibilities towards the host society in which the company functions. On the barest level, corporate responsibility amalgamates environmental values and alarms in the corporate conduct, in tandem with national regulations and laws (UNGA 2008).

As of the late 1990s, several transnational corporations were reconstructing their role in the world and their duties to the environment and human rights. This trend, named corporate social responsibility (CSR), has since taken substantial awareness from both supporters and critics. Followers assert that CSR presents transnational corporations a given chance to do extremely well while excelling well. Critics argue against this by positing that CSR, as a voluntary program, is not more than a public relations tactic to augment market share and increase corporate profits.

As the CSR movement expanded, many corporations and firms vowed to perk up their environmental and social performance predicated on the doctrines of corporate social responsibility. A number of firms made a trade case for CSR, positing that it can increase profitability by sinking the danger of negative media hype, consumer boycotts, and shareholder activism. Several other corporations made an ethical/moral case for CSR, arguing that transnational corporations have a moral/ethical obligation to the world and the planet which displaces the odd quest for profit making. Most times, the knowledge of CSR is often from the standpoint of business philanthropy and benevolent contributions to the locale, but this doesn't succeed in capturing the most precious assistance that a company needs to make (Reyes and Twose, 2002, pp. 55).

Of recent, the behavior of TNCs when in service in peripheral countries has been addressed under the notion of CSR. This approach, worked out under the "stakeholder's theory", although moral in character, also sway's the legal perception. The meeting between ethical and legal scope in this light becomes highly significant for the internationalization of human rights. Advancing CSR means that TNCs are

expected not merely to take full advantage of shareholders' interests, reduce the negative impacts of their activities and to uphold the law but also to add to societal development and meet the welfare and wants of a broad range of stakeholders (Sullivan and Hogan, 2002, pp. 70).

Also, TNCs are required to respect responsibilities which exceeds national laws of the host country in which they function in order to contribute to sustainable development of their host communities, which is in reaction to the global society's conjecture that giving transnational companies their right to being and the probability of operating globally via trade and investment ought to be evenhanded by balanced obligations (UNCTAD, 1999, pp. 345).

Responsibility of corporations has also been distinguished by the need to preserve a stable awareness for the environment as the economic advancement leads to diverse progress in the standards of life. On a minimal level, corporate responsibility assumes a rising pressure on TNCs to put into consideration the environmental repercussions of their activities regardless whether specific legal obligations demands that they do so. By and large, corporate responsibility has been illustrated as regulatory in nature, by making its hub on potential corporate conduct relatively than past behavior (Raman, 1998, pp. 7).

Thus, responsibility appears to pass on as the need for substantive principles, principles referring to the outcome that can be obtained, with suggestions to the involvement of TNCs in the realization and support of sustainable development,

through the execution of environmentally based strategy, performance and technologies (UNCTAD, 1999, pp. 68)

Underneath the tag of "corporate social responsibility", far-reaching obligations are required such as respect for the territorial sovereignty, political structure and organization of the host state, respect for economic, civil, social and communal solidarity rights, nonparticipation in corrupt acts and observance of competition and tax laws, up to TNCs' responsibilities not to misuse their economic power in a way that is detrimental to the economic security of the nation states in which they function. Therefore, CSR is much further than the "not doing harm" truism and should be known as "how managers ought to deal with public policy and social issues" (Windsor, 2006, pp. 93).

Thus the Special Representative Ruggie (2008) clearly envisaged a social framework for the operations of corporate investments in host countries and a social accreditation to operate. The core means by which transnational corporations are to implement their responsibility to respect human rights through the use of a due diligence system to human rights risk assessment. This demands that for the corporations to shift their identity from being victims of "identifying and disgracing" to "understanding and protecting" that they internalize human rights through due diligence (UNSRSG, 2008, pp. 54).

The core fundamentals of due diligence includes: a complete human rights strategy, intermittent appraisal of the impacts of human rights, and appropriate management and reporting systems that emphasizes effectual corporate complaint measures.

Special Representative Ruggie also emphasized that this is not like previous profitable due diligence procedures, which are in the major transactional processes, as there exist a constant necessity to employ proper communication measures with the right-holders. Put differently, the corporation must think beyond the safety of its own assets but rather attend to the needs of those it affects by its dealings (UNSRSG, 2008, pp. 55).

The amplified significance of TNCs social responsibility corresponds to the increasing range of activities taken by these ventures in the internationalized world economy (UNCTAD, 1999, pp. 10). Another aspect which elucidates the widened significance of TNCs in the world economy is the theoretical as well as operational development in the definition of TNCs, as they are now in addition to their conventional foreign direct investment form incessantly defined by a multiplicity of small or non-equity investments.

CSR has extended in the gap that is present between unenforceable public rights and absent private rights and corporation stakeholders have organized to insist on better height of accountability from corporate actors. CSR has advanced to the position where corporations are no longer creating social obligations in a normative vacuum. Corporations will discover that their programs are appraised against a broad diversity of principles ranging from local and national laws to voluntary standards established by factions ranging from industry associations to the United Nations (Altschuller, 2010, pp. 5).

2.3 Corporate Social Responsibility as Understood by States

A grave debate of corporate responsibility unavoidably includes the functions of government. Several argue that, as the world economy assumes a more incorporated stance, the power of states begins to decline. Similarly, the state must tackle ethical principles, who has the jurisdiction to label them and its application? Nor can the function of business in the world economy be alienated easily from the subject of world inequality in access to trade and resources (beyond voluntarism).

For critics of CSR such as (Freidman (1970) and Stone (1975), obedience of laws by corporations has always been the first point of reference of social responsibility. Nevertheless major propositions on CSR has been largely centered on the presumption that responsible corporations operate in the context of a politically defined regulatory framework which is largely dictated by governmental laws, however through globalization, this cannot be said to be the situation of things again especially in the developing world (McWilliams and Siegel, 2001).

Over the years, the relationship between states and TNCs in the world has always been characterized with different factors depending on the side of the global divide a country is, and this is sometimes subject to change as a result of globalization. Also, it is a known fact that states have the power to regulate the activities of corporate entities in their jurisdiction, which sometimes reflect in the attitude of corporations in their policy choice of CSR and its mode of implementation (Garvey and Newell, 2005, pp. 5).

The transformations in the enormity and character of TNCs activities have led to the boost in the importance and substance of social responsibility in two interconnected ways. First, the impact of TNCs on the world populace has increased ostensibly as these instruments of economic globalization move into the verve of domestic societies through both fairness and non-equity methods. Espousing their amplified global reach and capacity, TNCs have developed into more proficient, immediate and conscious actors whose actions may create contributory links to societal results in manifold countries and cultures. This important factor therefore creates exacting apprehensions for governments if the principal TNC source of change does not even possess an invested local existence which is disposed to the host state's legal jurisdiction or jurisprudence. This kind of situation is mainly likely to take place in lesser developing countries whose social order is most susceptible to the activities of exterior forces (UNCTAD, 1999, pp. 19).

Many other concerns, particularly ones that may predominantly have an effect on people in the developing world, are usually ignored by the general public and are not taken up by TNCs in as much as they are not connected with amply powerful public pressure. Therefore, numerous development-oriented matters such as technology transfer, education of the host workforce, the significance of backward linkages and the sponsorship of local entrepreneurship; which are of significant interest to peripheral countries are normally excluded when TNCs and civil society in the advanced-industrialized countries engage in discussion over CSR (UNCTAD, 1999, pp. 8).

Corporate social responsibility has advanced and become wider in scale over time alongside with society's perceptions and expectations. If CSR is understood as voluntary obligations to stakeholders which a corporation undertakes, in contrast to legally prescribed conformity efforts, it can then be seen as a bellwether of the course in which guidelines is trending or parts in which sensitive legal standards may be anticipated to become known as a product of amplified communal expectations (Altschuller and Jaramillo, 2012, pp. 2).

Observance with CSR may appear an ill-defined notion, but it is astonishingly actual and demanding. If a target is set for the corporation whether that is a legally authorized goal such as conformity with the Foreign Corrupt Practices Act or local labor laws, or a voluntary standard such as the Voluntary Codes on Human Rights and Security and the Global Network Initiative Principles the only extra worth for the corporation is in achieving and executing that goal. Paying purely lip service to CSR objectives might lead to legal, public image and internal morale challenges (Altschuller and Jaramillo, 2012, pp. 3).

2.4 Role of International Law over the activities of TNCs and Corporate Regulation on Human Rights and Environment

The development of international law as a legal framework was mainly to regulate relations and communications among states within the international political system (Kingsbury 2003). In line with the United Nations Charter, it was acknowledged that international law has developed from the realm of Westphalian law which was largely based on co-existence of states and has emerged presently as a law that ensures cooperation between states and non-states actors.

With the advent of globalization, law has been dichotomized into two spheres one is that the present realm of international law is beyond the concept of states cooperation and this has been made possible through the emergence of new regimes. The second sphere is that international has been distinguished by the emergence of certain legal regimes, which provides rules of jus cogens and erga omnes character and in turn regulates the activities of private actors (Wood and Scharffs 2001).

Traditionally, international law has been considered to be feeble when it comes to regulating TNCs, this feebleness is increased in the absence of municipal laws which is competent at holding TNCs liable for their negative activities within it territory. There is more complications in the situation whereby the cost country's government, domestic laws; legal or judicial system is incompetent at enforcing accountability or responsibility from TNCs that operates within its borders. This jurisdictional issue has led to more arguments that TNCs carry out their activities outside the legal framework and therefore creates a problem of holding them accountable for their negative impacts in the society and at the same time making it impossible for states to be held liable for the activities of their companies abroad. In the same vein, private actors acting independently cannot attribute their behavior to their home state (Sende, 2009, pp. 34).

Historically, the international legal system didn't make provisions to attend to individuals but was majorly focused on activities of states, and this was largely portrayed by emphasis on the fact that the rights, roles and privileges enjoyed by citizens were dependent on the state. However contemporary international law has somewhat changed in the sense that it has evolved with more regimes such as the

trade regime, human rights and environmental regimes to fill the lacuna created with the emergence of new issues such as human rights violations and environmental degradation thereby granting individuals or corporations redress at the international level (Emberland, 2006, pp. 20).

Due to the significance of multinational investments, it is obvious that MNCs are significant global actors, they are particularly significant in environmental laws and politics and policy making because they are usually inclined to invest in environmentally sensitive sectors (Clapp, 2003, pp. 18).

Jagers (1999) posits that traditionally, TNCs have never been recognized as subjects or participants of international law and this has given them the opportunity to behave anyhow. The invisible nature of TNCs' accountability at the international stage, particularly under international human rights law, has emerged from the dual consequences of two elements. The first element is that traditionally, international human rights law has developed as an instrument to protect individuals from the unreasonable utilization of power by governments, and not companies or other non-state actors.

To this fact that international human rights law does hold non-state actors, and this done by way of taking states ultimately responsible for the direct infringements of the rights of others, as well as corporations (Clapham and Jerbi, 2001, pp. 346).
While the second point is that historically corporations have been almost a domestic issue (Kinley and McBeth 2003:52). However the legality of international accountability of TNCs in the global sphere has usually been referred to the

emerging regimes in international law such as international human rights law and this has steered the outcomes of negotiations and discussions towards strategies and policies based on human rights (Kamminga and Zia-Zarifi, 2004, pp. 27).

International corporations have influenced environmental global governance by creating their own policy of conduct which is aimed at preempting state or international law. During the Rio earth summit and the Johannesburg climate summit, international corporations emphasized the significance of intended environmental schemes being initiated by corporations, in contrast to specific external obligations forced on them (Chatterjee and Finger, 1994, pp. 35).

TNCs have adopted codes such as the international organization for standardization's ISO 14000 environmental management standards, the ICC's business charter for sustainable development, responsible care and the coalition for environmentally responsible economies (CERES) principles (Nash and Ehrenfeld, 1996, pp. 37).
International law has tried overtime to regulate universally the activities and behaviors of TNCs especially in areas of international human rights and environmental law. These attempts to create norms has however not been limited to the global level, but has also transcended to the regional level such as the EU, AU and other international organizations like the OECD and the ILO and other non-governmental organizations that are engaged in advocacy and creation of awareness in order to create an effective regulatory system to combat the negative excesses of transnational corporations. The second phase of the use of legal framework to regulate the activities of TNCs usually emanates from the state. A very good example of this is the Alien Tort Act which is used by the United States in providing

jurisdiction for charges brought against TNCs under the United States jurisdiction. With reference to the exact category of international human rights mechanisms, there is span for the argument that the provisions of some of them can be read to apply to corporations. It is therefore imperative to examine this issue from the Universal Declarations of Human Rights angle.

United Nations international human rights regime is largely founded on the Charter of the UN and the Universal Declaration of Human rights and are both predicated on covenants and treaties. According to general international law, the Charter of the United Nations and other treaties and covenants creates obligations in which states are meant to abide with. This is mainly as a result of the fact that the UDHR was drafted at a period in history where corporations or private actors had little or no power, influence and control in the international legal system as they do now in the contemporary political system but was largely dominated by state actors for regulatory purposes amongst each other. At this period, there existed no persuasive reason to regard private actors or non-state actors as players that would affect human rights or even environmental rights which invariably explains why it is usually hard to regard them as subjects or participants of international human rights law.

In 1948, there was the adoption of the UDHR which was composed of standards declared by the United Nations General Assembly as "a general standard of accomplishment for all peoples and all states, to ensure that all individuals and organs of society shall strive through education and teaching to promote respect for the rights and freedoms and through progressive means, national and international, to secure their universal and efficient recognition and observance" (UDHR 1948).

Despite the fact that there was no specific duties for corporations in the UDHR, the final paragraph which states that "all organs within the society" can be regarded as a foundation for commitment on the path of the private sector or non-state actors to ensure the observance of the UDHR (BLIHR 2006).

Most especially, Article 29 and 30, of the UDHR can be viewed as referring to TNCs and other non-state actors when combined together in the context of their obligations not to deny nor violate the human rights of others. Even though it is commonly accepted that some requirements in the UDHR have become customary international law, it is vague whether articles 29 and 30 have attained such status. With the nonexistence of binding laws, the obligations that the UDHR force's on TNCs might sum up to ethical obligations.Therefore in terms of international law, the UDHR might be the "most delicate foundation on which to build a doctrine of individual obligations to value human rights," and by addition, a most doubtful position to bind corporations (Paust, 1992, pp. 53).

The problem however is that even the UDHR is non-binding and so far has not been able to expressly make a direct statement about its position on transnational corporations or non state actors, nonetheless, it has been widely argued that there are some soft laws or non binding codes that have been voluntary that are able to work to an extent in ensuring the accountability of these transnational actors.

In order to expatiate more on the validity of the UDHR and the accountability of TNCs in the international legal field, Higgins posits that the normative character of international law which is a process, allows it to achieve more general values and at the same time making provisions for an operational structure that adjusts to changing

realities in the international political system and at the same time aware of the applicability of such rules (Higgins, 1996, pp. 35).

It is therefore quaint essential to note that the present lack of universal regulation of TNCs in light of human rights and environmental law has created a question which is how the international law making body which includes the United Nations and other regional bodies are able to counter the challenges. Moreover, the answer to this question has come in form of soft-law regulatory mechanisms and schemes (Akermak and Marsater, 2005, pp. 535).

Faced presently with the proliferation of soft-law in all spheres of international law, the first thing that crops up is how to create the linkages between the traditional hard norms and the emerging soft norms (Kirton and Trebilcock, 2004, pp. 11). The idiom or phrase known as soft law is used to describe law who's legal or normative features are highly contentious and ambiguous in the sense that its normative character is not presumed on justiciability or obligations. According to Georges Abi-Saab, "soft law permits the discovery of novel spheres for the development of international law, through the articulation of general value which helps in explaining frameworks that further encourages states in Normativity expansion" (Georges Abi-Saab, 1987, pp.161).

It is instructive to note that soft law also signifies the acknowledgement of the necessity for modern legal framework, indirect, provisional protection measures through a process of influencing prospective legal values and their applicability by the international community.

Soft law has also contributed to the evolving of international human rights law and environmental law which has gone under serious deliberations and negotiations and can be said to possess an element of states to these norms and development of state practice in respect to international law (Shelton, 2000, pp. 223).

Still the lack of binding power inhibits the effectiveness of soft law, leading to a lacuna between the theoretical and practicability of soft law. The applicability of soft law is highly voluntary and is not subject to the jurisdiction of the court (Varella, 2003, pp. 2).The fact that soft law is not limited to the state but also non-state actors such as corporations and private individuals in understanding evolving global guidelines or frameworks for human rights and environmental corporate accountability therefore makes this thesis to examine vast amount of soft law mechanisms, plan of actions, intergovernmental documents, declarations of conferences, recommendations and guidelines and reports of expert groups intergovernmental organizations and voluntary codes of conduct proposed by NGOs for TNCs. Nevertheless international law is not much about compulsion, in spite of its hard nature or soft nature, or airs ability to sanction behavior of states and individuals, law is mainly to set directions for the conduct of people or corporations (Morand, 1991, pp. 129).

A very good example of soft laws can be seen in the OECD and ILO guidelines for multinational enterprises or transnational corporations activities within a given states. Put differently the states are the signatory to theses soft laws but they are not binding on them; however they are mechanisms by which host states can investigate and hold

accountable transnational corporations within their jurisdictions (Rodley, 1993, pp. 297).

The guidelines made by OECD in 1976 which was reviewed in 2000 for multinational enterprises recommends that MNEs "respect the human right values of those impacted by their operational actions which are in concert with the host states international obligations and commitments" (OECD 2001). The Guidelines are majorly composed of voluntary principles for accountable corporate conduct in fields like environment, information disclosure, labor relations, human rights, consumer welfare, anti-corruption supply chain management and taxation.

The Guidelines objectives were to ensure the promotion of the encouraging contributions of TNCs to environmental, social and economic development. The Guidelines reflect the collective ethics of 39 states which consisted of the 30 OECD members and 9 non-member states. Most of the countries that adhere to the guidelines contribute more than 90 percent of the global FDI and serve as home states for strategic TNCs. Though the observation of the codes of conducts is highly voluntary for corporations, participating states try to ensure commitments from the path of the TNCs.

During the 2002 revision of the OECD guidelines, the National Contacts Points has widened its focus to ensure the promotion of the global standards, handling of enquiries and providing assistantship in the event of challenges. The most tangible evidence of the commitment of the NCP is usually the establishment of a government office that is in-charge of promoting the observation of the standards and creation of awareness and advocacy for those standards for the proper understanding of the

affected stakeholders.

In the absence of agreement at the state level, the officials of the NPC must revise and prepare a statement which would identify the culpable corporations unless there are other factors to be met that still under the guidelines and are in the process of being fulfilled. Despite the fact that these reporting methods sometimes dissuade corporate behavior from human rights abuses by using public interest as a tool, compliance however with the standards is voluntary and there are no procedures provided for enforcement. The OECD guidelines can be said to be the most commonly utilized voluntary mechanism at the global stage (De Schutter, 2005, pp. 32). The Committee on International Investment and Multinational Enterprise of the OECD is in charge of the interpretation of the Guidelines (OECD 2001).

However there has been criticism from some corners over the weakness of the National Contacts Point strategy for being highly feeble and unsuccessful. Thereby leading too suggestions on how to improve the NCP framework and make it more effective. The NCP codes or framework is under the umbrella of other instruments which seeks to encourage transparency and responsibility from the path of the government also international investors (OECD June 2006).

Some critics have viewed this OECD guidelines due to the fact that the guidelines were discounted for some time because they were perceived as restricted to the OECD arena and thus incompetent of addressing breaches by corporations outside the OECD region (Salzman, 2000, pp. 788).

Another soft law which emerged as a regulatory mechanism was in 1977, whereby the International Labor Organization created the Tripartite Declaration of Principles regarding Multinational Enterprises and Social Policy. The Tripartite declarations or principles are not only directed to labor organizations, but also to corporations and the private investment sector. The tripartite declarations are concerned with the promotion of large scale employment, wages and benefits, rights to make complaints, labor organization rights, good health and safety and finally equal treatment of employees. There is also a committee appointed to supervise observance and adjudications regarding conflicts among transnational corporations (ILO 2001).

This is however deficient in the sense that the tripartite principles or guidelines which originated from global consensus of ILO structure is only limited or restricted to labor rights but excludes all other forms of human right that might promote development. The process of interpretation is also under-utilized. States are the only actors permitted to make a request for interpretation, however in the occurrence of their inability to do so, both employers and employees union are permitted to request interpretation.

The world most substantial corporate responsibility or liability initiative that has emerged till date is the United Nations Global compact which was created in 2000. Its creates a forum or avenue for corporations and companies to join forces with United Nations sub organizations, states, NGOs and civil societies, to promote ten major principles the fields of anti-corruption, environment, human rights and labor (Corell, 2005, pp. 236).

The United Nations Secretary General at that time was Kofi Annan, and he started the Global Compact initiative to regulate the relations between the private sector and the United Nations. The Global Compact was initiated on 26th of July 2000 as a voluntary mechanism to ensure co-operation with the private sector, corporations and NGOs. The mechanisms consist of ten principles which were extracted from the UDHR, OECD, ILO Tripartite, the 1992 Rio summit declaration and the UN Convention Against anti corruption (RIO 1992, ILO 1998, De Schutter 2005).

The principles of the Global Contact consist of directives aimed at ensuring the promotion of human rights improvement labor standards, environmental protection and transparency (Prakash, 2003, pp. 110). The Global Contact is voluntary initiative founded on ten major principles concerning human rights, anti-corruption, labor standards and environmental protection. The human rights principles are:

- Internationally declared human rights within the area of businesses must be protected upheld and respected
- Corporations must ensure their lack of complicity in human right violations (UN Global Compact).

However there has been come criticisms over the observance of the Global Compact especially when it comes to it enforcement, there exist a fear of abuse. The compact has also made a provisional clause which is that the participation of a corporation or company does not grant it automatic recognition or certification from the compact as being an organization that has implemented the principles of the compact. The compact is the largest global initiative on corporate responsibility, which has more than 3000 corporations and stakeholders as participants. In addition, there exist no

yardstick for measuring the operations of corporations in respect to the protection and promotion of individual rights standards. Therefore the Global Compacts objective is to be a foundation for the expansion of codes and standards of operations which are in concert with the principles, beliefs, ideas and values of participating corporations (Beyond Good Deeds, 2002, pp. 27).

The other side of this is that the encouragement of corporate good conducts, shared learning and voluntary value for the protection of human rights, and has portrayed the United Nations as being afraid of addressing the issue of solid action against the activities of human rights abuses by corporations through the international hard law field. The adoption of soft law mechanism like the global contact has resulted into optimistic and applaud able cases but with the presence of no central United Nations regulatory mechanism with effective leadership, corporations or private businesses would seize this as an opportunity of wearing the garment of the UN as a participant in protecting human rights but without really doing any tangible thing to promote human rights (Fernandes and Girard 2011).

2.5. The United Nation Principles on the Responsibilities of Transnational Corporations and Other Business Ventures with respect to Human Rights

Recently, there has been another trial at developing a framework for corporations an businesses in relations to human rights and environmental protection. This framework is the UN Norms on the responsibilities of transnational corporations and other businesses and which consist of a list of human rights responsibilities of corporations. Unlike previous regulatory schemes of the UN which are mostly universally created for all actors, the UN Norms is majorly directed at the activities

of transnational corporations but these Norms have not been ratified. In 2003 the UN Sub-Commission on the protection and promotion of human rights gave its approval to the statement of the Norms.

According to the preamble of the Norms, there is the recognition that corporations possess:

> '…the capability to create damaging effects on the lives of individuals and human rights by their central business activities and operational policies …'(UNGLC 2005).

There is a provision made for the implantation and monitoring of the Norms by the United Nations Human rights responsibilities. According the article 15, corporations as part of their prior march in line of compliance are under the obligation to ensure the adoption, dissemination and implementation of the codes of operation which are in concert with the United Nations Human Rights Responsibilities and to employ other means of full implementation of these obligations and to create measures for the speedy implementation of the Norms established in the Un responsibilities (UNHRR 250).

Furthermore, article 15, states that transnational corporations are to ensure the incorporation and application of the principles or guidelines in the business contracts or several other modes of interactions with their suppliers, contractors, licensees and sub-contractors. Also the UN Norms and Responsibilities envision a situation whereby national, inter-governmental and non-governmental bodies would ensure independent, transparent monitoring of the implemented principles (UNHRR 250 article 16).

It is instructive to note that in the Responsibilities drafted by the UN, there has been no clear definition granted to monitoring and the important provisions seems to require ad hoc and not systematic monitoring of the operations of transnational corporations. There is no clear division between monitoring the compliance of transnational corporations with the Norms and monitoring of the Implementations of the Norms.

The UN Norms and Responsibilities are drafted in mandatory tone which removes any form of ambiguity and creates a clear obligation for transnational corporations to protect and promote human right codes. Transnational corporations are to ensure the protection, prevention of violations and promotions of human rights at both the national and international level within their operational environment. Aside the Global Compact and the refusal of state ratification of the UN Norms and Responsibilities, for transnational corporations in relation to human rights, there was an appointment of a Special Representative for Business and Human Rights in person of Professor John Ruggie who was an active player in the creation of the Global compact by the UN Secretary General in 2005 (HRR, 2005, pp. 69).

In 2008, Ruggie created a framework embedded on three major principles which are the principles to protect, respect and remedy. The principle of protection is largely created for the state as its duty to ensure that there exist no cases of human rights violations by third parties, corporations inclusive through proper policies of adjudication and regulation. The second principle is that of corporate responsibility and accountability to human rights, compliance with laws, and in addition, corporations are expected to operate under social licensing to fulfill social and

operational expectations. The last principle is that which advocates for access to remedies for victims of human rights violations from transnational corporations. Even in cases of optimal operations by transnational corporation and companies, conflicts over effects of companies in regards to human rights are plausible and this means the need for redress for victims of such actions. The non-binding regulatory frameworks have been globally accepted by both the businesses/corporations and governments (U.N. Doc. A/HRC/8/5 2008).

Also there is the emergence of extraterritorial legislation in terms of tools of municipal law with extraterritorial reach which are proficient enough to snare corporations across an array of human rights breaches, such as the U.S. Alien Tort Claims Act (ATCA) have indeed curbed some corporations (Ratner, 2001, pp. 443). On the path of the home states of these corporations, there exist no legal obligations to regulate extraterritorially the conduct of their corporations. Likewise there is no statute of international law that prevents states from regulating the conducts of TNCs. States have been endowed with far-reaching authority and power under international law to adjudicate and prescribe their jurisdictional power over the extraterritorial operations of their national corporations.

Moreover in cases of international legal norms enforcement in some countries, what has been witnessed in some states has been obstacles which has emerged as a result of the parties that are involved, put succinctly, there has been enforcement challenges as a result of the political and legal sagacity of the corporations involved. It has been observed that sometimes victims of human rights violations have had the interest of suing corporations that are responsible for these acts of violations in an alien country

rather than the country of violation. This can sometimes be as a result of the fact that the subsidiary company is uninsured or bankrupt and the only means of compensation can only come from the parent company or the fear of justice not being carried out their country.

In recent years, the United States government and courts have started applying old law or developing new laws that transcends it national borders, which has been used in prosecuting both American and non-American citizens for human rights abuses through the Alien Tort Claim Act (Taylor and Scharlin, 2004, pp. 17) and for corruption acts through the Foreign Corrupt Practices Act (Avi-Yonah, 2003, pp. 25). Optimistically this seems to look like there is no opportunity for deviant behavior from corporations thus reducing the lacuna created by transnational status. While the use of these laws might seem to undermine the powers of other states (Kobrin 2001).

It is imperative to note that tort law is based on complicity, which tries to define situations in which an individual or actor can be liable for violations committed by someone else due to the relationship between the victim and the violator. Tort can be applicable to corporations in different situations. First is the presence of a joint enterprise between corporations and its host government, the corporation can therefore be seen as being liable for all the violations or abuses committed by its partners in implementing the joint action (Fleming, 1985, pp. 36).

The Alien Tort Claims Act of the United States has had a momentous significance in relations to corporate practices in the developing world. The ATCA is a two-hundred-year-old law which has been used in the last twenty years to drag multinational corporations to the court on litigation matters concerning human rights

abuses. The ATCA Act is derived from the 1789 judiciary act, and it has been usually uncommon in human rights cases until the first benchmark case where it was applied in the Filartaga v. Peña-Irala, lawsuit of 1980 (Ochoa, 2005, pp. 635).

Most suits filed in the 1980s were mostly alien nationals suing their own state governments which invariable involved state practices. But by the 1990s there was an expansion in the litigations leveled against states to corporations as being complicit in human rights abuses and violations of their host states. In the following years, the courts have been busy with making decisions on norms that should be considered as infringing on the law of nations and thus a major part of the federal law. It was the Kadic v. Karadzic case that enabled courts to find corporate actors complicit in acts of human rights violations (Kadic V. Karadzic 1995).

The amount of cases attended to was minimal in number to the actual amount being filed. This was as a result of the inability in transferring liability to corporations in cases they have not being directly involved in the violations. Therefore the most significant question that crop ups is whether transnational corporations can be apprehended or held liable for gross violations of human rights committed under its watch or by its partners. It has been quite complicated to get jurisdiction over individual human rights abusers but legal litigations against corporations has been more successful in the United States that all other states (Lovejoy, 2009, pp. 246).

However the ATCA has been useful in the prosecution of transnational corporations who have aided and abetted governments in carrying out gross human rights violations on its citizens. Avery good example of this case is the Wiwa v. Shell case in Nigeria which has already being referred to in the previous chapter of this work

and which was settled out of court as a result of the fact that the cases brought against Shell Nigeria were moving towards serious complicity on the part of shell. Another company which has been charged under the Alien Tort Claim Act is Chevron Nigeria on Complicity issues and they have also opted for settlement out of court. This decision has been based on their inability to account for their role in human rights violations.

Therefore Tort claims are simply considered as thinning down the impacts of abuse brought on victims. Furthermore the Tort claim has provided a practicable and easier means of redress for both violations of social and economic rights and also human rights violations under international customary law. Despite the fact the Tort claim act does not utilize the language of human rights; it is a significant mechanism of protection of rights. Also it can be acknowledged that the Tort law is the most significant mechanism of enforcing human rights under private international law and can be placed side by side with states as regards of enforcement under public international law. It can therefore be said that human rights law and the Tort law complement one another and can be regarded as twain laws.

It should be noted that when it comes to the purpose of holding corporations to explain for their human rights violations abroad, the ATCA suffers from an amount of bureaucratic and substantive restrictions. There are three major restrictions. Two of these are from the fact that the over two century's old statute was never created with the intention of capturing corporations in this manner. The third is general to all municipal laws which seek to function extraterritorially; notwithstanding, it is still significant for the functioning of the ATCA.

The first restriction is synonymous to the courts' restrictive interpretation of the human rights abuses which fall within the class of the "the law of nations" and thereby establishes actionable justification under the Act.

In general, it might be unsaid that human rights standards that comprise *jus cogens* norms would qualify, as would potentially all customary international laws (Collingsworth 2002: 198).

An exacting predicament of this restricted field is that it roughly leaves out social and cultural rights, like health, education, housing, and a clean and healthy environment, and defense from cultural defamation rights which are mainly prone to mistreatment by TNCs (Scott, 2001, pp. 78).

The second challenge is that the usefulness of the ATCA is restricted by the state action prerequisite. Generally, non-state actors may be legally responsible under the ATCA only where they have acted in alignment with state executives or with important state support. A substantial body of jurisprudence has been developed about the concept of state action, which is imperative in explaining both the substance and the reach of the doctrine. But what is perchance more essential than understanding what the ATCA does cover in this context is identifying what it does not cover explicitly. This is that the ATCA does not cover all the cases of severe human rights abuses by corporations whether working alone or without state support or conformity (Hall, 2001, pp. 415).

The last constraint is predicated on the requirement of the courts to be able to ascertain personal jurisdiction over alien defendants. Like with all common law

courts, U.S courts have the power to decide whether or not there are satisfactory relations between the alien corporations against which an ATCA suit has been filed and the forum jurisdiction put differently America (Joseph, 1999, pp. 181).

In all, the adaptation of international regulatory regimes which enforce human rights responsibilities on corporations hence appears to need a fundamental departure from the configuration of international legal convention, which perceives non-state actors as sheer objects of international law. If such human rights duties are going to be forced on TNCs, they must be acknowledged in international law as subjects of, or participants in international law, able to bear international legal obligations. Put succinctly, they must hold international legal character or traits (Higgins 1994).

Undoubtedly, a genuine barrier to admitting TNCs into the international legal turf in this manner is that states would be perhaps reluctant to allow such dominant challenging entities, no misgiving fearing the erosion of their superiority in international law. Nonetheless for international law to respond correctly to the consequence of economic globalization, it must acknowledge the invasive influence of non-state actors, and principally TNCs, in the international ground and try to allot rights and responsibilities to them accordingly (Voon, 1999, pp. 25).

It is enough that TNCs possess restricted rights and responsibilities, such as the right to sue and be sued, the capacity to claim a right, and the recognition of legal responsibility in judicial forums, but not possess the status of a member to intergovernmental forums or international mechanisms. This would not only represent a concrete base on which to construct a system of undeviating human rights responsibilities at international law, but it would also protect the primacy of states in

the international arena (Voon, 1999, pp. 26). The degree to which TNCs hold an international legal status might be determined by investigating whether TNCs possess any current rights or obligations under international law.

There is sufficient proof that shows TNCs do have international rights and obligations, and, with reference to their rights, the ability to implement them. Traditionally TNCs have been given rights under foreign investment law, predominantly in relation to expropriation, compensation, and non-discriminatory national behavior relative to domestic firms (UNCTAD, 1999, pp. 46).

Summary of Chapter

This Chapter has examined the emergence of TNCs and how they have become important policy actors in the international arena due to their trans-border identity which has led to both positive and negative criticisms on their activities. Also this chapter analyzed the relationship between TNCs and CSR by first identifying the reasons for the creation of CSR, put succinctly, the factors that necessitated the demands for CSR, such as the Oil Spills, human rights violations and the emergence of Regimes in international Law such as Environmental and Human rights. Going further, this chapter examines the different theories that have tailed the notion of TNCs and CSR such as the shareholder and stakeholder's theory which were able explain the different academic and business stance/ positions on the duties of TNCs and their responsibilities.

The study also examined the position of states on the concept of CSR and how it is understood by them and comparing it to how CSR as an initiative is understood by TNCs themselves. Thus leading to the examination of how CSR is regulated by states and international organizations. A concise analysis was made on the different

regulatory frameworks created to regulate and demand accountability from TNCs such as the UDHR, OECD, ILO, UN Global Compact and the ATCA, all of which are regarded as soft norms that are neither binding nor obligatory.

Chapter 3

CORPORATE SOCIAL RESPONSIBILITY AND POLICY VARIATIONS

3.1. Corporate Social Responsibility as understood by TNCs and its Variations and forms of implementation

Prior to the 1980s, CSR was relatively understood as a form of corporate philanthropy which a company pursues after it has been able to accrue profits, which simply means that in the absence a profit, a corporation can behave irresponsibly. While other corporate entities saw the act of corporate social responsibility as a form of waste of shareholders resources. Nonetheless between the 1980s and 1990s, there was a shift in thinking as to the utility of CSR by corporations in that they saw Philanthropy as a means of accruing more profits, public relations mechanism of promoting organizational performance and identity (Chamhuri and Harizan, 2005, pp. 6).

Monumental to this debate and understanding of CSR is that the continuous increase in corporate power and influence and the concurrent widespread of ethical issues corporate misconduct and the inability of government to perform their basic responsibility has led to the inevitable, which is the ultimate acceptance of CSR by corporations (Carroll, 1999, pp. 43).

Despite the fact that CSR has been somewhat described as costly, the notion of economic gains and good publicity has informed the business stance adopted by most corporations which perceive CSR as a moral vehicle by which economic gains are achieved (Bowie, 1991, pp. 57).

It is also instructive to note that there exist variations under the umbrella of CSR, put succinctly there are different policy approaches and method of policy implementation adopted by TNCs in their relations with diverse countries and this policy variation has been largely traced to type of regulatory framework at play in such countries. According to Locke (2002) there exist four different variations of CSR, which are "minimalist backed with highly weak regulatory framework, philanthropic backed with weak regulatory framework, social activist backed with average regulatory framework and encompassing which involves strong regulatory framework", While some countries like Brazil, Malaysia, South Africa and Argentina have experienced economic growth and sustainable development as a result of the CSR approaches adopted by the operational TNCs in those countries, a huge number of this success stories has been attributed to strong regulatory framework and strong governmental and civil control/influence over the activities of operational TNCs in those countries, especially in the extractive industry.

Malaysia for example has been in favor of strong regulatory framework on CSR policies which drives the implementation process and outcomes of CSR activities carried out by TNCs. Studies by (Chamhuri and Harizan, 2005, pp. 11) confirms this as they ascribe the increase in economic growth and sustainable development to the strong regulatory mechanism guiding the activities of both government owned

corporations and TNCs and how this has made CSR in Malaysia evolve from philanthropy to sustainable development policies. Also, South Africa which has strong independent political institutions has been able to enforce positive CSR policies from corporations operating within its borders as a result of its threat of punitive measures which is usually backed by state actions and also access to information by government from aggrieved citizens (Hanks 2002).

The success stories recounted above cannot be said to be the general trend in developing countries as there are still some developing countries who cannot boast of positive CSR policies or implementation within its borders. This is usually attributed to the fact that some states support and offer concessions to corporations in an attempt to attract foreign direct investment which is usually not to promote national development goals nor increase resource equity but to be able to channel those profits generated to personal accounts of political figures or government officials (Garvey and Newell, 2005, pp. 9). A very good example of a country like this is Nigeria, who does not only have corporations practicing CSR within its borders, but is also riddled with weak regulatory framework which inevitably allows corporations to pursue CSR for short-term development (Okonta and Douglas 2001).

An analysis of this therefore has revealed that despite the fact that all countries are subject to international law and other mechanisms of accountability, CSR policy outcomes can sometimes be different which is usually as a result of the strength of regulatory framework in each country. Policy implementation in Malaysia and Policy implementation in Nigeria has often be characterized with different outcomes.

A valid explanation for this can be better understood in terms of how CSR as a concept itself emerged in Nigeria and what vacuum it sought to fill. The concept of CSR in Nigeria emerged in the mid 1990s after the execution of the Ogoni Nine activists by the Nigerian government which led to criticisms from the international community on the government as well as Shell Corporation for its role as a bystander in the brutal murder of the human rights activists.

This event led to the emergence of the concept of CSR in Nigeria from both Non-Governmental Organizations as well as Corporations such as Shell who desperately wanted to redeem its image in the Nigerian Society. Shell, has since endeavored to settle the accusations of human rights violations and environmental damage. In their 1998 CSR report entitled Profits and Principles, SPDC acknowledged that "we had looked in the mirror and we neither recognized nor liked what we saw" (Tangen et.al, 2000, pp. 189).

Also to be noted is that CSR in Nigeria as a policy is a direct product of a form of self regulation which most corporations have subscribed to as a means of portraying their commitment to socially responsible activities, and cannot be viewed as a mandate of the Nigerian government or part of the contract signed because most oil TNCs in Nigeria have existed even before the concept of CSR became a global policy framework and most contracts have been left unchanged and archaic thus leaving the Nigerian government with little or no regulatory or enforcement power over the activities of TNCs within its shores(Omeje, 2006, pp.36).

Globalization has played a huge role on how CSR has been understood by TNCs in Nigeria, put differently oil TNCs have positioned CSR to be an independent policy decision on the path of the corporation which therefore mostly dictates their decision to bypass the government and rather often look towards associating with local area chiefs who have often been labeled as corrupt community leaders that have collaborated with TNCs in further plundering the resources of their people. While CSR in the understanding of the Nigerian government have often enjoyed the status of a personal policy of corporations in which the government has little or no quota but only serve advisory role or mediatory or commissioning role of CSR projects carried out by TNCs (Ite, 2007, pp. 219) .

Also the mode of implementation of CSR by corporations in Nigeria has varied, as these TNCs have developed approaches which seem suitable and more convenient in tackling the issues relating to their performance of CSR. This implementation variation has mostly been witnessed in the extractive oil sector which has been among the major industrial sectors advocating (CSR). Oil firms attach critical importance to social and environmental effects and they are more involved with indigenous population unlike some few years back (Zalik, 2004, pp. 405).

It is pertinent to note that the efficacy of CSR projects in the extractive crude sector has been ever more queried, and this has led to rising indication of a lacuna between the declared intent of corporate actors, their real behavior and its impacts on the globe.CSR activities in oil companies have been characterized with several elements, surrounding employment issues, environmental issues and local community issues (Frynas, 2005, pp. 3).

Frynas (2005) in his study identified at least four essential factors propelling corporations to go aboard on community development Schemes including gaining aggressive advantage; ensuring a secure working environment; manipulating outer opinion; and ensuring employees happiness. In order to understand these factors, Frynas posits that most of these development schemes taken by TNCs are methods of keeping their host communities silent or temporarily pleased until they have been able to obtain what they want.

Using the Nigerian Niger delta as a case Frynas (2005, 2007) posits that community objections have brought to standstill oil exploration activities, therefore development schemes are infrequently commenced as a way of placating the local communities' agitations, thereby leading to the granting of permission to the corporations to carry on with their profitable operations. For example, Shell Petroleum Development Company supplies its chief contract directors with a development financial plan, so in the event of the construction of a new pipeline, the director can commence a new development project within a community in order to allow pipeline construction to proceed unobstructed. When Shell concludes its construction of the required pipeline, the community development financial plan for the locale is merely shut down and this explains the reason behind the initiation of development scheme.

Therefore projects are initiated based on short-term value than the long-term development desires of the populace; and the dilemma of this short-term value is aggravated by the fact that the chief contract directors are not development experts (Zalik 2006).

3.2. Corporate Social Responsibility an Instrument of Short-Term or Sustainable Development in Nigeria

Several debates have emerged as to the real reasons behind the adoption of corporate social responsibilities by transnational corporations, according to some school of thought it is a shift from the conventional profit maximizing orientation of transnational corporations to a more humane and concerned approach to its host communities while some other school of thoughts have argued that the adoption of corporate social responsibility by transnational corporation is only a strategy employed to be able to access resources without restraints and obstacles and in order to promote short term development. Therefore these two schools of thoughts shall be examined.

The Corporate Social Responsibility program has an unclear connection with international development. It is perceived by a few as a medium by which the private sector can drive poverty reduction and other societal intents, which cannot be accomplished alone by governments. The evolving of CSR as a development matter has to be viewed in the perspective of the shifting outlook of the development agencies on the major purpose of development and the paramount way of promoting development. In the last five decades the perspective of development as being paramountly concerned about how economic increase has drastically reduced, especially with the establishment of Human Development Index by UNDP, higher stress on the social magnitude of development as has been demonstrated.

This change resulted in the acceptance of the UN Millennium Development Goals (MDGs), which is based on poverty eradication, attaining universal primary education, encouraging gender equality, reduction in mortality and health improvement, and finally ensuring environmental sustainability. Another characteristic of the shifting perspective of the development agencies in this contemporary era is the reduction in the belief in the function of the state as an instrument of development (Jenkins, 2005, pp. 530). Development according to the United Nations Declaration on the Right to Development is:

> "...an all-inclusive process of economic, social, cultural and political growth whose main objectives is the continuous improvement in the over-all well being of the populace and of all citizens based on their vigorous involvement in the developmental process and in the equitable distribution of the gains"

Significantly, major oil transnational's have commenced and invested considerable sum in diverse community development schemes. One estimation states that, international expenditure by oil, gas and mining corporations on community development initiatives was over US$500 million in 2001 (Wells, Perish and Guimaraes, 2001).

Since CSR has acquired an outstanding position in all foremost oil transnational, Exxon has moreover silently done voluntary enhancement to its social and environmental performance (Rowlands 2000; Skjarseth and Skodvin 2003). The oil and gas sector has been amid the foremost sector in CSR advocacy. Based on extremely observable impacts of its operations and well renowned product representation, the firms or corporations in this sector seem to be under bigger demands to handle its rapport with the international society (Frynas, 2009, pp. 6-7).

The recent attention given to CSR can be attributed to two important factors or elements; the first set of elements can be categorized under social drivers or advocates such as trade unions, inter-governmental organizations and non-governmental organizations which has so many other social movements underneath its umbrella such as labour union, human rights groups, sustainable developments groups and anti-corruption crusaders. The second category of actors or players can be classified under policy makers, organized business interest groups who have recognized the need for institutional frameworks that can lead to reduction in the negative impacts of economic globalization (Utting and Ives, 2006, pp.11).

As a result of public pressure and calls for regulation, and due to their imperative effects on the global commons, the extractive industries have opted to minimize their activities of environmental degradation (Ali and O'Faircheallaigh 2007, pp. 52).
Cutting edge policies of environmental protection and justice has become the priority and are being put in place in most corporate social responsibility programs (Horowitz 2006; Yongvanich and Guthrie 2005; Hamann 2003; Kolk et al. 2001). The drive for corporate responsibility and sustainable development by the extractive industries can be viewed in their development of initiatives such as the Mining, Minerals and Sustainable development project, CSR guidelines of the prospectors and developers of Canada and lastly the Global Mining Initiative. These movements emerged some years back and have been able to accomplish remarkable improvements in the environmental management field (Hilson 2006).

The centrality behind the pursuit of CSR by some business or corporations is as a result of the drive to accrue short-term profit and the pursuit of other objectives which inevitably has long-term negative effects. Corporations and business which are socially irresponsible are likely to experience diminished benefits as a result of social and economic insecurity, loss of customers and drastic exhaustion in raw materials. Also it has not been proven that CSR create long-term development and some critics are of the opinion that advocacy for CSR is a decoy to reduce the welfare, and undermines the market economy (Henderson, 2001, pp. 35).

On a more concrete note, examination of the domestic constituent of Nigeria would expose the lacuna in the Nigerian law, which is further buttressed by the lack of international legally binding norms or guidelines for controlling TNCs have further amplified the promotion of CSR (Amao, 2009, pp. 381).

Environmental sustainability in the Niger-Delta region of Nigeria is a concept that cannot be over-emphasized due to the fact that the development (physical, infrastructural, economic and social) of the region is largely dependent on environmental sustainability. This solely because the Niger-Delta is constituted by rural communities which do not have access to the entire social infrastructure required of a community thereby making its members to depend solely on resource gained from the environment. Statistics has proven that over 70 percent of the indigenes there depend on the environment for their daily living (UNDP Report, 2006). The Niger-Delta region is also known for its prevalent conflict between transnational oil corporations and the indigenous communities. This conflict is usually characterized with human rights violations, oil pipeline vandalization,

kidnapping of oil transnational employees, lockdown of oil facilities and production plants and all these leads to negative corporate reputation, loss of profits and reduction in government revenue (Idemudia and Ite 2007).

These problems have been responded to by TNCs by adopting CSR strategies and demonstrating their by increasing their community development programs. However Moon (2002) argues that engagement in non-profits activities by corporations displays their level of commitment to improving their host communities. Originally, several TNCs in the region adopted the CSR approach of community development alone without involving other organizations, but lately there has been a shift in the approach to a more partnership oriented strategy with non-governmental organizations helping the TNCs in the implementation of community development.

This was further buttressed by David O'Reilly, CEO of Chevron, who stated that despite the fact that oil transnational have adopted CSR and community development, yet all the needs in the communities cannot be satisfied ,which necessitates, the urge for partnerships (Onishi 2002).

In their argument, Blowfield and Frynas (2005) posit that CSR is as "an alternative to government which is regularly advocated as a means of filling the lacuna created in governance as a result of globalization". They explain this by citing Nigeria as an example, especially in the Niger-Delta where TNCs in the oil industries are consistently under public and international pressure to provide infrastructures such as hospitals, schools and other forms of social amenities due to the fact that the government have been irresponsible in the region and has not provided those basic

amenities for the communities. Also there is a lax environmental regulation in the region which probably equates any TNCs concern for protection of the environments as CSR (Frynas, 2001, 2005).

Countering the above view, Moon and Vogel (2008) propose that states have not made use of CSR to transfer responsibility of their duties to the private sectors, but relatively to balance government policies. Presently, states have declined the use of rule making or regulations to affect the activities or policies of TNCs but rather have accepted the use of subtler methods to influence their activities. Deakin and Walsh (1996), however argues that CSR is a component that has affected and impinged on the role of government and its association with other actors.

Amaeshi *et al.* (2006), posits that the CSR agenda in Nigeria is particularly designed to address socio-economic challenges facing the country especially the Niger-Delta region which includes poverty reduction, infrastructural development, education and provision of health care. This they consider to be in contrast with the traditional western perspective of CSR as free and fair trade, climate change, green marketing and consumer protection.

Since TNCs in the Niger-Delta have realized the need for partnership in order to foster more developments and contribute to community development in the region they have taken up this partnership by joining up forces with community based organizations, non-governmental organizations and some government agencies. It is therefore imperative to examine some of these community development initiatives.

SPDC claims that its CSR method contributes to sustainable development in two patterns. Its first contribution is by its ethical/moral effective pursuits of its core corporate values which create a spin-off that is beneficial for its host community put differently the Niger-Delta, and second by investing more in the social aspects that is far beyond corporate philanthropy but technological and financial transfer for their host community for its development (SPDC 2004a).

By 1997, SPDC decided to change its strategy of community assistant to development and this was largely due to the failure of the programs and projects carried out under the auspices of community assistant strategy and were further characterized with little or no participation in the designing and execution of the project by some of the local community members. They were projects that had no positive correlation to the needs of the community in which they were being carried out. This failure however led to the adoption of community development which was more comprehensive and inclusive and had the capacity of promoting sustainable development (SPDC 2004a).

Some scholars such as Ite (2007) have argued that SPDC's community development approach is potentially a road map for community growth empowerment and development which ultimately leads to reduction in all social vices. However, it was noted that the partnership initiatives of oil TNCs designed as development strategies under the new community development approach was not carried out to promote empowerment as widely publicized, but to reduce all forms of confrontations that might arise between local youths and TNCs and also to create an atmosphere whereby negotiations can be carried out without violence (Zalik, 2004, pp. 402).

3.3. Vehicle of CSR Implementation in Niger Delta Region of Nigeria

Table 1: Source (SPDC 2003, 2005, MPNCN 2002-2005, Exxon Mobil 2002, and Idemudia 2007)

Corporations	Type A(Community Assistance/ Minimalist)	Type B (Community Development/Philanthropy)	Type C (CSR Partnership with NGOs/Social Activist)	Type D (CSR Partnership with Community members and NGOs/encompassing)
Shell	1970-1998 (giving things it felt was needed by its immediate community, also bribery and corruption also became parts of its form of assistance).	1997 (Adoption of community development in order to achieve cooperation with host communities in gaining access to raw materials)	2003(there was a shift to Sustainable Community Development which was achieved via partnership with NDDC in providing infrastructure and capacity building for host communities)	2005(Adoption of GMOU strategy which is to facilitate cooperation between Shell and Community members)
Exxon Mobil	1997(Health Care, Education, electricity etc)	Top-down approach adopted in collaboration with NDDC via contribution of 3billion Naira per year	2002(Capacity Building and Economic Empowerment via STEP in collaboration with GBF and IFC) also Collaboration with NNF on health care provision	2002(ICDP and Project in collaboration with UNDP,)
Total	1999(Health care facilities, and provisions of Drugs)		2002 bottom-up approach	2002(Corporate Community Development with PNIN/VSO which greatly involved inputs from community members)

The above table clearly shows a timeline of CSR development and practice in Nigeria. Put succinctly the evolution of CSR in Nigeria began to move from community assistance to community development and finally to partnership with NGOs and community members by TNCs. However it is instructive to note that as a result of policy variations in CSR approach in Nigeria, there was an increase in environmental and human rights violation. Therefore it is perhaps right to say that CSR which was supposed to reduce environmental degradation, human rights abuse and increase sustainable development became a cosmetic approach. This cosmetic approach of CSR however has its own consequences; which is an increase in environmental degradation, human rights abuse and more violence in Niger Delta.

Summary of TNCs, CSR and Policy Implementation Variations

With the realization that the soft norms were unable to hold TNCs accountable as anticipated scholars and activist began to realize that there exist policy variations in the implementation of CSR by TNCs. This chapter therefore examined the CSR policies of TNCs in some developing countries like Malaysia, Brazil, South Africa and Nigeria, which led to a comparative analysis between these countries which showed that strong regulatory framework in countries like Malaysia, Brazil and South Africa has favored positive and successful CSR policies, while in Nigeria weak regulatory framework has led to a mixed response ranging from allegations of short-term development, to CSR being a cosmetic approach to cover environmental degradation and human rights violation which are products of TNCs activities in the Niger Delta region. The chapter was concluded with an in-depth description via a table on the CSR policy models adopted by TNCs in Nigeria and how successful they have been in their CSR strategy.

Chapter 4

CONSEQUENCES OF WEAK REGULATORY FRAMEWORK IN NIGERIA: THE ENVIRONMENTAL CASE

4.1. Historical Development of Environmental Law

Right from the United Nations Conference on Human Development in 1972, there were negotiations regarding the duties of companies and corporations in ensuring the protection of the global commons and the need for incorporating environmental norms and codes of conduct in company policy (UNCTC 1993, pp. 7). This was the first time environmental protection was regarded to as a subject to be considered as a right, thereby kick-starting the first attempts of connecting environmental law and human rights.

This has further led to the global recognition of concepts such as sustainable development, peace and inter-dependent, human rights and sustainable environment. Undeniably the Stockholm declaration's preamble states a clear directive at the responsibilities of corporations towards environmental protection:

> "To achieve this environmental goal will demand the acceptance of responsibility by citizens and communities, and by enterprises and institutions at every level, all sharing equitably in common efforts (UNCHE. 1972, pp. 7)".

Further discussions concerning the responsibilities of transnational corporations emerged in 1992 in Rio de Janeiro at the United Nations conference on environment and development.

These discussions emerged as a result of the previous resolution adopted by the United Nations General Assembly which was solely directed at the impacts of transnational corporations and how their activities affects some specific sectors such as the environment (UNGA, 1989, pp. 10).

Surprisingly the Rio earth summit declaration did not outline specific means by which transnational corporations are meant to contribute to a sustainable environmental development and this has been from some quarters has an opportunity which cannot be recovered. However, principle 16 of the Rio earth declaration placed some emphasis on internalizing environmental overheads by corporations. The polluter-pays principle emerged as the global provision for accountability of corporations in areas of oil pollution and nuclear disasters (Gleckman 1988).

Also agenda 21 is predicated on the notion that sustainable development can only be attained with the cooperation of corporations. Most importantly chapter 30 emphasizes on the need for corporations to participate in the adoption and implementation of agenda 21. Two programmes were put forth for corporations in the chapter 30 and agenda 21; they are Promoting Cleaner Production, which is based on effective use of resources put differently proper waste reduction, recycling or reuse, reporting of environmental activities and partnerships with other non-governmental organizations. Most succinct was the promotion of responsible corporations which entailed execution of sustainable development practices and models by corporations and supervision of product processes from the

environmental, health and security facet through more ethical and regulatory models (Agenda 21, 1992, pp. 30).

There were extreme negotiations on the functions of the corporate sector in 2002 in Johannesburg at the World Summit on Sustainable Development. There was a presentation of a framework for a convention that possesses stipulations for corporate responsibility and accountability by an association of non-governmental organizations (WRI, 2003, pp. 129).

Two references were made to the function/role of corporations for sustainable development at the WSSD Political Declaration. The "duty" of the corporate sector to contribute to the establishment and implementation of sustainable global commons was emphasized in paragraph 27. To buttress the notion of enforcement of corporate accountability laced with regulatory mechanisms and transparency of corporate actors, paragraph 29 emphasizes this (WSSD, 2002, pp. 1).

Invariably, so much awareness on environmental accountability has been created at the global level by the Johannesburg environmental Summit, which gave environmental justice and protection an international outlook. Of a truth this can be classified as anticipation much waited by the United Nations Conference on Trade and Development of 1999 which posits that policies or strategies adopted at the municipal level can be greatly amplified at the international level and this has been able to take shape based on the nature and character of environmental and human rights issues (UNCTAD, 1999, pp. 50).

Also corporate responsibility as a subject which embodies environmental issues and sustainable development were vigorously expanded to accommodate the notion of corporate liability and accountability by the WSSD in its agenda 21 (UNCTAD 1999, pp. 395).

The people who are most at the receiving end of environmental degradation are usually located in the developing countries and these people are indigenous peasant groups who either depend on hunting, subsistence farming and they are usually victims of pollution due to the fact that they have large amount of natural resources which inevitably attracts TNCs under the guise of globalization.

Renner (1996) further buttressed this stance by stating that:

> "Their ability to resist and guard their interests is enormously weak. These groups not only depend on limited lands for subsistence, but they are also socially, economically, and politically disenfranchised. They are usually too powerless to struggle for the preservation of natural systems on which their living and survival rest" Renner (1996:55)".

4.2. Case of Nigeria, Weak Regulatory framework and CSR; consequences for the Environment

Nigeria is regarded as the biggest crude producing state in Africa, and the fifth biggest in the OPEC. In the past four decades oil has generated ninety percent of the foreign reserves of Nigeria, funding eighty percent of total government income earning. 1956 was the first discovery of saleable magnitude of crude-oil in Nigeria, with estimated reserves ranging from 16 to 20 billion barrels generally found in different areas in the wetlands and oceans of the Niger Delta (Forest 1993).

Nigeria's independence in 1960 saw the increase in oil exploration for exportation which had grown significantly as British and American oil corporations sighted better investment prospects.

Due to the fact that the 1914 Mineral Act, which vested all lands and minerals in the Nigerian territory, was renamed and re-modified into the Petroleum Act of 1969, the Nigerian state strengthened its new dedication to the expansion of the oil Sector.

With low capital and technical assets, the state was not capable to execute the transformation of the Nigerian economy into a major oil exporting economy. Amplified surge of investment from multinational corporations made this change inevitable. Through a sequence of agreements and emerging laws, the Nigerian domestic market was reshaped to develop into a more attention-grabbing sector to attract foreign investors (Frynas and George, 1999, pp. 13).

Indeed, several oil companies reacted positively to the new adjustments, contending to take part in cooperative enterprise agreements with the Nigerian state. And by 1975, Nigeria had emerged as the fifth largest country with foreign direct investment in the peripheral world (Human Rights Watch, 1999, pp. 15).

The Niger-Delta is region which is occupied by a population of over 12 million individuals with diverse cultural and lingual backgrounds. Their unity is as a result of shared historical identity in Nigeria as the South-South minority groups (NDDC, 2004). The Niger-Deltans had been on the frontline of minority campaigning right from the colonial era till the present day (Saro-Wiwa, 1992, pp. 1993).

One of the fundamental problems and sources of conflict affecting the growth and development of the region has been over the issue of resource ownership. In the last four decade, the Nigerian government had enacted several laws which have been to

promulgate the that all resources found in any community or state belonged to the government which has led to a systematic exclusion of the host communities from exploring such resources. Both the constitution and the petroleum act have made total transfer of ownership of any crude found in any part of the country and also the land use act has which stipulates that a land stays under the ownership of the federal government has been used to buttress this.

Nonetheless these laws and acts has been used to restrict the Niger-Delta communities from partaking in oil exploration (Ako, Adedeji and Coker, 2007, pp. 432) In reaction to the continual violence and conflicts in the Niger-Delta region Ukeje (2005) posits that:

> *"*One major shortcoming of extant works on the political economy of the Niger Delta is that many of them are limited to the period since the commercial exportation of crude oil in 1958. They often convey the impression that the ingredients of history are absent in the menu of violence that has ravaged Nigeria's delta region. In reality, however, it is only by investigating critically the historicity of the Niger Delta (and complementing same by critically probing contemporary forces and factors) that scholars can expose the many 'hidden transcripts' necessary for representing a holistic, rather than a partial picture of conflicts in that region."

There has been a restriction and bottleneck placed on the rights of the host communities of these natural resources as a result of the legal frameworks put in place by the federal government. However, over the years, there have been several responses to these legal bottlenecks. In the 1970s and 80s, the Niger-Deltans made their grievances known through the use f non violent means such as peaceful protests, litigations petitions, town-hall meetings with stakeholders who are sent to negotiate with both the oil corporations and the Nigerian government. But by the turn of the 1990s, aggressive measures were adopted as their demands were not met by both the oil transnational and the government.

This led to the rise in taking hostage oil employees, disruption and vandalization of oil facilities and installations and finally occupation and lock down of production plants.

With the return to democratic process in 1999 by Nigeria, these violent tactics have reached its apogee. Kidnapping and attacks are now carried out systematically on a large scale and this has taken its toll on both national and international economic security. The transnational oil corporations have responded to these by employing repressive strategies to quash the confrontations between the host communities and them. This repressive measures and strategies has further aggravated the scale of violence and conflicts and which has place the communities on the offensive side (Isumonah, 1997, pp. 27).

Another scholar Oyefusi emphasizes this when he states that

> *"*Violence in the Niger Delta locale is credited, to feeble institutional provisions which manifest itself in poorly-conceived laws, non enforcement, regulatory confinement, and a union of interest between the State and oil transnationals which often persuade the State to employ repressive procedures on host communities in cases of conflicts".

The very crucial reason for Nigeria's failing economic situation is largely related to pollution from lackadaisical and unregulated oil production. It is seldom argued that oil exploration in Nigeria has led to harsh damage on agriculture, fishing, and economic stability, with perhaps the most ruthless cost to the social and economic atmosphere of the nation. The nonexistence of laws that oversee process of oil drilling and shipment has permitted companies to doggedly threaten the survival and livelihood of a huge number of local communities. The side-effect of gas flaring persistently damages the ecosystems of surrounding localities, and pipelines which have been built along several farmlands have ripped open, causing harm to large

areas of agricultural land. Out of the recognized causes of oil spillage in Nigeria, ripped open pipelines account for 70 percent of the occurrence while the lingering 30 percent are caused by engineering miscalculations, poor maintenance, and disruption (Omoweh 1998).

4.3. Environmental Impacts of TNCS Activities in Niger-Delta

Environmental damage is inevitable; in as much as human actions have direct effects on the environment. Undoubtedly, the damage done to the environment is not only limited to the environment but also transferred to the inhabitants of such environment especially the human species. There has been sufficient evidence to demonstrate the culpability of oil transnational's when it comes to the issues of environmental damage and degradation in Nigeria (Ebeku, 2002, pp. 20).

I had never seen anything as horrific as the gas flares I saw during my expedition to the Niger-Delta. The massive hot flames, which were consistently discharging harmful gasses, which created the blistering heat and making an intolerable loud noises was my perfect vision of what hell felt like. And still this was the traditional day-to-day life experienced by many Niger-Deltans (Jersch, 2005, pp. 9).

In the whole sub-Saharan Africa and even the world, Nigeria has emerged has the biggest gas flarer and this has added to more green house gasses, and toxic poisoning (Environmental Law and policy 2005: 258). The effect of oil pollution in the Niger Delta environment and its locality is brutal. Oil pollution from gas flaring, oil spills, hydrocarbon crust left after oil spill "cleanups" and acid rain, unlined waste pits, and waste from expatriate workers neighborhood and hospitals contributes to the destruction of the ecosystem. Natural gas flaring harmfully affects the environment and the indigenous people in such locality. Such flares are usually very noisy,

hazardously hot, and flare twenty-four hours a day, thus depriving the locality of natural night, emit thick smoke and greenhouse gases (EAGE, 2005, pp. 12).

The indigenous people of the Niger Delta once maintained a living on the sales of fish from the delta waters and produced from the arable land. Presently, after over three decades of oil operations, pollution envelops the region; the indigenous people in the Niger Delta region experience land loss and food shortage. Their subsistence way of life cannot be continual because of the environmental harm caused by oil pollution; nor do they possess the capacity to purchase food due to the fact that there are no economic alternatives to their conventional way of life. Consequently, hunger and malnutrition are uncontrollable, and the Niger Delta population experience amplified mortality and morbidity (Human Rights Watch 1995).

The only option available to the indigenes of the Niger-delta is the importation portable water due to the absence of pipe borne water which leaves the coastal waters the only source and this are made non portable by the oil pollution experienced in the area. There is the lack of natural aeration which leads to the death of organism in the water which ultimately leads to decline in fish is also reduced as a result of the activities of oil corporations in the coastal which also leads to the poisoning of humans who have consumed oil affected fish. Statistics have shown that over the past four decades of oil exploration in Nigeria, more than 60,000 oil spills have been recorded and more than 2 million barrels have been released into the eco system of the region (Human Rights Watch 1995).

Mobil oil transnational reported its most awful oil spillage in January 1998 at the Idoho off-shore in Akwa-Ibom which had moved to other parts of the country in less than 30 days Nigeria recorded 418 cases of oil spillage, and reports from the spokes-person Mrs. Halima Alao of the ministry of environments shows that:

> "This portends a great danger to us as a nation, and particularly to the environment and the social and economic development of our people. (Vanguard, Oct. 29, 2008, pp. 5).

It is however instructive to note that this is a gross understatement as to the true state of the effects of oil spillage in the Niger-Delta. The indigenous people of Niger Delta have shown higher rates of respiratory ailments, rashes, brain tumors, genetic mutations, cancers, Kwashiorkor and malnourishment which are widespread and this is due to the lesser fish catch and reduced crop productivity which has resulted from the pollution (Ikein and Eaton 1997). Nonetheless, the lack of functional financial and institutional frameworks to address the ecological disasters and make available provisions for compensation has generated a reason for the militancy witnessed in the region in the last two decades (Onduku, 2001, pp. 7).

4.4 Social Challenges as Consequences of CSR and Weak Environmental Regulatory framework in Niger-Delta

In a statement released by the Sierra Club's representative Stephen Mills, Oil transnationals' in the Niger-Delta have harvested up to 30 billion dollars from resources gotten in Ogonilaand and have left behind environmental induced illness, shorter life expectancy, deformed or malformed babies, destitute and ecological damages. In spite of the vast resources in crude and petrochemicals withdrawn from the region through exploration, the region has still been largely underdeveloped with no social infrastructures such as pipe-borne water, durable roads, schools and hospitals (Welch 1995, HRW 1999).

The social effects of the activities of oil transnationals' in the Niger-Delta has created violence, frustration and destruction which has made the indigenous local communities to view the crude resources got from their land is a curse. This frustration is largely based on the people's perception of the stance of transnational corporations and the government on their demands as being outrageous and not realistic and their inability to perform promised reforms and measures that are meant to be used in promoting sustainable development of the region (O'Hara, 2001, pp. 302).

The underdevelopment witnessed in the Niger-Delta has not changed, it is rather getting worse at every second and leaving the region more marginalized and pauperized (World Bank 1995). This paradox and obvious tragedy of suffering and hunger in the midst of plenty and riches in the Niger-Delta region that has laid the foundation for the political economics of human rights Violations and environmental degradation in the region (Oputa Panel, Ibibia Report and Nkoro, 2005). The perfect description that fits the Plight of the Niger-Deltans is that of a case of genocide which has been carried out by both the military government and the oil TNCs against the indigenous groups of the region (Naanen, 1995, pp. 66).

The late Ken Saro-Wiwa (1998, pp. 31-32) expressed his agony for the situation of the region by stating that:

> "I stared at Ogoni and saw that the whole place was now a wasteland; and that we are the wounded of an ecological war that is extremely severe and unconventional. It is unconventional because no bones are broken, no one is mutilated. People are not distressed because they can't see what we experiencing. But people are at risk, plants and animals are at danger. The air and water are poisoned . . . Even though we hail from the richest part of Nigeria — a place gifted with lush land, water and clean vegetation, oil and gas, I'm seeing soldiers, bandits, in reality coming to cart away these and

> build up their own home while pretending that they are governing Nigeria. Oil has brought nothing but catastrophe to Ogoni nation"

As already mentioned above, the Niger-Delta is known for its vast social, economic and structural underdevelopment, and it happens to be one of the least developed regions in the Nigerian state. It has only benefitted from 2 percent of road construction, and less that 30 percent electricity, less than 2 percent health care structures, dilapidated educational centers and in sum a proper picture of what poverty is (NDES 1997).

While there exist a continuous environmental degradation which leads to loss of livelihood, coupled with high rate of unemployment, there has been no move to compensate them for their loss. Thereby making poverty and hunger the core foundation of the region which makes them believe this marginalization is as a result of their small population within the Nigerian state (Osaghae, 1995, Corporate Social Responsibility News, 2002).

In a study conducted in 2004 by Aluko on environmental damage and its effects on the Niger-Delta region, the researcher employed primary data which was distributed across 13 local communities and he was able to come the conclusion after a thorough analysis from the respondents answers that environmental degradation and oil production are the two causal factors of poverty within the region. Also there is the alarming rate of unemployment which is a spill-over from the inability to trade from the main resources of the region (Okon and Egbon, 1999).

Chapter 5

CONSEQUENCES OF WEAK REGULATORY FRAMEWORK IN NIGERIA: THE HUMAN RIGHTS CASE

5.1. Historical Development of Human Rights and CSR

The centrality of human rights creates a situation whereby there is need for constant development and expansion of international law to be able to meet up with the constants demands created by developments in the international legal system. Put succinctly, the rise in environmental degradation and violations of human rights has made it a necessity for the scope of human rights to expand and become all inclusive bringing fields such as environmental justice and protection under an umbrella in order to create a sustainable environment for the entire globe. Despite the fact that international environmental law and human rights law evolved as two separate regimes under international law, there has been consistent effort to identify the linkages between this two legal regimes especially by international organizations through the use of declarations, international covenants and treaties (Ziemer, 2001, pp. 233).

5.2. Nigeria a Signatory to Strong Regulatory Human Rights Framework Adopting Weak Policy Stance

When analyzing the issues of human rights violation, the first question usually asked is if the state in question is a signatory to human right treaties conventions and covenants. Notably in the case of Nigeria, it is a state that is a party and signatory to almost all human right conventions, charters and treaties.

Outside the municipal human right provisions and stipulations, Nigeria has ratified nine out of 13 major human right treaties which are still very much effective till date. They include the 1969 Convention on the Elimination of All Forms of Racial Discrimination, the 1963 International Covenant on Civil and Political Rights, the 1985 Convention on the Elimination of all Forms of Discrimination against Women, the 1991 Convention on the Rights of the Child, 1993 International Covenant on Economic, Social and Cultural Right, the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, also in 2000 the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography and finally the 2001 Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, Also, Nigeria is a signatory to the African Charter on Human and Peoples' Rights, which has been inducted into the municipal law of the country by obeying the Charter's Ratification and Enforcement Decree.

Furthermore international law has made it an obligation for the Nigerian government to protect and respect human rights. This simply means that states should desist from activities and actions that would undermine the enjoyment of human rights by individuals within their territory and to also ensure that other non-state actors under their jurisdiction do not violate human rights but rather protect it (Amnesty International 2009).

5.3. Weak Legislations on Environmental Law and Human Rights in Nigeria

In the last twenty years, there has been an exponential increase in the incorporation of human rights and environmental norms into the national constitutions of states. As

a matter of fact, more than 60 national constitutions globally has inducted and incorporated the constitutional right to a healthy environment.

It is quaint essential to note that there exist variations in the constitutional rights to a healthful and hygienic environment and the constitutional rights ones being imposed on the state as it duties to ensure individual rights to a clean and safe environment, sustainable use of natural resources and maintenance of a sound environment (Ksentini 1994, Weiss 1989). With respect to the Nigerian case, the 1999 constitution of Nigeria in its section 20 state that "the Nigerian state shall ensure the protection and improvement of the environment, safeguard the air, land and water, with forest and wild life inclusive". In general terms, the above statement can be found in most constitutions, however it is of great importance to note that the 'right' identified in the section 20 is more of an illusion because of the fact that section 6(6)(c) of the same constitution makes its unjusticiable put differently, the section right clause is highly unreliable when invoked in the court of law by the plaintiff or defendant; it can be termed to be unenforceable unless the judge handling the case decides to use his discretion (Constitution of Federal Republic of Nigeria 1999, Section 6(6)(C)).

Also there exist a certain amount of legislation which have been promulgated under the Nigerian law to deal with diverse aspects of environment. Moreover, this thesis has decided to examine just three of these legislations which are the Petroleum (Drilling and Production) Regulations 1969, the Federal Environmental Protection Agency (FEPA) Act 1988 and the Charter on Human and Peoples' Rights (FEPA 1990, PRA 1990, ACHPR 1981).

The 1969 Petroleum Drilling and Production regulation framework which is tied to the Petroleum Act of 1969 contains essential stipulations for the protection of the environment under the territorial jurisdiction of the Nigerian state especially from environmental degradation which are effects of oil spills or explorations.

The regulation 25 stipulates that all oil transnationals which possess license for oil exploration in the Niger-Delta should implement "all forms of practicable precautions in their activities as a form of preventive measures taken to protect the inland waters, rivers, and coastal waters, water courses territorial waters of Nigeria from oil or other poisonous materials.

Moving further, regulation 36, stipulates that oil transnational and their representatives should ensure the adoption of "good oil field practices in their activities and try in their possible way to avoid causing irreparable damage to the crops, buildings, structures and properties and the surface of important locations (PRA, 1990, pp. 12). Added to this, in the advent of degradation or damages to the environment as a result of the activities of oil transnationals, regulation 15(1) (f) stipulates that the corporation involved must restore the affected land mass to its original state as soon as possible or implementable.

Yet under regulation 23 it is stipulated that in a situation whereby the oil transnational irrationally hampers with the fishing rights of the community in as a result of its operational activities, it must pay sufficient compensation to any injured party. To summarize the above it can be said that the 1969 Petroleum Drilling and Production Regulation proscribe important damage or destruction of the environment

in its inherent nature, so also for other forms of damages to individuals and to recommend proper sanctions for violations (PRA, 1990, pp. 24).

The second legislation to be examined is the FEPA Act which is the most comprehensive environmental protection legislation in Nigeria that is non-sectoral and able to make recommendations for the protection of diverse environmental sphere. In light of this thesis, the sections of the Act that would be considered is the section 20 and 21 of the FEPA Act.

According to section 20 sub-section 1 of the FEPA Act, it proscribe s the ejection of damaging quantities of all forms of injurious substances into the atmosphere, land or waters of Nigeria or neighboring waters, only by exception through permission from the Nigerian authorities. This section stipulates the penalty for violating or breaching any of the clauses by corporations or individuals. The section 21 of the FEPA stipulates that added to the criminal penalty of the section 20, a violator shall be liable to recompense the cost of removing the harmful substances, including expenditures incurred by government agency or body in the process of restoring natural resources degraded as a consequence of the ejection of harmful substances and also the payment of reparation to their parties. Therefore like the Petroleum Drilling and Production Regulation, the FEPA Act makes provision for two types of reparation put differently, indemnity for damaged environment and for the communities or individuals (Omorogbe, 1992, pp. 25).

In 2007 however, the FEPA Act was repealed and replaced through the establishment of the National Environmental Standards and Regulations Enforcement Agency (NESREA) a legislation which extensively constrained the capacity of the Ministry of Environment to make obligatory environmental law in respect to the oil and gas industry (Amnesty International, 2009, pp. 43).

The bureau is meant to make sure that all laws, regulations, policies, codes, standards and international guidelines are followed to the latter. Nevertheless the Act which established the NASREA has consistently banned the bureau from ensuring compliance in the oil and gas industry, particularly, compliance with legislations on harmful wastes; Control mechanisms such as registration, licensing, permitting systems, environmental auditing and regulations on noise, land, air, seas, oceans and the mangroves.

Despite the reference to compliance with international guidelines in the context of oil exploration, nevertheless, the Nigerian laws and legislations are characterized as laws with huge flaws especially with respect to their effects on the affected population or communities and the environment. The poorness of the law and it unenforceability makes it more or less a like a mockery of the whole legislative system, which leaves the oil sector to its self-regulation code of conducts, or largely unregulated. This enforceability failure can be traced to three major elements, first is that the government who is meant to regulates benefits from the oil exploration, inadequate capabilities to regulate and confusion in the regulatory system and lastly lack of developmental fund for the agencies monitoring or enforcing environmental laws and legislation (Amnesty International 2009).

5.4. Case of Nigeria, Weak Regulatory framework and CSR; consequences for Human Rights

The principles of complicity were first made clear in terms of corporate liability under the Alien Tort Acts for the Ninth Circuit United States court of appeals in the Doe v. Unocal case. Taking precedence form the International Criminal Tribunal for Yugoslavia and the International Criminal Tribunal in Rwanda, the court posits that complicity involves "having knowledge or encouragement which has extensive impacts on the execution of a crime under this reasonable knowledge test, there must be a form of evidence from the plaintiff which shows that the corporation was aware or had reasons to be aware that its behavior assisted the crime (Clapham, 2006, pp. 225).

Therefore Complicity accusations against TNCs ought to be examined in terms of the security threats in the host state. Security challenges are one of the most pressing issues experienced by oil transnationals' in many of their host states. When analyzing this particular issue the first example that comes to mind is the Military Junta regime in Nigeria in 1994 whereby there was a direct complicity of shell Nigeria in the repression of the indigenous people of the Niger Delta and especially the subjugation of the Movement for the Survival of the Ogoni people (MOSOP) which was an organization which rose to defend the cause of its people. According to the Wiwa v Shell case the allegations against shell Nigeria was the recruitment of Nigerian police and military to suppress MOSOP (US District Court 2002).

Shell Corporation is said to have provided logistical support for, transportations and weapons to Nigerian authorities to attack the Ogoni villages and stop opposition to Shell's oil-excavation. The Ogoni indigenous people was said to have been killed, beaten, raped and shot during this raids. However there was the conviction and execution of the Ogoni nine who were the leaders of the MOSOP movement in 1995 by the junta regime in Nigeria after a sham tribunal convicting them of murder, also there were evidences of Shell Nigeria bribing witnesses to give false testimony at the trial and during this supposed trial Ken Saro-Wiwa's family members including his aged mother were constantly subjected to torture (US District Court 2002).

There have been instances of sabotage of pipelines reported, kidnapping and intimidation of oil employees all of which had been disputed by the local communities. These issues of security are embedded in the demonstrations against the dastardly acts or impacts of corporate conducts on the indigenous people. For instance there were allegations that Shell Nigeria forcefully annexed land for oil production which caused environmental damage without compensating the communities (HRW, 1999, pp. 10). To ensure the protection of their facilities and employees, oil corporations in the Niger-Delta often employ special police, which are recruited and trained by the Nigerian police force. There have also been instances whereby corporations have enlisted some security operatives or personnel from the Nigerian government (HRW, 1999, pp. 10). The above can be seen as a direct complicity of Shell Nigeria with the government in the suppression of its citizen's rights for the corporations profit maximization.

It is imperative to understand that Wiwa and shell is not the only case of complicity by oil transnational's and the use of security forces to perpetrate human rights violations. Another example of corporate complicity was at Umuechem in 1990, where Shell was alleged of its complicity in the murder of eighty unarmed civilians and destruction of several properties by security operatives whose protection Shell had paid for. There was an acknowledgement of transactional payment made by Shell directly to those security operatives (HRW, 1999, pp. 11).

Complicity charges has however not been limited to SPDC alone but to other oil transnationals' in the Niger-Delta region such as Chevron-Texaco whereby charges of complicity and liability were filed against them by Bowoto, in the Bowoto v. Chevron Texaco corp, where the plaintiff accused both Chevron-Texaco and Chevron Nigeria limited of two incidents where they had both been complicit. The first incident was the shooting of protesters at Chevron's Parabe offshore platform in May 1998 and the immediate detention and torture of the leaders of the protest.

Stating the that the protesters were only demanding for more improvement in the environment, and the plaintiff argued that Chevron Nigeria's actions were in tandem with the Nigerian government when it required the backing of the Nigerian state security operatives and making available helicopters for the security operatives (N.D 2004). It is pertinent to note that there are other forms of complicity carried out by oil corporations in Nigeria, such as the beneficial and silent complicity of corporations and government. Put differently transnational corporations in Nigeria has flagrantly violated environmental law and regulations but have been able to continue unpunished due to the fact that they have been able to bribe their way out of

regulation. The top government officials have enjoyed their patronage thereby making it impossible to make them culpable for their acts. It is imperative to note that transnational bribery has assumed many guises, but anywhere the practice takes place, it hampers economic development and alter competition. It interrupts allocation channels, damages incentives to contend on quality and price, weakens market effectiveness and certainty, and eventually refuse many people the right to a nominal standard of living (Powpaka, 2002, pp. 227).

5.5. Weak Regulatory Framework Promotes Complicity of the Nigerian Government on Human Rights

The host state is main direct legal system that is most applicable in regulating the conduct of corporations. Due to the principle of territorial integrity, oil transnationals are subjects under the jurisprudence of the host country. This control is based on the protection of the state's national interest before the entry and after the entry of the foreign investor in the country (Sornarajah, 2004, pp. 117).

In the case of Nigeria, one of the major paradoxes is that the state is inordinately powerful and pitifully irrelevant when it comes to TNCs operating in the territory (Ake, 1990, pp. 12).

The Nigerian government generates more that 90 percent of its foreign revenue from oil exploitation, exploration and production by foreign oil transnationals. Still the government has refused to utilize these funds to develop areas where they are being generated from put differently the oil-producing region (Oyeshola, 1995, pp. 62).

The Nigerian state lacks a consistent, rational and effective way of transferring some of the funds accrued from oil exploration back to where they funds were generated. This was however complicated by the fact that the discovery and exploration of oil

began simultaneously with the High jacking of power by the military whose idea of governance was based on centralization of wealth (Ibibia report and Oputa Panel 2001).

The emergence of the military regime and the end of the civil war led to the demise of the revenue sharing method (Ibibia report; Oputa Panel 2001). The Oputa Panel report states that two actors are majorly responsible for the adverse despicable conditions witnessed in the Niger Delta. The first actor is the Nigerian government which has failed in its duties to protect the rights of its minority groups and abandoned its obligations of providing development to the region. The second culprits are the oil transnational's who are involved in oil exploration.

The report thus states that the accusations made against the oil transnational's can be categorized into three phases: the first accusation was that oil transnational's operate below the global standards stipulated and their activities encourage gas flaring and oil spillage which is accompanied with terrible impacts on both the environment and the means of livelihood of the host communities. The second allegation is that oil transnational's are not concerned about the welfare of the communities in which they carry out their exploration. They only dole out peanuts to the locals in order to reduce bad publicities. The last accusation was that oil transnational does often employ the strategy of divide and rule to create chaos between the communities through un-uniformed methods of compensation. Their method of selection of payment is often characterized as a model which lacks equity (CSRN, 2002).

The Nigerian state has not reacted to the allegations leveled on it nor it cohorts but has proceeded to further let loose its repressive agents and methods on the communities. These subjugation ranges from occupation of those locations, promulgation of harsh laws, un-lawful detention and torture of community leaders' militarization of the area, and also harassment of soft targets such as women and children. Also the state employs the divide and rule strategy by favoring one community over the other in the creation of local governments or infrastructure in order to create disunity among the indigenous groups.

In order to assess the issues of complicity and violation by government, the UNCHR appointed a Special Rapporteur Commission in which the head of the delegation was the Indian Attorney-General Soli Jehangir Sorbjee. Despite the Nigerian government's opposition to this assessment, the commission was still able to produce a report based on the information and data gathered outside the shores of Nigeria. The commission was able to declare that there exists in Nigeria persistent and prevalent violation of human rights, and that there were no effective legal frameworks in the Nigerian judiciary which was meant to protect individuals from violations, that there was no prevalent rule of law but could only find human rights abuses around (Human Rights Watch/Africa 1999). The commission's report also includes:

• The Nigerian Government was a failure at addressing the problems of the Ogoni group and the protection of their rights

• Recommendations made by the Secretary-General's fact-finding mission about the appointment of a committee to bring about enhancement of the socio-economic situation of the indigenous groups (Human Rights Watch/Africa, 1999; and the

Report of the Special Rapporteur of the Commission on Human Rights, Mr. Soli Jehangir Sorabjee. U.N. Document E/CN.4/1998/62).

There was also confirmation from the report about the magnitude of shell's environmental destruction or pollution and their laxity towards clean-ups and development within the Niger-Delta region. It is instructive to note that all the acts of the democratic government that emerged in 1999 were a total contradiction from what they promised:

> "To restore to health the injury of the past and hurriedly put the ugly past behind us, so as to persistently extend our hands of comradeship and companionship to all Nigerians for absolute resolution founded on truth and comprehension of the truth in our nation (Obasanjo,1999)".

It was also quite obvious that the Nigerian government was willing to repress any form of objections to its policy especially from the civil societies or NGOs in order to gain exclusive rights to the resources (Obi, 1999, pp. 57). Unfortunately, the Nigerian state lost its monopoly to violence, due to the recent development in which the youths within the region now have illegal access to arms and ammunitions and have trained themselves into becoming militants who have decided to combat and overwhelm government forces.

However even the government is increasingly afraid of the indiscriminate use of weapons by militia groups, hoodlums, cult groups and gangster. The availability of such weapons within the community turns the smallest arguments or negotiations into bloodshed. This form of approach to issues has been promoted due to long-military rule and the intimidation of people to vote in the democratic era has created

a society which sees violence is as continuous means of politicking (Soremekun, 1995, pp. 76).

In sum, one can rightfully say what has been witnessed in the Niger-Delta is an ecocide and genocide which has been brought on those communities by both the federal government and oil transnational's'. History has often proven that people under repression often take-up arms in defense against subjugation and this is what is currently at play in the region. The movement for the Emancipation of Niger-Delta has usually stated its demands in a peaceful manner in which concessions should have been made because its struggle is basically based on equity, sustainable development and environmental and human rights protection which is not too much to be granted. Most Nigerian rulers have often favored short-term development and this is one of the reasons why the Niger-Delta region facing these challenges, which is likely to transfer to other parts of the nation if not, handled with utmost care.

Chapter 6

Conclusion and Recommendation

6.1. Conclusion

This thesis has been highly particular about transnational CSR variations and policy outcomes and has thus demonstrated that the lack of both national and global accountability of transnational corporations especially in cases of aiding and abetting violations of environmental and human rights laws and cases of complicity has necessitated the attempts made by governments and civil societies to tackle the regulatory lacuna in the international legal arena, thereby giving birth to the concept of CSR. However, this work also demonstrates the hypothesis stated in the previous chapters about how CSR policy and implementation coupled with weak regulatory framework as an approach is a cosmetic way of diverting stakeholders attention from the real havoc caused by the activities of TNCs and that CSR does not promote sustainable development as widely publicized, and this was fully articulated in chapter two with valid evidence.

Also this thesis has been able to demonstrate the validity of another hypothesis which is that there exist policy variation in CSR implementation in most developing countries around the world and that this variation can be traced to either the strength/weakness of the regulatory framework operational in such countries. An example of this was the comparative analysis made between Malaysia, South Africa

and Nigeria in Chapter Two, referring to the influence of government in enforcing good CSR policy implementation.

The above findings therefore lead the thesis to the validation of another hypothesis which is that weak regulatory framework and CSR initiatives on environment and human rights, promotes environmental degradation and human rights violation. This was further explained with numerous examples form chapter three and four where in-depth analysis were made on the consequences of weak regulatory framework merged with CSR in Nigeria, and how it has translated to negative CSR policy outcomes.

With the validation of the tested hypotheses, it can thus be said that TNCs, CSR, environmental degradation, human rights violation and weak regulatory framework are all interwoven concepts that can only be unlocked with the introduction of accountability mechanism, which are subject to two factors; namely an accountability framework which is in form of the UN global reporting initiative or the introduction of other actors such as NGOs/CBOs who use their advocacy and media power to ensure good CSR policy implementation and non complicity of corporations in environmental degradation or human rights violation.

The global reporting initiative center which is in partnership with the UN Environment Programme, civil societies, NGOs, corporations and other inter-governmental organizations works to enhance the reliability and integrity of corporations CSR reports on environmental, human rights and development matters. The GRI has established a sustainable reporting framework which is used in

recording the progress of corporations on CSR and accountability issues but has a short coming of not possessing the capacity to monitor or verify the reports presented by corporations. It is a long-term initiative which is aimed at harmonizing reports methods which would inevitable emerge as the universally acceptable accountability standards.

The 2002 sustainability guidelines have been subject to several revisions since its first creation. The Global Reporting Initiative has also stated its employment of sector and issue supplements as well as protocols on indicator measurement which are going to be used in tandem with the guidelines (GRI, 2002, pp. 5). Despite the abilities of the guidelines to address cogent issues regarding CSR reporting, it has also been able to raise concerns as to its efficiency in identifying TNCs that are committed to developmental programs and those that are not. The GRI reports are intended to be created but it has not identified pointers that could be used in prescribing operational codes for corporations on environmental matters.

Adequate reporting issues on human rights from the GRI perspective are usually supplemented. Also while the pointers for human rights reporting have been considerably improved in the previous drafts of the guidelines, this creates an avenue for corporations to publish reports according to the stipulations of the GRI and then exclude some indicators which are paramount to some stakeholders. This however might not necessarily amount to breach of codes but can be termed as exclusion.

Apart from the above mentioned challenge, there is also a recent phenomenon which can be seen as the publishing of reports by TNCs on human rights and environment that does not represent the reality of the activities being carried out by them, and

therefore creates a question of credibility. In a topical research carried out by ERM, which is a consulting firm, it was discovered that 79 percent of corporate bodies have published on their websites reports on their CSR activities and self-assessments, but only 16 percent of them made use of empirical methods in getting their reports (Janus, 2002, pp. 7).

The above therefore leads to an examination of the role of NGOs and CBOs who have not only demanded accountability from TNCs but have also emerged as partners of development with TNCs.

Civil Societies and Non-Governmental Organizations

Notwithstanding the multiplicity of ideas that have emerged of recent, virtually all have been independent and voluntary, deficient in obligatory principles which can be utilized in invoking genuine and not just ethical reprimands in situations of corporate collusion in human rights violations. As a result, an extensive section of civil society, together with unions, human rights organizations and environmental groups, are predisposed to consider corporate accountability initiatives with cynicism, considering them as instruments in improving the general reflection of corporations that do not attend to the significant issues that the social and environmental operations or activities of corporations spawn. This has become the driving force behind the activities of several civil society associations in their usage of social accountability model to engender additional transparent, effectual instruments to hold corporations liable for human rights and environmental rights commitments, as stipulated in international guidelines, norms or standards and national laws (Broomhil, 2007, pp. 26).

Non-governmental organizations and their diverse demands on TNCs symbolize one of the mainly proficient presently obtainable ways of demanding that TNCs develop into socially accountable citizens of the globe. Nevertheless, regardless of the encouraging position of NGOs contribution and the excellent outcome of their efforts, Non-governmental activism ought to only provide an added mechanism in regulating corporations and their behavior, not as an exclusive effort (Joseph, 2004, pp. 81).

Quasi-legal and non-legal approach of pressurizing or lobbying corporations are also highly significant and can also serve as deterrent to corporations by earning them economic sanctions or embargo. Activities of NGOs such as establishing or proposing of codes and standards, creation of awareness, data gathering and analysis, advocacy and solidarity with indigenous groups or victims through litigations has also contributed to the transparency of TNCs and has served as mechanisms by which corporations have become more answerable and accountable (Linton, 2005, pp. 608).

Awareness and Advocacy

There are several instruments that have been employed by NGOs in making corporations or the private sector more answerable to the general public or the international arena such as the reporting of consultations made with corporations, governments and other inter-governmental organizations, the distribution of information about violations and degradation caused by the operational activities of transnational corporations (Mertus, 1999, pp. 1368).

Also traditional or orthodox instruments have been employed such as demonstrations, protests and boycotts; also to be noted is the novel method of networking via social networking sites such as facebook or twitter and other technological mediums. Purchasing shares of corporations by which NGOs are able to control the decisions that are taken by these corporations. Non-governmental organizations have also served as international litigants and have sometimes provided lawyers for victims of abuse or violations or served as witnesses (Shelton, 1994, pp. 88).

In sum, the most effective tool used so far by NGOs is the identifying and disgracing of corporations that are willful violators of environmental and human rights laws and are highly unrepentant in their acts. This attack is laid on these corporations by exposing the negative acts and the attitude of externalization adopted, which usually leads to reduction in consumers as well as development of problems regarding the hiring of excellent employees. Activism of NGOs can be said to have reached its apogee by the encouraging outcomes and changes they have been able to enact in the international corporate conduct and the world.

6.2. Recommendations

In the global context, a more obligatory regulatory framework/hard law should be created under the umbrella of International Law which should not possess a voluntary character but should be binding on all participants including civil and corporate actors leaving TNCs with no choice but accountability. In enforcing this, states should be empowered under this new law with the power to exercise strong punitive measures on TNCs who have been found guilty of either environmental degradation or human rights violation.

Also there should be the creation of international hard laws which would empower and extend jurisdiction to ICC and ICJ on the complicity of states that have either ignored negative CSR policies of TNCs or has colluded with TNCs in the violation of human rights and degradation of the environments. Most especially government officials who have benefitted from corrupt TNC practices should be extradited and tried under the ICC or ICJ.

Policy Framework for States

Developing countries should legislate law(s) that would ensure that renewal of TNCs contracts would be based on the overall assessment of their performance on CSR policy and implementation, environmental protection and adherence to human rights laws after a given number of five to ten years in a certain country. However this law(s) should be backed up with credible threat in the event of non-compliance by TNCs. Also states should integrate international standards and laws on environment and human rights into their national laws or constitution which would in turn give more legitimacy to their hold on TNCs

Also coming down to Nigeria, the government should apply the above suggestion of legislating laws with credible punitive measures, and demilitarize the Niger-delta region because what has been causing the escalation of violence is military buildup and the government's affiliation with the security agencies of corporations. After that the Nigerian government should adopt a responsible stance on development, not waiting for TNCs to carry out their duties for them, but TNCs CSR should complement the government's drive towards the development of the area.

Finally, the judiciary in developing countries especially in Nigeria should be empowered more to be able to try cases of human rights complicity/environmental degradation of TNCs and when a judgment is reached, the court should be able to enforce its decisions as opposed to what has been witnessed over the years whereby court decisions have been fragrantly disobeyed.

Policy Framework for Corporations

Globally, corporations should adhere more strictly to good CSR objectives as this will not only benefit their host but also benefit the corporation themselves as they get to have more access to natural resources without being obstructed. Also TNCs should increase their partnerships with CBOs, NGOs and community members in order to ascertain community needs and not just make assumptions.

In sum one cannot over emphasize the effects of strong regulatory framework in CSR approach and implementation as this has produced more results in terms of development and profits for both the TNCs and host states and communities.

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