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Neoliberal Corporate Governance, Oil MNCs and the Niger Delta Region: The Barriers to Effective CSR

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This Thesis is submitted in Fulfilment of the Requirements for the Degree of Doctor of Philosophy (PhD) in Law

Kent Law School

Faculty of Social Sciences

University of Kent

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DEDICATION

To my brother, Hon. Okey Nwoke

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A thesis is never the sole product of the author. The support and encouragement of people are necessary and this research is not an exception.

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LIST OF ABBREVIATIONS

BITs	Bilateral Investment Treaties
CG	Corporate Governance
CSR	Corporate Social Responsibility
DFID	Department for International Development
FNDIC	Federated Niger Delta Ijaw Communities
FSB	Financial Stability Board
GMoU	Global Memorandum of Understandings
HRW	Human Rights Watch
ILO	International Labour Organization
IMF	International Monetary Fund
IYC	Ijaw Youth Council
JSCs	Joint Stock Corporations
JTF	Joint Task Force
MCC	Market for Corporate Control
MEND	Movement for the Emancipation of the Niger Delta
MNCs	Multinational Corporations
MOSOP	Movement for the Survival of Ogoni People
MPS	Mont Pelerin Society
NDDC	Niger Delta Development Commission
NDPVF	Niger Delta People's Volunteer Force
NEDs	Non Executive Directors
NGO	Non Governmental Organization
NNOC	Nigerian National Oil Corporation
NNPC	Nigerian National Petroleum Corporation
OECD	Organisation for Economic Co-operation and Development
OMPADEC	Oil Mineral Producing Areas Development Commission
PR	Public Relations
RNC	Royal Niger Company
ROSCs	Report on the Observance of Standards and Codes SAPs
SAP	Structural Adjustment Programmes
SPDC	Shell Petroleum Development Company
SV	Shareholder Value
UNEP	United Nations Environmental Programme
UN	United Nations

TABLE OF CASES

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Higgs & another v Minister of National Security & Others (2000) 2 W.L.R 1368

Kiobel v Royal Dutch Petroleum Co (2011) 642 F.3d 379 (2d Cir. 2011)

Longe v First Bank of Nigeria Plc (2006) 3 NWLR (Pt 967) 228

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Mobil Producing (Nig) Unlimited v Monokpo (2003) 18 NWLR (pt. 852) 346

Nigeria Gas Company v Dududsola (2005) 18 NWLR (pt. 957) 292

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Opuo V NNPC (2001) 14 NWLR (pt. 734) 552

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Shell Petroleum v Federal Board of Inland Revenue (1996) 8 NWLR (Pt 466) 256

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ABSTRACT

In recent years, oil has become a dominant feature of the Nigerian economy. For almost two decades, the Niger Delta region – where the oil is primarily situated – has been engulfed in crisis which continues to prove adverse to the socio-economic development of the country. Many have argued that the unrest in the region is rooted in the inability of MNCs to act in a socially responsible manner. The MNCs argue that the various CSR projects they have initiated and implemented should be enough to satisfy host-communities.

This research seeks to contribute to the body of knowledge in this area. It assesses whether CSR in its contemporary form is capable of making a significant contribution to the resolution of the Niger Delta crisis. It examines the nature of contemporary CSR in the context of the essentially neoliberal forms of corporate governance which have risen to dominance in recent years. In the course of the research, the thesis identifies and separates for analytical purposes, a number of interconnected but distinguishable barriers that render the CSR practices of MNCs ineffective – ideological, practical and political barriers. It suggests that these barriers, rooted mainly in the Anglo-American neoliberal shareholder value model of corporate governance and promoted by international organizations including the OECD, the World Bank and the IMF, militate against the realization of effective CSR, both in Nigeria specifically and, perhaps more generally.

It argues that given the current dominance of the 'maximizing shareholder value' model of corporate governance – both in Nigeria and internationally – it will not be advisable to pin too much hope in CSR as a solution to the problems in the region. Neither the culture of corporations, nor the pressures to which they are currently subjected encourage socially responsible behaviour. The thesis equally argues that the problem in Nigeria is exacerbated by the country's political situation and the close links between MNCs and key state officials.

In view of the arguments developed in the thesis, one of its main conclusions is that the existence and operations of these barriers render the CSR practices of MNCs in the area ineffective.

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General Introduction: Research Overview

Research Background

Oil has come to be the mainstay of the Nigerian economy. At present, it is by some distance the country's most important export commodity, accounting for over 80 per cent of her revenue and 95 per cent of her foreign exchange earnings.[1] As a result, it plays a crucial role in the country's economy and will continue to do so into the future. The oil industry – situated primarily in the Niger Delta region of the country – encompasses both the federal government and subsidiaries of oil multinational corporations (MNCs) such as Shell, Chevron, Total and ExxonMobil.[2]

The centrality of oil mining and the attendant revenue accruable from it to the Nigerian state cannot be over-emphasised. This explains why the crisis rocking the oil-producing region continues to prove adverse to the socio-economic development of the country. The militant activities of the Niger Delta youths have resulted in huge losses of revenue to both the corporations and the federal government. In 2008, the country lost over ₦14 billion (US$86, 184 million) in revenue as a result of the unrest in the region.[3] This increased to over ₦15 billion (US$92, 340 million) in 2010[4] and to more than ₦21 billion (US$127,785 million) in 2012.[5] The inference to be drawn from this is that if

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[1] S Pegg and N Zabbey, 'Oil and Water: The Bodo Spills and the Destruction of Traditional Livelihood Structures in the Niger Delta' (2013) *Community Development Journal* Vol. 48 (3) 391–405 at 393; See also SF Iwejingi, 'Socio-Economic Problems of Oil Exploration and Exploitation in Nigeria's Niger Delta' (2013) *Journal of Energy Technologies and Policy* Vol. 3(1) 76

[2] JC Ebegbulem, D Ekpe and TO Adejumo, 'Oil Exploration and Poverty in the Niger Delta Region of Nigeria: A Critical Analysis' (2013) *International Journal of Business and Social Science* Vol. 4 (3) 280

[3] Nigerian National Petroleum Corporation (NNPC) Annual Statistical Bulletin (2008) *NNPC Website* <http://www.nnpcgroup.com/Portals/0/Monthly%20Performance/2008%20ASB%201st%20Edition%20Web.pdf> accessed 19 November 2013

[4] See NNPC Annual Statistical Bulletin (2010) *NNPC Website* <http://www.nnpcgroup.com/Portals/0/Monthly%20Performance/2010%20ASB%201st%20edition.pdf> accessed 19 November 2013

[5] See NNPC Annual Statistical Bulletin (2012) *NNPC Website* <http://www.nnpcgroup.com/Portals/0/Monthly%20Performance/2012%20ASB%201st%20edition.pdf> accessed 19 November 2013

the country is to achieve a significant level of sustainable development in the future, there is a pressing need to find a workable solution to the crisis.

This thesis focuses on the attempts to deploy the idea of corporate social responsibility (CSR) to control and moderate the activities of the multinational oil corporations (MNCs) operating in the Niger Delta area of Nigeria. The backdrop is an Amnesty International report, published in 2009, which looks at the operations of these corporations and the consequences of their actions on both people and the environment. This report, entitled ***Nigeria: Petroleum, Pollution and Poverty in the Niger Delta,***[6] gives a detailed account of the degree of human and environmental destruction occasioned by the exploration and extraction of oil mineral in this part of Nigeria.

Considerable damage has been done to the ecosystem by oil spillage, gas flaring, seismic surveys, construction of pipelines, dredging which causes environmental damage, inadequate clean up and negligent waste disposal, amongst many other things. In recent years, there has also been an increasing loss of life and property, occasioned in part by the intensified militant activities of the people of the Niger Delta. Many have argued that the unrest in the region is rooted in the inability of MNCs to act in a socially responsible manner.[7] The MNCs argue that the various CSR projects they have initiated and implemented should be enough to satisfy host-communities. The host-communities disagree and insist that the CSR initiatives of oil corporations are hypocritical and self-serving. The consequence of these arguments and counter-arguments is a region enmeshed in armed conflict and a country reeling from dwindling oil revenues.

I had originally intended to focus my research on the behaviour of MNCs in the region and to assess the extent to which they have in fact been acting in a socially responsible way. My goal was to identify ways that might make them act in a more socially responsible manner. As I began to investigate the issues, however, new ones arose. For instance, after looking at the Anglo-American model of corporate governance, which has become progressively more dominant globally in recent decades and which seems to have increasingly shaped the behaviour and culture of these corporations,

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[6] See Amnesty International, 'Nigeria: Petroleum, Pollution and Poverty in the Niger Delta' (2009) *Amnesty International Publication* <http://www.amnesty.org/en/library/asset/AFR44/017/2009/en/e2415061-da5c-44f8-a73c-a7a4766ee21d/afr440172009en.pdf> accessed 19 November 2013

[7] See chapter Two where this is discussed in details

I began to wonder whether it was realistic to expect them to behave responsibly, when their governance regimes and the environment in which they operate seem to propel them in a very different direction.

In the course of the research, it became clear to me that corporate managers, in significant part because of the market imperatives to which they are subject, are under immense pressure to prioritize 'shareholder value' above all other goals. This state of affairs is justified by the radically shareholder-oriented, Anglo-American theories and models of corporate governance which have become increasingly dominant in recent decades. Within these theories, the rights and interests of non-shareholders – so-called stakeholders such as employees, customers, and the community at large – are entirely secondary, in the absence of rights protected by law or acquired through contract. In this context, CSR is almost inevitably marginal and ameliorative in nature: it seeks only to make sure that the maximization of shareholder value is not pursued to such an extent that it totally disregards the impact of a corporation's operations on the larger society. Moreover, contemporary CSR relies almost entirely on self-regulation by corporations; it is voluntaristic.[8] What this means, in essence, is that contemporary CSR and respect for the rights of stakeholders depends on voluntary action by corporations themselves. It has to come voluntarily from within, rather than being imposed on corporations from without.

In keeping with the neoliberal market-based model of economic and social development, with its emphasis on free trade, freedom of movement for capital and limited state intervention in and regulation of economic affairs, contemporary CSR promotes not the legal regulation of corporations by the state, but self-regulation by corporations themselves. Indeed, its emphasis on voluntarism and self-regulation is one of its defining characteristics. From this perspective, contemporary CSR is arguably part and parcel of neoliberalism.

[8] Paddy Ireland and Renginee G Pillay 'Corporate Social Responsibility in a Neoliberal Age' in P Ytting and J. Marques (eds.) *Corporate Social Responsibility and Regulatory Governance* (Hampshire: Palgrave Macmillan 2009) 83

Research Questions, Key Aims and Hypothesis

The recasting of the purpose of the thesis led me to revise my research questions. In the first place, given the essentially neoliberal underpinnings of contemporary CSR, to what extent can it be an effective solution to the crisis in the Niger Delta? Or to put it in another way; is contemporary corporate governance, with its neoliberal focus on maximizing shareholder value, fundamentally antithetical to effective CSR practices? Again, are there barriers to effective CSR and are these barriers purely ideological? Furthermore, is the seeming failure of MNCs to engage meaningfully in effective socially responsible behaviour rooted in the economic pressures they face and in the existence of corporate governance mechanisms embedding shareholder value, or is this failure attributable to the peculiar situation in Nigeria? Finally, given the questions above, is there any hope for the Niger Delta and Nigeria?

In attempting to answer these questions, I will seek to examine the CSR practices of MNCs in the Niger Delta and to briefly assess how effective these practices have been in providing solutions to the crisis in the area. I will also examine the tension that exists between neoliberal ideology (and by implication, that of shareholder value) and the idea of CSR, in order to ascertain whether they are compatible or incompatible. I will then move on to assess what I call the barriers to effective CSR. The thesis seeks to show that the barriers to effective CSR are not purely ideological; that there are also practical and political obstacles militating against the realization of effective CSR, both in Nigeria specifically and, perhaps, more generally.

In this thesis, I will argue that given the current dominance of the 'maximizing shareholder value' model of corporate governance – both in Nigeria and internationally – we cannot pin too much hope in CSR as a solution to the problems in the Niger Delta. Neither the culture of corporations, nor the pressures to which they are currently subjected encourage socially responsible behaviour. Moreover, the problem in Nigeria is exacerbated by the country's political situation and the close links between MNCs and key state officials.

Thesis Structure

This thesis seeks to assess whether CSR in its contemporary form is capable of making a significant contribution to the resolution of the Niger Delta crisis. To this end, it examines the nature of contemporary CSR in the context of the essentially neoliberal forms of corporate governance which have risen to dominance. In recent decades, it is argued, the goal of maximizing shareholder value has increasingly shaped the character and culture of corporations (including those in the Niger Delta). Is the pursuit of shareholder value compatible with meaningful CSR? Or does the pursuit of shareholder value overwhelm any attempt to realize effective CSR?[9]

The thesis is divided into two parts (I and II) and proceeds as follows;

Part one, made up of two chapters; provides a brief introductory narrative of the Niger Delta conflict and the claim by MNCs in the region that CSR can be an important part of a solution.

Chapter one offers an insight into the Nigerian oil industry (including the Niger Delta region) and the legal regulation of the industry. It begins with a critical assessment of the oil industry in Nigeria and the various legislations, licences and contracts which regulate the sector. It argues that as a result of many factors which are present in the Nigerian socio-political system, the various legislations appear ineffective as a regulatory mechanism for the conduct of oil exploitation in the country. The chapter also looks at the roles played by the Nigerian government, the oil MNCs and the host communities in the conflict in the region. It suggests that the implication of the petroleum contracts between the NNPC and the oil corporations is that they afford the latter the freedom to operate with little or no regard for the environment. This, it contends, is one of the causes of the crisis in the Niger Delta.

Chapter Two investigates the CSR claims of oil corporations in the area. It begins with a review of the existing literature on the CSR practices of MNCs in the Niger Delta and what amounts

[9] As a literature-based study, documents emanating from the region will be utilized, as well as documents from the wider world. Primary and secondary sources including text books, journal articles, Nigerian government gazettes and legislations, corporate websites and reliable internet sources will be consulted.

to sustainable development for the people of the region. It then proceeds to look at the internationalization of the Niger Delta conflict and the growing international pressures exerted on oil corporations by such groups as the Human Rights Watch, Amnesty International, the Green Peace, Friends of the Earth, the United Nations' Human Rights Commission (UNHRC) etc. It contends that the MNCs eventually resorted to CSR as a reaction to these pressures. The chapter traces the various activities which are depicted by the MNCs as evidence of their socially responsible behaviour.

However, it suggests that a distinction needs to be drawn between philanthropic CSR acts such as the building of schools, roads, hospitals etc., and the more demanding CSR duty to refrain from harming the ecosystem – sometimes referred to as the duty of care owed by MNCs to the environment.[10] The failure of the MNCs to discharge this duty lies at the heart of the crisis in the area. The seeming inability, or refusal, of oil MNCs to care for the environment has clearly created a negative perception of corporate activities by host-communities. It is clear, it is suggested, that many people in the Niger Delta do not believe in the MNCs' claims that they are behaving in a socially responsible manner; and that they have good reasons for this belief. The question is why?

Part Two is made up of three chapters and seeks to identify and separate for analytical purposes, a number of inter-connected but distinguishable barriers to effective CSR: ideological, practical and political. The part equally explores these barriers to effective CSR in the Nigerian context and argues that they are also present in the Nigerian situation, rendering it unlikely that CSR in its contemporary form will do much to resolve the problems found in Niger Delta.

Chapter Three is divided into two sections; sections one and two. In section one**,** the ideological barriers to effective CSR – neoliberalism and shareholder value – are analysed. The analysis begins by looking at the decline in the 1920s and1930s of the idea that corporations were purely private enterprises to be run only in the interests of shareholders – so-called shareholder primacy. Moving on, it examines the rise of the idea of the socially responsible corporation and the belief that corporations should not be simply seeking to maximize profits for shareholders, but should rather, be seeking to balance a range of different interests. However, beginning from the 1970s, there was a backlash against the idea of the socially responsible corporation, and the 1980s and 1990s saw

[10] Equally known as negative injunction duties

the rise of the idea that corporate managers should be seeking to maximize 'shareholder value'. The ideological re-assertion of shareholder primacy that resulted did not however occur in isolation. It was part and parcel of the rise to prominence (and eventual hegemony) of neoliberal theories about economic and social development in the international financial architecture.

The section, therefore, also examines the rise of the neoliberal theories of economic and social development which rose to prominence during this period. It suggests that neoliberalism is a developmental theory which champions free markets and takes an anti-state stance which is rhetorical. In this sense, it encourages precisely the voluntarism and self-regulation which lies at the heart of contemporary CSR. For this reason, it is arguable that contemporary CSR is consonant with both neoliberal ideas and shareholder value. The section will also explore what makes neoliberalism new,[11] and what differentiates it from classical liberalism. Neoliberals, it is suggested, recognize that markets are not natural but have to be created and maintained by the state. The rise of neoliberalism can be attributed in part to the failure of classical liberal ideas about natural and self-regulating free markets in the 1920s-1930s, and to the fear of state regulation and of the threats posed to market-based social and economic arrangements by Communism, Fascism and Keynesianism. The section concludes by arguing that there is a fundamental tension between ideas about the desirability of socially responsible corporate behaviour (CSR) and the belief that it is to the benefit of society as a whole for corporations to be run solely in the interest of their shareholders, and for managers to seek to maximize shareholder value.[12]

Section Two of the chapter explores the paradigm shift in Nigeria which began in the late 1970s, from Keynesianism to neoliberalism, and which led to the eventual domination of neoliberal and shareholder value ideologies in the country. The section also examines the impact of this major shift in economic thinking on the policies pursued by the Nigerian state, particularly in relation to the activities of multinational oil corporations operating in the country. It argues that by adopting and implementing neoliberal ideological reforms, including the promotion of the primacy of shareholder

[11] That is a brief history of neoliberalism

[12] See for instance, Milton Friedman's 'the Social Responsibility of Corporations is to Profit Maximise' discussed in chapter Three

value, any hope that contemporary CSR will be an effective solution to the Niger Delta crisis is seriously undermined.

If the barriers to CSR were only – or largely – ideological, however, there would clearly be hope for it: all its supporters would have to do is to persuade corporations and corporate managers that they should take account of the wider social interest in their decision-making – either because it is worthwhile in itself or because (as many supporters of 'stake-holding' have tried to argue) acting in a socially responsible manner is in the long-term interests of shareholders.[13] But there are good reasons for believing that the barriers/obstacles standing in the way of CSR are not purely or even predominantly ideological.

Chapter Four explores a second set of barriers to effective CSR and is equally divided into two sections. Section one begins by exploring the links between shareholder value and contemporary corporate governance. The implication of the belief that corporations should profit maximize, it is suggested, finds expression in the claim that corporate governance is a simple agency problem: how do you get corporate managers to act in the interests of inactive and often dispersed shareholders?[14]

In this section, the various mechanisms which have been developed to solve this agency problem are examined and evaluated. While some of these mechanisms operate from within corporations – things such as performance related pay and the use of Non- Executive Directors to monitor managers –; others operate externally, such as the market for corporate control. These mechanisms, it is argued, have incentivized corporate managers to seek to maximize shareholder value – and, more specifically, to get the share price of the corporations they are managing as high as possible. Not only that, they have put intense pressure on managers to do so to avoid the wrath of 'the markets' and the threat of takeover. The resulting model of CG – which is essentially the Anglo-American, stock market based model[15] – has been, and is being, promoted around the world by the

[13] An idea captured in the notion of 'enlightened shareholder value'.

[14] See for instance; A. Shleifer and R. Vishny, 'A Survey of Corporate Governance' (1997) *The Journal of Finance*, Vol. 52(2) 741

[15]Susanne Soederberg, *The Politics of the New International Financial Architecture: Re-imposing Neoliberal Domination in the Global South* (London: Zed Books 2004)139-149

OECD, the FSB, the World Bank and the IMF, not least in Nigeria. The section *concludes with the contention that these entrenched mechanisms now constitute major* practical barriers to effective CSR.

Section Two will consider the application of the neoliberal corporate governance mechanisms in Nigeria. It aims to show that the practical barriers to effective CSR discussed in section one (performance related pay and the use of Non- Executive Directors to monitor managers, the operations of the markets for corporate control and the stock markets) are also present in the Nigerian situation, rendering it unlikely that CSR in its contemporary form will do much to resolve the problems found in the Niger Delta.

Chapter Five explores a third set of barriers to effective CSR, referred to here as political. It is suggested that these set of barriers are largely attributable to the re-emergence of financial power.[16] Again, the chapter is divided into two sections: section one of the chapter explores the resurgence in the power of finance and its role in imposing shareholder primacy and entrenching the corporate governance mechanisms discussed in chapter Four. In this context, the section looks at the idea of globalization and the spread of neoliberalism.[17] It also investigates the role of international organizations[18] in these processes and looks at the Washington Consensus and Post-Washington Consensus policy packages that have been imposed on developing nations. The Post-Washington Consensus package, the chapter argues, is the precursor of what has been termed 'disciplinary neoliberalism'[19] or the 'new constitutionalism'.[20]

The effect of this new constitutionalism has led some critics to conclude that neoliberalism is a class project aimed at protecting and furthering the interests of financial elites. Indeed, it is also arguable that corporate executives are now themselves one of these financial interest groups, even if their interests seem at times to conflict with those of shareholders. Possibly, this class project explains

[16] Or the power of resurgent finance

[17] However, considering that globalization is a controversial concept which means different things to different people, the context in which it is applied in the thesis is in the liberalization of (liquid) capital across territories and in the lifting of the ban on capital and its free movement internationally.

[18] Including the Washington institutions and the OECD

[19] Stephen Gill, 'The Constitution of Global Capitalism' (2000) <http://www.uv.es/~mperezs/intpoleco/Lecturcomp/Geoeconomia%20y%20Globalizacion/Constitution%20of%20Global%20Capitalism%20S%20Gill.pdf> accessed 20 October, 2013

[20] David Schneiderman, 'Investment Rules and the New Constitutionalism'(2000) *25 Law and the Social Inquiry*, 757

the contrast – which often amounts to a gulf – between neoliberal rhetoric (anti-state – reduce state welfare) and neoliberal practice (increased state support for finance).[21] To these critics, neoliberalism in practice is very different from neoliberalism in theory. In this context, the thesis briefly looks at the works of commentators such as Stephen Gill, Susan Soerderberg, Ha-Joon Chang, David Schneiderman and David Harvey. As these writers make clear, the very idea of a free market is deeply problematic: markets are not natural, they are political and legal constructs.

The section concludes with the argument that the activities of this powerful financial interests amount to political barriers to effective CSR.

In section two of the chapter, the application of disciplinary neoliberalism and the new constitutionalism in Nigeria and how this has created a class of financial elites fundamentally opposed to the realization of effective CSR will be discussed The section will finally examine the problem of institutional corruption in the country and argue that the 'slick alliance' between oil corporations and the Nigerian government officials is a major political barrier to the realization of effective CSR in the Niger Delta and Nigeria.

Part Two will be followed by a **general conclusion** which concludes the thesis.

[21] David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press 2005) 70-71

PART ONE

Introductory Narrative of the Niger Delta Conflict and the CSR Claims of MNCS in the Region

Chapter One

The Niger Delta Region and Regulation of the Nigerian Oil Industry

Introduction

In a study undertaken by a group of Nigerian and international environmental experts in 2006, it was reported that the Niger Delta is;

> ...one of the world's most severely petroleum-impacted ecosystems [and] the damage from oil operations is chronic and cumulative, and has acted synergistically with other sources of environmental stress to result in a severely impaired coastal ecosystem and compromised the livelihoods and health of the region's impoverished residents.[1]

This type of negative report is one of the reasons why critics have maintained that Nigeria is among the countries that possess the proverbial 'resource curse' characteristics.[2]

The Niger Delta region is arguably the world's largest wetland, and certainly one of the 10 generally acknowledged wetland and seashore maritime ecosystems of the world.[3] It has a population of about 35 million people and is endowed with enormous naturally occurring minerals. The Niger Delta boasts of a profusion of diverse aquatic life and mineral residues and is the major oil producing

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[1] Nigerian Conservation Foundation, WWF UK and International Union for Conservation of Nature (IUCN), Commission on Environmental, Economic and Social Policy, with Federal Ministry of Environment, 'Niger Delta Natural Resources Damage Assessment and Restoration Project Scoping Report' 2000 contained in *United Nations Development Programme (UNDP) Niger Delta Human Development Report 2006* <http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/name,3368,en.html> accessed 1 March 2013,

[2] 'Resource curse' hypothesis or the 'paradox of plenty' refers to the contradiction of a country or region blessed with rich mineral resources still suffering from poor economic growth and under-development; For a detailed discussion of the term, see F Allen, *Implementation of Oil Related Environmental Policies in Nigeria: Government Inertia and Conflict in the Niger Delta* (Newcastle upon Tyne: Cambridge Scholars Publishing, 2012) 10

[3] O Ibeanu, 'Oiling the Friction: Environmental Conflict Management in the Niger Delta, Nigeria' (2000) *Environmental Change & Security Project Report* Vol. 6 20

area in Nigeria, generating over 80 per cent of the country's national revenue. Mineral oil has been mined in the region by MNCs on behalf of the federal government for over 50 years. An estimated $600 billion has been generated from it since the 1960s.[4]

The Niger Delta is made up of a number of States near the coast of the Atlantic Ocean. They include the States of Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers. It is a region of people whose economic activities and life sustenance revolve around the coastal waters. The demography of the Niger Delta is made up of individuals who enjoy an analogous cultural relationship and comparative convergence of history. The population engages in the economic activities of fishing, farming and hunting, though fishing and farming are the dominant occupations.[5]

The area is a stumpy, level land spanning some five miles north of the equator. It is a vast, abundant stretch extending into the Gulf of Guinea and creating the Bight of Biafra in the East and the Bight of Benin in the West.[6] These 36,000 square kilometres (14,000 square miles) of marshland, creeks, tributaries and lagoons empty the Niger River into the Atlantic Ocean, at the Bight of Biafra. A third of this area, measuring around 12, 000 square kilometres, is a delicate mangrove forest, alleged to be the biggest mangrove forest in the world. It contains many plant and animal varieties, comprising numerous colourful and distinctive flowers and birds.[7]

The local population is classified into a number of 'ethnic groups or nations' including the Ijaw, Urhobo, Itsekiri, Isoko, Efik, Etche, Ibibio, Andoni, Ikwere, Ogoni, Edo and Kwale-Igbo. Several of these 'nations' are additionally split into 'clans' with their own individual languages. The bulk of the Niger Delta people live in the three states of Rivers, Delta and Bayelsa. Others are scattered in the other six states in different proportions.[8]

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[4] G Wurthmann, ''Ways of Using the African Oil Boom for Sustainable Development' (March 2006) *African Development Bank Economic Research Working Paper Series* No. 84 <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/00806226-EN-ERWP-84.PDF> accessed 2 March 2013

[5] AO Emmanuel and others, 'Poverty, Oil exploration and the Niger Delta Crisis: The Response of the Youth' (2009) *African Journal of Political Science and International Relations* Vol. 3 (5) 225

[6] Ike Okonta and Oronto Douglass, *Where Vultures Feast; Shell, Human Rights and Oil* (London: Verso Books 2003) 1

[7] O Ibeanu (n 3) above 20

[8] Kenneth O Dike, *Trade and Politics in the Niger Delta 1830-1885: An Introduction to the Economic and Political History of Nigeria* (Oxford: Oxford University Press 1956) 21

A combination of the 1999 Constitution of Nigeria and a cluster of other local legislations (like the Land Use Act of 1978 and the Petroleum Act of 1969) mean that local communities have no legal rights to the oil and gas reserves in their area.[9] The Federal Government issues 'permits, licences and leases' to MNCs to survey, explore and mine oil. Following from such assignments, the corporations are accorded admittance to the land covered by their licences or permits.[10]

The involvement of MNCs in the Nigerian economy dates back to the colonial era, before the country's independence. The concession of mineral oil permits to the Shell d'Arcy Petroleum Development Company by the colonial government in 1937 marks the starting point of MNCs' activities in Nigeria, although exploration and surveying activities began as early as 1906. Shortly after oil was discovered in commercial quantities at Oloibiri, in present day Bayelsa State, other multinationals like ExxonMobil, Chevron, Agip, Elf, and Texaco also moved into the country.[11]

The oil extraction industry is made up of the government of Nigeria, subsidiaries of MNCs, and a few Nigerian corporations. Oil extraction is operated through contractual arrangements (joint venture agreements, production sharing contracts or service contracts) between the state-owned Nigerian National Petroleum Corporation (NNPC)[12] and one or more oil corporations.[13] NNPC is the 'chief investor' in all joint ventures, while Shell Petroleum Development Company (SPDC), a subsidiary of Royal Dutch Shell, is the main oil MNC in Nigeria. The SPDC joint venture involves

[9] See S. 44 of the Constitution of the Federal Republic of Nigeria, 1999 discussed below

[10] See Petroleum Act 1969, amended in 2004 and Oil Pipelines Act 1990; These legislations are discussed in details below

[11] See NK Obasi, 'Nigeria and Oil' <http://www.onlinenigeria.com/links/adv.asp?blurb=493> accessed 2 June 2011

[12] "The Nigerian National Petroleum Corporation (NNPC) was established on April 1, 1977, under the statutory instrument-Decree No. 33 of same year by a merger of Nigerian National Oil Corporation, NNOC, with its operational functions and the Federal Ministry of Mines & Power with its regulatory responsibilities. This decree established NNPC, a public organization that would, on behalf of Government, adequately manage all government interests in the Nigerian Oil industry. In addition to its exploration activities, the Corporation was given powers and operational interests in refining, petrochemicals and products transportation as well as marketing. Between 1978 and 1989, NNPC constructed refineries in Warri, Kaduna and Port Harcourt and took over the 35,000-barrel Shell Refinery established in Port Harcourt in 1965"; See <www.nnpcgroup.com> accessed on 28 February 2013

[13] These are discussed below

NNPC, which holds 55 per cent, Shell 30 per cent, Elf Petroleum Nigeria 10 per cent and Agip, 5 per cent.[14]

Oil activities constitute a risk to the ecosystem at each phase of the supply chain, be it at the exploration, production, transportation, or refining stage. During oil exploration, possible ecological injuries include land clearing (which can cause enduring and perpetual loss of vegetation) and drilling activities (which cause the liberation of ‘drilling fluids’ into the atmosphere). At the production phase, the environment is damaged either as a result of oil pipes breaking and causing leakages, or as a result of atmospheric emissions from the flaring of gases, an inevitable consequence of oil production. At the transportation phase, tankers discharge oil into seas and rivers in the process of pumping out bilge water containing oil residuals, solid-wastes and atmospheric emissions. As well as the environmental perils inherent in oil processing, consumer utilization of oil products, just as with fossil fuels, adds to the hazards of global warming.[15]

Oil extraction equally has undesirable consequences on the indigenous peoples of the oil-rich regions. In extreme cases, the setting up of oil facilities actually divests host-communities of their means of survival. In constructing roads for oil business, rivers may be sidetracked and water reservoirs desiccated. Fishing waters are thus destroyed, making it necessary for families to relocate from their ancestral homes. Oil operations cause the destruction of private property and agricultural land, leading to poverty and deprivation.[16]

For the communities in the Niger Delta region, environmental sustainability and excellence are essential to their general welfare and growth. As the United Nations Development Programme (UNDP) recounts, over 60 per cent of the population have sources of livelihoods contingent on the natural environment.[17] For many of the communities, the environmental resource base is exploited for agricultural purposes: fishing, hunting and the gathering of forest fruits. For many, these activities are

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[14] See <www.shell.com> accessed 28 February 2013

[15] RB Clark (ed.) *The Long Term Effects of Oil Pollution on Marine Populations, Communities and Ecosystems* (London: Royal Society 1982) 7

[16] J. G Frynas, ‘The Oil Boom in Equatorial Guinea’ (2004) *African Affairs* 103 (413) 527-546

[17] United Nations Development Programme (UNDP), ‘Niger Delta Human Development Report’ (2006) <http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/name,3368,en.html> accessed 1 March 2013 74

the main or only source of subsistence. Pollution and environmental damage, therefore, pose significant risks to their very existence.[18]

Despite the background of a huge reservoir of natural resources, a significant percentage of the inhabitants are poor. The UNDP portrays the territory as tormented by 'administrative neglect, crumbling social infrastructure and services, lack of clean water and adequate health-care facilities, high unemployment, social deprivation, abject poverty, filth and squalor, and endemic conflict'.[19] Notwithstanding the enormous mineral reserve of the Niger Delta, it continues to be one of the poorest and least developed regions of Nigeria.[20]

It is calculated that approximately 70 per cent of the population suffer from deficiencies in fundamental facilities including electricity, pipe-borne water, hospitals, proper housing and good roads. Incapacitating factors like scarcity and destitution, starvation and sickness are rife in the region. According to a World Bank estimate, 84.5% of the region's inhabitants in 2010 survive on less than $2 per day,[21] while the UK's Department for International Development (DFID) declares that the region has some of the worst social indicators in the world.[22] By juxtaposing the sufferings of the people with the huge resources engendered by oil, the area turns out to be one of the world's severest and most alarming instances of the 'resource curse'.[23]

Apart from the destruction of the ecosystem and the connected hazards of contamination and disease, periodic eruptions of fires from worn-out and haphazardly laid oil pipes have destroyed thousands of lives and properties worth billions of Nigerian naira. Some oil pipelines dissect farmlands, streets and homes, rendering them useless. Gas flaring and acid rains negatively affect both people and their environment. While gas is usually put to other 'beneficial', or at least 'less harmful',

[18]See Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta* (London: Amnesty International Publications 2009) <http://www.amnesty.org.uk/uploads/documents/doc_19492.pdf> accessed 1 March 2013

[19]UNDP Report (n 17) above

[20]FN Ikome, 'Conflict in the Niger Delta: Issues and Dynamics' (2005) *Global Insight* Vol. 44 5; See also the UNDP Report cited in (n 17) above

[21] See World Bank, 'Report on Nigeria' <http://data.worldbank.org/indicator/SI.POV.2DAY5> accessed 10 February 2011

[22] See UK's DFID Website <http://www.dfid.gov.uk/countries/africa/nigeria.asp> accessed 10 February 2011

[23]Amnesty International (n 18) above; see also (n 2) above

uses in the developed world, oil MNCs in less developed countries like Nigeria and the Niger Delta have a preference for random and arbitrary gas flaring because it offers a cheaper alternative.[24]

In the last two decades, the Niger Delta region has been engulfed in crisis, spawned, many believe, by alleged neglect by the government and MNCs. The indigenous people of the region accuse oil MNCs of systemic environmental degradation and a callous destruction of their sources of livelihood. The people also indict the Nigerian state for collaborating with MNCs to perpetuate these vices. As evidence of the alliance between the state and oil corporations, the communities point to the brutal suppression of non-violent demonstrations and gross human rights abuses by the Nigerian state, aimed at promoting and protecting the oil business. For many, this was epitomized by the extra-judicial killing of Ken Saro-Wiwa and the Ogoni eight in 1995.[25]

The alleged despoliation of the environment by MNCs, coupled with the state's preferred methods of addressing agitation from the communities, led to the formation of various indigenous civil society organizations, which helped to broadcast the perceived injustices of oil business beyond the shores of Nigeria. This alleged mistreatment created an environment of anger, desperation and violence. Youths resorted to kidnapping and hostage taking, destruction of corporate facilities and illegal oil bunkering. Non-violent protests, initially the major tool of protests thus transformed into violent confrontations.[26]

The hanging of Saro-Wiwa and the Ogoni eight, together with other state actions, including the Odi Massacre in 1999, contributed to the internationalization of the conflict. The international community, represented mainly by international non-governmental organizations now became aware of the tragedy in the region. These organizations became involved in the conflict indirectly, financially supporting indigenous civil society movements like MOSOP and IYC. They condemned equally strongly most of the policies and actions of the corporations. MNCs, suddenly under intense pressures from NGOs and civil society organizations, reacted by adopting corporate codes of conducts

[24] ibid 3

[25] N Nwogwugwu, OE Alao and C Egwuonwu, 'Militancy and Insecurity in the Niger Delta: Impact on the Inflow of Foreign Direct investment to Nigeria' (Sep. 2012) *Kuwait Chapter of Arabian Journal of Business and Management Review* Vol. 2(1) 23

[26] Ibid

and by laying claim to CSR practices. To what extent, however, is CSR providing a solution to the problems and conflict in the area? And to what extent can it do so in the future?

This chapter offers an insight into the Nigerian oil industry (including the Niger Delta region) and the legal regulation of the industry in the country. It begins with a critical assessment of the oil industry in Nigeria and the various legislations, licences and contracts which regulate the sector. It argues that as a result of many factors which are present in the Nigerian socio-political system, the various legislations appear ineffective as a regulatory mechanism for the conduct of oil exploitation in the country. The chapter also looks at the roles played by the Nigerian government, the oil MNCs and the host communities in the conflict. It suggests that the implication of the petroleum contracts between the NNPC and the oil corporations is that they afford the latter the freedom to operate with little or no regard to the environment. This, it contends, is one of the causes of the crisis in the Niger Delta.

I

OVERVIEW/ REGULATION OF THE OIL INDUSTRY IN NIGERIA

The Nigerian oil industry is broadly divided into two; the upstream sector – exploration, drilling, production and transportation of crude oil – and the downstream sector – refining, storage, importation, transportation, distribution and marketing of petroleum products. As was stated above, the Niger Delta is home to most of the country's oil reserves. This explains why the region is seen as 'one of the most prolific oil-bearing sedimentary basins in the world'.[27] Recently, however, oil wells have also been discovered in offshore locations outside the Niger Delta – Bight of Bonny, Gulf of Guinea and the Bight of Benin – and in the Nigeria-Sao Tome and Principe Development Zone (JDZ). The country's major oil terminals are at Forcados and Bonny (under the management of Shell),

[27] See S. Awogbade, S. Sipasi and G. Iroegbunam, 'Getting the Deal Through-Oil Regulation: Nigeria' (2008) *AELEX Legal Practitioners and Arbitrators*, 115 <www.gettingthedealthrough.com> accessed 27 May 2011

Escravos and Pennington (managed by Chevron), Qua Iboe (Exxon Mobil) and Brass (operated by Agip).[28]

The *Oil and Gas Journal* reports that in 2007, the country's oil reserves stood at 36.2 billion barrels. In that year, the federal government had plans to increase this capacity to 40 billion barrels by 2010, and although this target was not met, the country's oil reserves slightly increased to 37.2 billion barrels by 2011.[29] It is suggested that Nigeria is the largest producer of oil in Africa and the sixth largest producer of oil globally.[30] In 2006, the country's total export hit a high of 2.45 million barrels per day (bpd), which then rose to 2.53 million bpd in 2011.[31] About 40 per cent of this oil is exported to the US alone.[32]

Despite the high export of crude oil, Nigeria imports petroleum products for domestic consumption. Though the country has four major refineries with a combined refining capacity of 438, 750 bpd (two in Port Harcourt, one in Warri and another in Kaduna), the refineries hardly refine up to the capacity of 214, 000 bpd due to lack of maintenance. As a result, Nigeria first exports crude oil overseas where it is processed into useable oil, before importing the refined product for domestic use.[33]

Ownership of Natural Resources in Nigeria

Under general principles of international law, states have permanent sovereignty over natural resources located within their territories (that is on-shore resources, especially those existing in the

[28] P.C Nwilo and O.T Badejo, 'Impacts and Management of Oil Spill Pollution along the Nigerian Coastal Areas'(2009) *fig publications* <www.fig.net/pub/figpub/pub36/chapters/chapter_8.pdf> accessed 15 May 2013

[29] From The Oil and Gas Journal (22 December 2010) <www.ogj.com/articles/2010/12/halliburton-agrees.html> accessed 25 September 2011

[30] See US Energy Information Administration on Nigeria (16 October 2012) <www.eia.gov/countries/analysisbriefs/Nigeria/nigeria.pdf> accessed 15 May 2013

[31] ibid

[32] See 'Top 7 Suppliers of Oil to the US' (30 July 2010) *Global Post Publication* <www.globalpost.com/dispatch/100726/top-7-us-oil-importers> accessed 15 May 2013

[33] Understanding Sudan, Fact Sheet Six: Nigeria <http://understandingsudan.org> accessed 2 June 2011

sub-soil).[34] For instance, the United Nations General Assembly (UNGA) Resolution 1803 (XVII) of 14 December 1963 (Permanent Sovereignty over Natural Resources) declared that 'the right of the peoples and nations to the permanent sovereignty over their natural wealth and resources must be exercised in the interest of their national development and of the well being of the people of the state concerned'.[35]

In similar vein, the 1992 Rio Declaration on Environment and Development, which is a follow up to the 1972 Stockholm Declaration on the Human Environment, provides that 'states have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction'.[36] The permanent ownership of natural resources by states has, therefore, been recognized under international law as one of the sovereign rights of the state.

Even though these international instruments specifically vests ownership of natural resources on states (to be utilized for the benefit of the individual citizens within them), at no time did they prohibit individual ownership of natural resources. Accordingly, states, under general international law, are free to determine whether these natural resources are to be owned by the state or by the individual land-owners who reside in the state. In this sense, it is left to the national laws of each state to develop and determine its own system of ownership.[37] However, despite international law not prohibiting individual ownership, the reality is that many countries (including Britain, Spain, Norway,

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[34] Anita Ronne, 'Public and Private Rights to Natural Resources and Differences in their Protection?' in Aileen McHarg and others (eds.) *Property and the Law in Energy Resources* (Oxford: OUP 2010) 64-65

[35]UN General Assembly, Permanent Sovereignty over Natural Resources' (1962) <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/193/11/PDF/NR019311.pdf?OpenElement> accessed 20 January 2015

[36] Principle 2 of the UN Rio Declaration <www.unesco.org/education/nfsunesco/pdf/RIO_E.PDF> accessed 20 January 2015 ; for other international instruments vesting ownership of natural resources on states, see the UNGA Permanent Sovereignty over Natural Resources Resolution No 2158 (XXI) (1966) <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/004/61/IMG/NR000461.pdf?OpenElement> accessed 20 January 2015 and the UN Resolution on the Charter of Economic Rights and Duties of States (Resolution 3281 (XXIX) of 12 December 1974) < http://www.un-documents.net/a29r3281.htm> accessed 20 January 2015

[37] Anita Ronne (n 34) 65; The same instruments also vest permanent sovereignty on states for off-shore natural resources found in and around their continental shelf (up to 200 miles offshore)

Denmark and Germany) vest the ownership of natural resources on the state, as against individual citizens who reside in them.[38]

In this context, as early as the sixteenth century, the British Court in *The Case of Mines,*[39] declared that all natural resources (including gold and silver), whether situated on public or private land, is vested in the Crown. The court also held that all minerals are the common heritage of the people, and the Crown, as custodian of these resources for the benefit of all citizens, may grant, refuse or administer mineral rights and charge royalties for their exploitation.[40]

The vesting of all natural resources in the Crown was part of the general colonial mining policy in colonised territories, including Nigeria. As a result, the history of legislations in the oil industry in the country began during colonialism, with the Oil and Mineral Laws of 1887, 1907, and 1914 (amended in 1925, 1950, and 1958 respectively). In this sense, English legal principles underlie much of Nigerian legislation in this area. These laws gave the rights of mineral ownership and exploration to the colonial government, whose administrators justified this position by arguing that minerals were important economic assets to the territories were they are located.[41] Being the gift of nature, the administrators argued, these resources should not be left in the hands of limited groups of private individuals (who sometimes may not even be members of the producing community). Accordingly, the advantages derivable from these mineral reserves should be shared beneficially to all members of the community in general.[42]

Nigeria, in line with what is commonly obtainable in other former British colonies, inherited this policy after independence and continues to vest all naturally occurring minerals in the federal government. In this respect, a number of legal instruments and legislations have been enacted by successive governments to regulate mineral oil exploitation in the country and simultaneously maintain the state's ownership of natural resources.

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[38] ibid

[39] (1568) 1 Plow 310

[40] Adrian J. Bradbrook, 'The Relevance of the *Cujus Est Solum* Doctrine to the Surface Landowner's Claims to Natural Resources Located Above and Beneath the Surface' (1998) *Adelaide Law Review* Vol. 11 462-463

[41] K Omeje, *High Stakes and Stakeholders: Oil Conflict and Security in Nigeria* (Hampshire and Burlington: Ashgate Publishers 2006) 35–36

[42] Colonial Office, *Memorandum on Colonial Mining Policy No 206* (London: H. M. S. O. 1964) 4

It is imperative at this juncture to suggest that while in theory the Nigerian government controls the activities of oil MNCs, in practice however, the latter controls actual production and ancillary services. As a result, they have significant influence over costs which the Nigerian government practically has no ability to supervise. Despite the fact that government receives a greater percentage of oil proceeds, the argument is that the Nigerian state 'cannot say exactly how much oil is lifted from the country' and depends almost exclusively on whatever oil corporations tell them.[43]

The 1999 Constitution

The 1999 Constitution reiterates the Nigerian state's absolute ownership and control of oil (and other natural resources) by conferring ownership of all mineral resources on the federal government. According to section 44 (3) of the Constitution;

> ...the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

In *Attorney-General of the Federation v Attorney-General of Abia State and 35 others*,[44] the Nigerian Supreme Court affirmed the position of section 44 (3) and held that only the federal government has control and revenue rights over mineral resources produced in the country, even though the federal

[43] C Nwachukwu and E Bala-Gbogbo, 'Black Hole: Nobody knows How Much Oil Nigeria sells' (29 April 2009) *Next Newspapers Publication* <www.234next.com/csp/cms/sites/Next/News/5408495-147/Black_Hole:_Nobody_knows_how_much.csp> accessed 12 May 2012

[44] (2001) 11 NWLR 689; S.C. 28/2001; 10 NSCQR 163; the case is commonly referred to as the 'Resource Control' suit

government is expected to share the revenue to all federating units according to the applicable revenue allocation formula.[45]

An analysis of the provisions of section 44 (3) has led to the suggestion that the right of oil-producing regions to participate in the oil industry, particularly as it concerns their 'well-being', is not recognized in the Constitution.[46] This is because by vesting all ownership rights in the federal government, the Constitution failed to consider the rights and interests of the oil-host communities. However, it should be noted that section 162 (2) of the same Constitution provides for the payment of not less than 13 per cent of the revenue accruing from such resources to the federating State in which the minerals are found.[47] This provision has been criticised on two grounds. In the first place, it is argued that 13 per cent is not an adequate compensation to the oil bearing communities and secondly, that it did not take into account the interests of other stakeholders – including the local governments where actual operations take place and the individuals and communities on whose lands the operations take place.[48]

Regarding the rights of Nigerian citizens to have access to justice against the government in issues concerning the protection of the environment, the 1999 Constitution neither recognizes nor protects such rights. For instance, the Constitution in section 20 provides that the government should 'protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria'.[49] This section is contained in Chapter II of the Constitution entitled 'Fundamental Objectives and Directive Principles of State Policy'. However, by virtue of the provisions of section 6 (6) (c) of the same Constitution, the provisions of Chapter II are not enforceable against the government. Section 6 (6) (c) provides that;

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[45]Though the principal issue before the Court was to determine how to calculate the amount of revenue accruing to the central government from resources derived from a particular State, the Supreme Court used the opportunity to affirm the position of section 44 (3) of the 1999 Constitution

[46] R.T. Ako and A.A. Adedeji, 'Public Participation: An Imperative to the Sustainable Development of the Nigerian Oil Industry' (2009) < www.bhu.ac.in/...09/.../5_RT%20AKO_public_participation_1_[1].doc> accessed 20 January 2015

[47]See section 162(2) of the 1999 Nigerian Constitution

[48] R.T. Ako and A.A. Adedeji (n 46)

[49] Section 20; See also, Olanrewaju Fagbohun, 'Re-appraising the Nigerian Constitution for Environmental Management' (2002) *AAU Law Journal* Vol.1 No. 1 (2002) 24-47.

> The judicial powers vested in accordance with the foregoing provisions of this section – shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.

The implication of section 6 (6) (c), therefore, is that no question as to whether any obligation under Chapter II (including environmental issues) is being complied with or given effect to can be raised before any court of law in Nigeria, not to talk of nullifying any legislation or policy made by the government on the grounds that it is inconsistent with the provisions of Chapter II.[50]

In this context, it appears that the state's absolute ownership of naturally occurring minerals and the inability of the Niger Delta people to bring actions against the Nigerian government itself is one of the major reasons for the conflict in the region. The host-communities have been agitating for 'resource control' and argue that the state's absolute ownership of mineral resources has significantly contributed to the under-development of their communities. Yet, they cannot seek for justice in the courts against the Nigerian government directly. They, therefore, advocate for a repeal of section 44 (3) of the Nigerian Constitution.[51]

In the light of the provisions of sections 43 (3) and 6 (6) (c) of the 1999 Constitution, it has been suggested that it is advisable for the Nigerian government to fashion out political arrangements that will tackle the challenges created by natural minerals ownership, instead of sticking to a strict legal interpretation of the Constitution as the Supreme Court did. This, it is argued, is because the doctrine of national ownership by the state is not the only option towards the proper control and utilization of resources. For instance, countries such as the United States of America and Canada, who

[50] Akinola E. Akintayo, 'A Good Thing from Nazareth? Stemming the Tide of Neoliberalism against Socio-Economic Rights' (2014) *ESR Review* Vol. 15 (2) 5-9 at 6

[51] M. O. Ameh, 'Ownership and Control of Mineral Resources: Can the Brazilian Model be used to Douse Resource Control Agitation in Nigeria's Oil Producing States? (2011) <www.dundee.ac.uk/cepmlp/gateway/files.php?file=CAR10...pdf> accessed 20 January 2015

recognize both national and individual ownership of resources (oil), are still able to achieve this unified goal, without conflict of both forms of ownership.[52]

The Land Use Act[53]

In addition to the 1999 Constitution above, the Land Use Act of 1978 is another legislation which regulates ownership of natural resources in Nigeria. Section 1 of the Act vests all land within the territory of each federating State in the Governor of that State, to be held on trust for all Nigerians, and the Governor is empowered under the Act to issue certificates of occupancy to applicants for the use and occupation of land. However, this provision only vests surface rights on the State Governor, meaning that ownership rights do not extend to resources below the surface of the earth. Where minerals are found beneath the surface, the right to the minerals is vested exclusively in the federal government.[54]

Section 28 (3) (b) of the Act contains provisions for compensation where land is compulsorily acquired for mining purposes or construction of oil pipelines or for any purpose connected therewith.[55] Equally, section 29 (2) (b) provides that the original occupier of land acquired for mining purposes is entitled to compensation as provided under the Petroleum Act[56] or any other applicable legislation. Nevertheless, section 47(2) of the Act ousts the jurisdiction of the courts to investigate or entertain any question relating to the amount or adequacy of compensation offered in pursuance of any acquisition made under it. The sub-section provides that:

> No court shall have jurisdiction to inquire into any question concerning or pertaining to the amount or adequacy of any compensation paid or to be paid under this Act.[57]

[52] ibid
[53] Now Cap L5, Laws of the Federation of Nigeria [LFN] 2004
[54] Section 1, Land Use Act
[55] Section 28 (3) (b) Land Use Act
[56] Section 36 of the Petroleum Act discussed below
[57] Section 47 (2) Land Use Act

Since the compensation rates are usually decided by the acquiring authority (the federal or state government) without the input of the host-communities, 'pre-determined' government approved rates are thereby used to guide the calculation and payment of compensation to 'victims' of oil mineral exploitation. The argument is that in many cases, the compensation rate is fixed without due consideration of the total or actual loss that has been suffered by the aggrieved person(s). This leads to an arbitrary and flawed payment system which gives little or no consideration to the prevailing market rates or the yielding potential and life span of crops that may be destroyed as a result of the acquisition.[58] The implication of section 47 (2), therefore, is that any person who is aggrieved with the amount of compensation offered by the government cannot seek and get justice in the courts.

The 1978 Act is also criticised on the basis that since it vests all lands in the State Governor, it alienates people from their lands and affords them mere proprietary rights to land, which is possessory in nature. Moreover, since 1978 when it was promulgated, critics argue that the Act has never been revised or modified to reflect the country's changing economic realities .[59]

The Petroleum Act 1969[60]

The Petroleum Act 1969 is Nigeria's principal petroleum legislation and forms the basis of the framework for the regulation of the oil Industry in Nigeria.[61] Section 1 of the Act vests all petroleum resources in the Nigerian state. It states that:

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[58] Sampson Akanimo, 'Ecologist Blames FG for Oil Pipelines Vandalization' (2003) *Daily Independent Newspaper* cited in R.T. Ako and A.A. Adedeji (n 46) above

[59] O. Iwere, What Effect does the Ownership of Resources by the Government have on its People: A Case Study of Nigeria? (2011) University of Dundee < *www.dundee.ac.uk/cepmlp/gateway/files.php?file=CAR-11_37...pdf> accessed 20 January 2015*

[60] Cap P10, Laws of the Federation of Nigeria [LFN], 2004

[61] Yinka Omorogbe, *Oil and Gas Law in Nigeria* (Lagos: Malthouse Press 2001) 17

> The entire ownership and control of all petroleum in, under or upon any lands to which this section applies shall be vested in the [Nigerian] state; this section applies to all lands (including land covered by water) which is in Nigeria; or is under the territorial waters of Nigeria; or forms part of the continental shelf.

In *Attorney General of the Federation (AGF) v Attorney General of Abia State (No. 2)*,[62] a case dealing with the legal implication of the federal government's ownership of petroleum resources in Nigeria, the Nigerian Supreme Court again confirmed the vesting of ownership of petroleum resources in the federal government and further held that the federal government alone, and not the littoral States (Niger Delta States) can lawfully exercise legislative, exclusive and judicial powers over the maritime belt or territorial waters as well as sovereign rights over the exclusive economic zones of the country, in accordance with universally recognized rights.

The Act generally empowers the Minister in charge of petroleum affairs to supervise the oil industry and requires that oil corporations should operate in accordance with good oil field practice.[63] It contains provisions for the prevention of the pollution of watercourses and the atmosphere during petroleum operations[64] and for fair and adequate compensation to be paid where the surface rights or other rights of an owner or occupier of lands or property is adversely affected by oil mining operations.[65]

It has been suggested that the Act failed to adequately provide for the protection of the environment. This is because the 'imprecise' obligation on oil corporations to 'prevent the pollution of water courses and the atmosphere' is not strong enough to compel oil MNCs to adequately cater for the environment.[66] Nevertheless, the Act empowers the Minister of Petroleum Resources to make subsidiary regulations prescribing anything to be done (including environmental regulations) for the

[62] (2002) 6 N.W.L.R, Part 764, 542
[63] Sections 2 and 9
[64] Section 9 (1) (b) (iii)
[65] Section 36 of the First Schedule to the Petroleum Act 1969
[66] O. Iwere (n 59); see below, on the implications of the petroleum contracts in Nigeria for further discussions of this.

purposes of the Act.[67] Pursuant to this provision, a number of subsidiary legislations have been made for the regulation of the oil industry. Some of these are:

Petroleum (Drilling and Production) Regulations:[68] This Regulation makes provision for the protection of buildings, dams, reservoir, public roads and forest reserves against the activities of licensees.[69]

Petroleum (Refining) Regulations:[70] This Regulation seeks to protect the environment from pollution arising from refining operations by placing certain obligations on managers of refineries.[71]

Other Acts which have been made in pursuance of the provisions of the Petroleum Act include:

Oil Pipelines Act[72]: This Act provides for the grant of license to construct oil pipelines and also creates civil liability on such licenses in the event of breakage or leakage of such pipelines.[73]

Oil in Navigable Waters Act[74]**:** This Act deals with the discharge of oil from ships. It prohibits the discharge of oil from a Nigerian ship into territorial waters or shorelines[75].

Associated Gas Re-Injection Act[76]: This Act deals with the gas flaring activities of oil and gas corporations in Nigeria and prohibits, without lawful permission, any oil and gas corporation from flaring gas in Nigeria[77].

Niger Delta Development Commission Act[78]: This Act is concerned with using allocated funds to tackle ecological problems arising from the exploration of oil minerals in the Delta[79].

Exclusive Economic Zone Act[80]: This Act makes it illegal to explore or exploit natural resources within the exclusive zone without lawful authority.[81]

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[67] Section 9
[68] As amended by the Petroleum (Drilling and Production) Regulations 1996 and 2001
[69] Section 17 (1)(b), 23 and 27 of the Petroleum (Drilling and Production) Regulations
[70] Petroleum Refining Regulations 1974
[71] Section 43(3)and 45 of Petroleum Refinery Regulations
[72] Cap O7, LFN 2004
[73] Section 1(5) and 17(4) of Oil Pipelines Act, Cap 07, LFN 2004
[74] Cap O6 LFN 2004
[75] Section 1(1)3, 6 and 7 of oil pipelines Act, Cap 07, LFN 2004
[76] Cap 20, LFN 2004
[77] Section 3(1)(b) and 4 (b) of Associated Gas, Re-Injection Act, Cap20, LFN 2004
[78] Cap N68, LFN 2004
[79] Section 7(1)(b) of the Niger Delta Development Commission Act

The Petroleum Profits Tax Act[82]

This is the principal legislation guiding the taxation of the operations of oil corporations in Nigeria. The legislation was initially enacted in 1959 and has gone through several amendments. Some features of the Petroleum Profit Tax Act to be noted are;

(i) The profits of the corporation in any accounting period on which tax would be based is the aggregate of the proceeds of sale of all chargeable oil sold by the corporation in that period, the value of all chargeable oil delivered by the corporation to a refinery without a formal sale or to an adjacent storage tank for refining by the corporation during the period, the value of all chargeable natural gas during the period as determined in accordance with the Fourth Schedule[83] to the PPTA and all incidental incomes to the corporation which are traceable to any of its petroleum operations during the period;

(ii) The tax rate on the profits of a corporation engaged in petroleum operations is 85 per cent as the PPTA prescribes that the assessable tax for any accounting period of a corporation is an amount equal to 85 per cent of the chargeable profits for the period;

(iii) The chargeable profit of the corporation, subject to taxation, is determined by the amount of its assessable tax for any accounting period less the deductible expenditure items or outgoings. The deductible expenses includes amongst others; all non-productive rents, the liability for which was incurred by the corporation during the period. These are annual rents paid in respect of oil prospecting licences (OPLs) or oil mining leases (OMLs);[84] all royalties, the liabilities of which were incurred by the corporation in respect of locally disposable or chargeable oil for that accounting period; all royalties, the liabilities of which were incurred by the company during that period in respect of crude

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[80] Cap C 11,LFN 2004

[81] See the long title to the Act

[82] Cap P13 Laws of the Federation of Nigeria [LFN] 2004

[83] Schedule Four of the PTA was introduced into the Principal Act by Act No. 95 of 1979. It was enacted as a means of converting chargeable natural gas into bands of chargeable oil equivalent to determine the value of the gas component in the profits calculation on which PPT is based.

[84] See below for a discussion of these terms

oil or casing-head petroleum spirit won in Nigeria; sums incurred by way of interest payable on capital employed in carrying out petroleum operations; any expense incurred for repair of premises, plant, machinery or fixtures employed in petroleum operations or for renewal, repair of implements, articles and utensils so employed; contributions to a pension, provident or other society, scheme or fund; all sums, the liability of which was incurred by the corporation during that period to the federal government or any other state or local government council in Nigeria by way of duty, customs and excise duties, education tax (other than tax imposed as petroleum profits by the PPTA) or any other tax, fee or other like charges.[85]

In *Shell Petroleum Development Company of Nigeria v Federal Board of Inland Revenue,*[86] the court was called upon to determine the computation of adjusted profits for purposes of payment of petroleum profit tax and to pronounce on the legal authority of the Federal Board of Inland Revenue (FBIR) to sue for and recover petroleum profits on behalf of the federal government of Nigeria. The Supreme Court held that by virtue of section 8 of the Petroleum Profits Tax Act, 1959, any corporation engaged in petroleum operations is liable to pay profits tax. On the meaning of petroleum operations for the purpose of payment of petroleum profits tax, the court held that 'petroleum operations' include not only winning or obtaining and transportation of petroleum oil by drilling, mining, etc, but also all activities incidental to such operations, excluding refining at a refinery.

Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007[87]

This Act was enacted to ensure due process and transparency in the payments made to the federal government by corporations operating in the Nigerian extractive industry, and to ensure accountability

[85] Humphrey Onyeukwu, 'The Incentives in the Fiscal Framework of the Nigerian MOUs with the International Oil Companies: Have the Objectives Been Achieved?' (2008)) *Bepress publication* <http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=humphrey_onyeukwu&sei-redir=1#search=%22Memorandum%20Understanding%20Between%20nigerian%20government%20Oil%20Companies%22> accessed 25 July 2011

[86] (1996) 8 N.W.L.R. Part 466, 256

[87] Nigeria Extractive Industries Transparency Initiative (NEITI) Act 2007 No. 36

in the revenue receipts of the federation from corporations in the extractive industry.[88] It also seeks to ensure conformity with the principles of Extractive Industries Transparency Initiative (EITI) and to eliminate all forms of corrupt practices in the determination, payments, receipts and posting of revenue accruing to the federal government from extractive industry corporations.[89]

The Initiative has the function of developing a framework for transparency and accountability in the reporting and disclosure by all oil corporations of revenue due or paid to the Nigerian federal government and evaluate without prejudice to any existing contractual obligation or sovereign obligations, the practices of both the oil corporations and the government regarding oil mining operations.[90] Section 6 (2) of the Act establishes a National Stakeholders Working Group, with a governing body made up of an inclusive network of stakeholders

The Petroleum Industry Bill (PIB) 2012

The PIB was conceived as a result of the need to bring the regulatory framework of Nigeria's oil and gas industry to the level of international standards. It seeks to consolidate all existing legislations under the Petroleum Act and the Petroleum Profit Tax Act.[91] The Bill was first presented to the National Assembly (NA) in 2008, but had to be withdrawn as a result of objections and reservations raised by oil corporations, who threatened to stop operations in Nigeria if the NA went ahead to pass the Bill into law. They complained that the implementation of the Bill will rob-off adversely on them.[92] For instance, the Chairman of Shell Nigeria complained that;

[88] Section 2, NEITI Act 2007

[89] ibid

[90] Section 3, NEITI Act 2007

[91] See Petroleum Industry Draft Bill (2012) <www.nnpcgroup.com/Portals/0/pdf/PIBDrapftBill2008.pdf> accessed 23 May 2013

[92] S. Saidu and Abdel R. Mohammed, 'The Nigerian Petroleum Industry Bill: An Evaluation of the Effect of the Proposed Fiscal terms on Investment in the Upstream Sector' (2014) *Journal of Business and Management Sciences* Vol. 2 (2) 45-51 at 46

> The PIB proposes multiple increased royalties and fiscal terms that will slow down new investments in deep water considerably. It will also exclude a number of legitimate costs from being recovered. Uncertainties around these issues are already stalling development of major discovered resources and discouraging companies from undertaking the aggressive exploration programmes they launched under the 1993 production sharing contracts (PSC's).[93]

As a result of these objections, the 2008 Bill was withdrawn and re-presented in 2012, after some modifications were made to address the complaints of the MNCs. The 2012 version has now gone through its second reading in both Houses of the National Assembly.

As contained in section 1 (Part 1) of the Bill, the key objectives of the PIB are: to create a favourable commercial environment for petroleum operations in Nigeria; to enhance exploration and exploitation of petroleum resources in Nigeria for the benefit of the Nigerian people – this objective states that the exploitation of petroleum minerals *for the Nigerian people*[94] should be a cardinal principle because they have not enjoyed any significant benefit from oil operations since commercial exploitation began in the 1950s; to optimize domestic gas supplies, particularly for power generation and industrial development; to establish a progressive fiscal framework that encourages further investment in the petroleum industry while optimizing revenues accruing to the government; to establish commercially-oriented and profit-driven oil and gas agencies; to deregulate and liberalize the downstream sector; to create efficient and effective regulatory agencies; to promote transparency and openness in the administration of the petroleum resources of Nigeria; to promote the development of Nigerian content in the petroleum industry; to protect health, safety and environment in the course of petroleum operations and; to attain such other objectives to promote a viable and sustainable petroleum industry in Nigeria.[95]

Section 2 of the Act re-states the position that ownership of minerals in the country vests in the Nigerian state. According to the section;

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[93] Mathew Sunmonu, 'PIB: No Further Investment in Nigeria' (2010) *Business Day newspaper* <www.businessdayonline.com/index.php?option=com_content&view=article&id=9150:pib-no-further-investment-in-nigeria-say-iocs&catid=1:latest-news&Itemid=18> accessed 20 January 2015

[94] Emphasis mine

[95] See section 1, PIB 2012

> The entire property and control of all petroleum in, under or upon any lands within Nigeria, its territorial waters, or which forms part of its continental shelf and the Exclusive Economic Zone, is vested in the federal government.

Section 3 states that the management and allocation of petroleum products in the country shall be conducted strictly in accordance with the principles of good governance, transparency and sustainable development. Section 6 gives the Minister supervisory powers over the affairs and operations of the petroleum industry, while section 7 gives the Minister the right of pre-emption. In section 8, the PIB outlines the conditions required for the minister to make subsidiary regulations, and the processes through which stakeholders in the oil industry (including host-communities) can participate in the management and operations of the petroleum industry. In this context, the Minister shall, prior to making any regulation, conduct an extensive inquiry and discuss a proposed regulation with host-communities.[96] However, section 8 (6) also gives the Minister the power to make regulations (as a matter of exigency) without conducting an inquiry. This power has been criticised as creating an avenue for official abuse and political interference.[97]

The PIB 2012 proposes to restructure the Nigerian National Petroleum Corporation (NNPC) and break it up into three separate corporations: the National Petroleum Assets Management Corporation (NPAMC), which would become the holding and management corporation for the investments of the Nigerian government in the upstream industry;[98] the National Oil Company, which will be vested with certain assets of the NNPC;[99] and the National Gas Corporation which will deal with the exploitation and production of gas.[100]

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[96] Section 8 (2) of the PIB

[97] S. Saidu and Abdel R. Mohammed, 'The Nigerian Petroleum Industry Bill: An Evaluation of the Effect of the Proposed Fiscal terms on Investment in the Upstream Sector' (2014) *Journal of Business and Management Sciences* Vol. 2 (2) 45-51 at 46

[98] Section 120 PIB 2012

[99] Section 148 PIB 2012

[100] Section 159 PIB 2012

Section 116 of the Bill proposes to establish a Petroleum Host Communities Fund (PHCF), for the development of the socio-economic infrastructures of the Niger Delta communities.[101] Each upstream oil corporation is required to remit 10 per cent of its net profit (derived from onshore and shallow areas) to the PHCF on a monthly basis. For profits derived from deep-water areas, the same 10 per cent remittance is to be made to the Fund for the benefit of producing littoral states and communities.[102]

It has been suggested that the PHCF will potentially improve the peace and stability of the Niger Delta region, since the communities will profit directly from the exploitation of oil. An increase in oil production will result in an increase in the funds remitted to the PHCF, which will in turn increase the amount to be delivered to the communities. This will then create a symbiotic relationship between the host-communities and the oil MNCs, eliminate production disruptions and costs and eventually lead to a significant increase in revenues for all the parties concerned.[103]

Another view, however, sees the proposal to establish the PHCF as needless and insists that its creation will serve no meaningful purpose. This is because the pre-existing 13 per cent Petroleum Derivation Fund given to the oil producing States has not been applied effectively to the benefit of the host-communities. As a result, what the PIB should be looking to correct is the in-effective and unproductive application of already existing funds (through such agencies as the Niger Delta Development Commission[104]), and not the creation of another agency in the form of the PHCF.[105]

National Environmental Standards and Regulations Enforcement Agency (NESREA) Act 2007[106]

The first enactment that had the statutory responsibility of protecting the environment in Nigeria was the Federal Environmental Protection Agency (FEPA) Act of 1988.[107] The Act was established by

[101] Section 117 PIB

[102] See section 118 PIB

[103] S. Saidu and Abdel R. Mohammed (n 97)

[104] See below for a discussion of the functions of this agency

[105] S. Saidu and Abdel R. Mohammed (n 97)

[106] Cap N164 LFN, 2007

Decree 55 of 30 December 1988 and up till then, was the most comprehensive and far-reaching legislation that dealt specifically with the environment in Nigeria.[108]

The FEPA Act was subsequently repealed by the National Environmental Standards and Regulation Enforcement Agency (NESREA) Act of 2007.[109] The 2007 Act is a consolidation of previous legislations and regulations dealing with the protection and sustainable development of the Nigerian environment and its natural resources. Under the 2007 Act, the NESREA is mandated to protect, develop and manage the Nigerian environment. It has the authority to ensure compliance with environmental laws, both local and international on environmental sanitation, pollution prevention and control through monitory and regulatory measures.[110] The Act empowers the agency to make and review regulations on air and water quality,[111] effluent limitations,[112] control of harmful substances and other forms of environmental pollution and sanitation.[113] The Act equally requires industries to report a discharge if it occurs and to submit a comprehensive list of chemicals used for production to the Agency.[114]

Section 27 of the Act prohibits the discharge of hazardous substances into the environment, without lawful authority. The section prescribes the punishment of a fine not exceeding ₦1, 000,000 (One Million Naira) and an imprisonment of five years. In the case of a corporation, there is an additional ₦50, 000 (Fifty Thousand Naira) for every day the offence persists. Under the section, where an offence is committed by a body corporate, every person who at the time the offence was committed was in charge of the body corporate shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly, provided that nothing shall render any

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[107] Cap F10 LFN, 2004

[108] Chinwe Nwufor, 'Legal Framework for the Regulation of Waste in Nigeria' (2010) *African Research Review* Vol. 4 (2) 491-501 at 497

[109] National Environmental Standards and Regulations Enforcement Agency (Establishment) Act Cap N164 LFN 2007

[110] Section 7, NESREA Act 2007

[111] Section 23, NESREA Act 2007

[112] Section 24, NESREA Act 2007

[113] Section 8 (1) (K) and section 25, NESREA Act 2007

[114] Section 4 and 5

person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.[115]

Environmental Impact Assessment Act[116]

An environmental impact assessment is an appraisal or evaluation of the likely effects, either positive or negative, of a proposed project on the natural environment. The E.I.A Act, as it is generally called, deals with the considerations of the impact of public and private projects on the environment. Accordingly, the EIA Act requires and assessment of public or private projects likely to have a significant negative impact on the environment before they are commenced.[117]

The Act requires that an application in writing should be made to the EIA Agency by any interested party for their environmental assessment, before embarking on such projects.[118] Section 13 of the 2004 Act establishes the various projects where an environmental impact assessment will be required, and these include projects for the exploration and exploitation of mineral oils. There is a legal liability and penalty for any failure to comply with the provisions of the Act.[119]

Companies and Allied Matters Act (CAMA) 1990[120]

CAMA 1990 is the principal legislation regulating the formation and operations of corporations in Nigeria. It repealed the 1968 Companies Decree promulgated by the military government to regulate corporations in Nigeria and is the applicable corporate law in the country presently.[121]

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[115] Section 27 (4); see below for a critique of some of the provisions of this legislation

[116] Cap E12 LFN, 2004

[117] Section 2 (1), EIA Act 2004

[118] Section 2 (4) EIA Act 2004

[119] Section 60, EIA Act 2004

[120] Cap C20 LFN 2004

[121] The provisions of CAMA and how they regulate the activities of corporations in Nigeria are treated in more details in chapter Four (section two)

Nigerian Legislations and the Effective Regulation of the Oil Industry

Before looking at how effective the Nigerian legislations are in regulating the conduct of oil MNCs in the country, it is necessary to point out that the obligations which are imposed on the oil MNCs by these regulatory statutes (that is by law) are treated differently from the obligations imposed on corporations under corporate social responsibility. The focus of this thesis is not on the obligations imposed by Nigerian legislations, but on the voluntary obligations assumed by corporations under contemporary CSR, as defined and analysed in chapters two and three. However, it is also true that in some instances, the same obligations which are imposed by statute (like cleaning up oil spills and preventing pollutions) may also be part of the corporate social responsibility obligations of corporations. Moreover, the effective legal regulation of the activities in the oil sector by the Nigerian government will equally act as an effective support for corporate social responsibility practices by MNCs.[122]As a result of this and for purposes of comprehensiveness, it is considered necessary to evaluate how effective the Nigerian legislations are in regulating the oil industry.

In this context, after an examination of the various legislations stated above, it appears reasonable to suggest that a comprehensive system of environmental regulations are in place presently in Nigeria. Yet, issues of environmental pollution and degradation continue to persist under these legislations. A number of reasons can be identified as working against the effective regulation of the oil industry by the Nigerian government. In the first instance, the recent legislations in the country which deal with the environment (for instance the NESREA Act 2007 and the EIA Act 2004) only address current and future issues. The fact is that commercial oil exploitation has been going on in the country since 1956, and the Niger Delta environment has suffered extensive pollution and degradation, the impacts of which are still felt today. Introducing legislations and regulations that only mandate oil MNCs to undertake present and future corrective measures will, therefore, not be

[122]Uwafiokun Idemudia 'Oil extraction and Poverty Reduction in the Niger Delta: A Critical Examination of Partnership Initiatives' (2009) *Journal of Business Ethics* Vol. 90 (1) *91-116 at 112*

adequate. Effective legislations, it is suggested, will need to address the present consequences of the past environmental abuses in the area.[123]

Again, in spite of the fact that some of these legislations provide for penalties and punishments in cases of breach by corporations and their managers, they 'neither provide a substantial deterrent effect against oil spills, nor create any substantial incentives to clean up spills once they occur'.[124] For instance, the punishments (in form of fines) provided under various sections of the NESREA Act amount to meagre amounts, when compared to the adverse consequences of a breach (for instance oil spill).[125] In this situation, corporate managers may decide to pay the daily fine and post-pone cleaning up the environment to a later date, instead of providing money for the immediate clean up of the spills, if doing this will affect short-term profits. Furthermore, these punishment provisions permit corporate managers to avoid punishment, if they are able to establish that the act in question was done without their knowledge, or that they exercised all due diligence to prevent the commission of the offence.[126] According to Eaton, this 'defence provides a loophole for managers claiming ignorance of the offense, even if that ignorance was negligent, reckless, or even feigned'.[127]

In similar vein, even though there have been many instances of oil spills and other instances of pollution in the region, there is no recorded instance of enforcement of the applicable sanctions by the government, against oil MNCs. The lack of enforcement is predicated partly on the incompetence of those entrusted to supervise the process, as well as on institutional structures which militate against the effective execution of sanctions. Some of these institutional structures are created by the Acts themselves. For instance, they entrust the enforcement of the sanctions to government officials, who in most cases are likely, when taking decisions, to protect government interests over the interests of pollution victims. As a result of government's over-reliance on proceeds from oil, the Nigerian government finds it difficult to use its officers to move against the oil corporations. Since more than

[123]Joshua P. Eaton, 'The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment' (1997) *Boston University International Law Journal* Vol. 15 261-307 at 289

[124] ibid

[125] See sections 20-27 of the NESREA Act 2007

[126] See for instance, section 27 (4) of the NESREA Act 2007

[127] Joshua P. Eaton (n 123)

80 per cent of the country's revenue is derived from oil, enforcement of environmental regulations may affect the production of oil, which in turn will have an impact on the amount of money accruable to the government. In this sense, the Nigerian government has 'direct economic incentives to ensure that environmental regulations are not enforced against the oil corporation'.[128]

Finally, corruption is another principal reason for the ineffectiveness of the legislations regulating the oil industry in Nigeria (the issue of corruption in Nigeria and how this decreases the ability of the Nigerian government to adequately regulate the activities of oil MNCs is discussed further in chapter Five).

II

PETROLEUM CONTRACTS IN NIGERIA

Petroleum contracts establish the rights and responsibilities of both the corporations and the government, and stipulate the formula for computing the amount of the revenues allocated to each party in the contract. These contracts are broadly categorized into leases and licenses.

Lease and Licence Types

The Petroleum Act 1969 introduced three types of contractual grants for the exploitation of oil in Nigeria. These are; the oil exploration licence (OEL); the oil prospecting licence (OPL) and; the Oil mining lease (OML).[129] A lease or license may be granted to any corporation registered in Nigeria under the Companies and Allied Matters Act (CAMA1990)[130] or any corresponding law.[131] Leases and licences are granted on the payment of an application fee and the applicant meeting the criteria for

[128] ibid

[129] Section 2 (1) (a) (b) (c), Petroleum Act 1969

[130] Discussed in more details in Chapter Four

[131] Section 2 (2) (b), Petroleum Act 1969

award. The lessee or licensee then pays another fee called the 'Signature Bonus', after which the government signs the lease or licence. Annual lease or licence fees are paid either as OEL, OPL or OML rentals by the holders.[132]

Oil Exploration Licence (OEL)

An oil exploration licence is granted by the Minister of Petroleum under the powers conferred by Section 2(l) (a) of the Petroleum Act 1969. It is usually granted for those areas that have not been explored before. It confers on the licencee, the non-exclusive right to carry out geological and geo-physical mineral exploration within the area covered by the agreement. The granting of an oil exploration licence does not preclude the granting of another OEL or another OPL or OML over the same area or part thereof.[133] Again, the grant of an OEL does not confer any right to the grant of an OPL or OML.[134] The duration of an OEL is for one year only, with a possible extension for another year.[135] Any discovery of hydrocarbon or other minerals by the licencee must be reported to the Head of the Petroleum Inspectorate of NNPC and this may be accompanied by an application for either an oil prospecting licence or oil mining lease in respect of the same area or areas.

Oil Prospecting Licence (OPL)

This licence, much like the OEL, is granted by the Minister of Petroleum on application by an oil corporation. It conveys an exclusive right to explore and prospect for petroleum within the area of the

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[132] D Otiotio, 'An Overview of the Oil and Gas Industry in Nigeria' (2013) *Academia.edu Publication* <www.academia.edu/2654835/AN_OVERVIEW_OF_THE_OIL_AND_GAS_INDUSTRY_IN_NIGERIA_BY_DENNIS_OTIOTIO> accessed 10 February 2013

[133] Section 2, First Schedule to the Petroleum Act 1969

[134] Section 4, First Schedule to the Petroleum Act 1969

[135] Section 3, First Schedule to the Petroleum Act 1969

licence.[136] The holder of an OPL may carry away and dispose any petroleum won during prospecting operations, subject to fulfilment of the obligations imposed on him by the Act or by the Petroleum Profits Tax Act or any other law imposing taxation in respect of petroleum.[137] The duration of an OPL is at the discretion of the Minister, but it does not usually extend beyond a five year period for inland and territorial waters, and seven years for continental shelf regions.[138]

Oil Mining Lease (OML)

Generally, an oil mining lease is an agreement which gives rise to the relationship of landlord and tenant or 'lessor and lessee' in respect of real or personal property respectively. In this sense, when compared with a licence, a lease is a more formal contract which confers greater and more enduring rights to the tenant. In Nigeria, an oil mining lease is granted for the purposes of searching for, wining, working, carrying away and disposing of petroleum[139] and may only be granted to a person who is already in possession of an oil prospecting licence.[140]

A lease granted under the Petroleum Act 1969 has similar characteristics to that of a general lease. Nevertheless, unlike the normal lease agreement, an oil lease under the Petroleum Act does not convey a leasehold estate to the tenant. This is because it is merely in the nature of a mineral lease which allows the lessee to exploit the land for oil and to dispose any petroleum mineral discovered within the area covered by the lease for a definite duration, upon the payment of royalties to the Nigerian government. The maximum duration of an OML is 20 years, which is renewable upon approval by the Minister.[141] The renewal may either be for the entire area of grant or for part thereof.[142]

[136] Section 5, First Schedule to the Petroleum Act 1969
[137] Section 7, First Schedule to the Petroleum Act 1969
[138] Section 6, First Schedule to the Petroleum Act 1969
[139] Section 2 (1) (a) (c), Petroleum Act 1969
[140] Section 8, First Schedule, the Petroleum Act 1969
[141] Section 10, First Schedule to the Petroleum Act 1969
[142] Section 13 (1), First Schedule to the Petroleum Act 1969

Contractual Performance of a Lease or Licence

The leases and licences for oil exploitation in Nigeria are performed through (i) Joint Venture Contracts (JV) (ii) Production Sharing Contracts (PSC) (iii) Service Contracts (SC).

Joint Venture Contracts

These refer to a set of policies affecting the way and manner in which holders and operators of production licences manage the licensed blocks, without the active participation of government.[143] JV contracts usually look like standard partnership agreements. They function as a form of 'joint venture partnership' between the corporations amongst themselves and the Nigerian federal government. In the agreement, the duties, responsibilities and interest of all partners are clearly stated. The agreement will equally stipulate in very clear terms, the particular partner that will function as the operator of the JV. The NNPC represents the interest of the government, whereas the respective MNCs operate the different ventures with varying participatory interests.[144]

The beginning of every fiscal year requires the operators to submit an operational financial statement to the joint venture partners for approval, and this estimate is based on the forecast of what the agreement will likely require for its operation in that year. Where the estimate is approved, the operators will prepare a 'monthly cash call statement', which requires all partners to provide their own share of the capital required to operate the JV in that particular month, paid half in Nigerian Naira and half in US Dollars. Where there is insufficiency of cash in a particular month – as a result of a partner defaulting in payment – an operator is also authorized to borrow money on behalf of the JV and charge the debt on the defaulting partner with interest. In the event that money cannot be

[143] CB Alalade, 'The Economic Performance of International Oil Companies in Nigeria' (PhD Thesis: Bournemouth University July 2004) 27-28
[144] ibid

borrowed, the operator will reduce the scope of the venture, to bring it in line with available funds. This has led to arguments against the JV contracts, as critics argue that the possibility of default by a partner makes it unattractive, more so in a relationship where all the parties are not of equal financial muscle.[145]

As soon as money is realized from the venture, it is shared amongst partners according to the amount of equity contributed for the operation, though each partner bears the tax obligations and royalty responsibilities which accrue to it. Operational costs are charged to the proceeds from the JV operations.[146]

In summary, the main features of a JV include: one partner is designated the operator; the NNPC reserves the right to become an operator; all parties are to share in the cost of operations; each partner can lift and separately dispose its interest share of production subject to the payment of Petroleum Profit Tax (PPT) and Royalty; the operator is the one to prepare proposals for programmes of work and budget of expenditure annually, which shall be shared on share-holding basis; each party can opt for and carry on sole risk operations; technical matters are discussed and policy decisions taken at operating committees where partners are represented on the basis of equity holding.[147]

Production Sharing Contract (PSC)

Under a PSC, the government has no equity in the venture, but shares in the volume of oil or gas produced by the licence holder. The government's share of production volume after deduction of exploration and production cost – expressed in terms of the value of oil volume – rises as production

[145] ibid

[146] MO Ameh 'Ownership and Control of Mineral Resources: Can the Brazilian Model be used to Douse Resource Control Agitation in Nigeria's Oil Producing States? (2011) <www.dundee.ac.uk/cepmlp/car/html/CAR10_ARTICLE32.PDF> accessed 24 July 2011

[147] National Petroleum Investment Management Services (NAPIMS) Nigeria Dynamic Fiscal Regime 2011 <www.napims.com/dynamic.html> accessed 24 July 2011

volume increases. The oil corporations provide a 100 per cent funding for the operations under a PSC.[148]

According to a United Nations Development Programme/World Bank (UNDP/WB) Report, ownership of the hydrocarbons stays with the federal government at all times. The oil corporations operate independently and engage in oil mining and production according to the terms of the PSC arrangement. The service provider is usually compensated by allocating a share of the production to it, in accordance with an agreed formula, which allows for prior recovery of costs at a pre-established rate.[149] Onyeukwu explains the PSC thus;

> The contractor bears the risks and costs of exploration which it loses if there is no discovery. If there is a discovery it recoups its costs from an agreed percentage of the production. The balance of the production is shared between the contractor and the NOC in accordance with agreed percentages that normally give a greater portion to the company when production is low and higher volumes of production give corresponding larger shares to the NOC. Nigerian PSCs have the elements of Cost Oil, Royalty Oil, Tax Oil, and Profit Oil. The crude oil is allocated between the NOC and the contractor in the following order: Royalty Oil, Cost Oil, Tax Oil and Profit Oil. Profit oil is shared subsequent to the deduction of royalty, provisions for cost recovery and tax payments. Cost recovery is usually capped and limited to production less royalty and PPT applied to the contractor's take at a rate of 50%.[150]

The location and water depth of a particular field are usually applied as the basis for calculating the royalty rates payable to the government, while the sum spent on production determines how the profits made from the contract are shared.[151]

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[148] CB Alalade (n 143)

[149] Joint United Nations Development Programme/World Bank Energy Sector Management Assistance Programme (ESMAP) Taxation and State Participation in Nigeria's Oil and Gas Sector (2004) 20 <www.esmap.org/filez/pubs/05704NigeriaTaxationMcPherson.pdf> accessed 26 July 2011

[150] Humphrey Onyeukwu (n 85)

[151] ibid

Service Contracts (SC)

These are new partnership arrangements introduced in 2000 as a third form of oil mining contracts, between the Nigerian government and oil MNCs. The difference between the SC and other petroleum contract types is that while a JV is operated solely by a particular multinational corporation, the SC involves the NNPC (using its subsidiary, E&P co.) as a joint operator with another MNC. It also differs from the PSC in the sense that while the investment requirements in the SC are shared between the joint operators according to the terms of the contract, in the PSC, investment risks are borne solely by the operator. This type of partnership arrangement has been used by NNPC and Agip.[152]

Memorandum of Understanding (MoU)

The Memorandum of Understanding is a contractual agreement between the Nigerian state and specific oil prospecting corporations with JV agreements. The reason for the MoU is to list out the different inducements that Nigeria has accepted to honour in favour of particular corporations, with the objective of ensuring that their operations are profitable in different circumstances.

In the stipulations contained in a model MoU between each oil corporation and the Nigerian government, the operating corporation collects a fixed amount per barrel of oil, on the condition that the cost per barrel stays within evident boundaries. The 'risk and benefit' of oil price changes, as a result, ensue mainly to the government. For instance, provided the cost of oil stays between US $35.50 and US $50 a barrel, the Shell Joint Venture pays US $5 per barrel to the reserved shareholders according to their shareholding. Then, to cater for prospective speculations, US $3 goes to theoretical operational expenses and the balance is paid to the Federal Government of Nigeria.

[152] GU Nwokeji, 'The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions' (2007) *The James A. Baker III Institute for Public Policy, Rice University*, 9-10 <www.bakerinstitute.org/programs/energy-forum/publications/energy-studies/docs/NOCs/Papers/NOC_NNPC_Ugo.pdf> accessed 24 May 2013

According to Onyeukwu;

> The advent of the...Memorandum of Understanding fiscal regime in Nigeria is traced to the period of the oil price recession of the 1970's, the IOCs[International Oil Companies] complained that the combined royalty and petroleum profits tax rates were reducing profit margins to such a level as to discourage further investment. The government then began the practice of granting fiscal incentives... to encourage a favourable climate for investment by the IOCs in the sector. The first MoU entered between the Nigerian government and the IOCs were in 1986. There were subsequent amendments in 1991 and the current one executed in August 2000.[153]

The MoUs purposes are; to create financial encouragements to oil MNCs, in other to motivate them in the quest to ensure that NNPC's holdings in crude oil is properly distributed in the international market; improve performances in exploration and growth operations and finally, engage in cost-effective activities.[154]

The Nature of Petroleum Contracts in Nigeria

An evaluation of the nature and role of petroleum contracts in the development of the oil industry in Nigeria is considered relevant in this part of the thesis. This is because the contents, terms and provisions of these contracts, to a large extent, determine how the parties conduct themselves in the execution of the oil mining operations. They set out the duties and obligations which the corporations are expected to comply with and detail the advantages which they are to enjoy in the mining ventures.[155]

Unfortunately, not many studies have been carried out in this area and very little information exists outside the knowledge of the parties to the contracts (that is the Nigerian federal government

[153] Humphrey Onyeukwu (n 85)

[154]G Etikerentse, 'Taxation and Other Fiscal Provisions in the Petroleum Upstream Sector' (2003) *Oil, Gas & Energy Law Intelligence* Vol. I (5) 28

[155] D. Bishop, 'International Arbitration of Petroleum Disputes: The Development of a Lex Petrolea?' (1998) *Year Book of Commercial Arbitration Vol. 23 (1)* 131; see also A. Alkholy, 'Arbitration in Energy Disputes' (2000) *Journal of Arab Arbitration Vol. 2* 46

and the oil corporations). Nevertheless, notwithstanding this dearth of existing literature, it is considered apposite to examine how these contracts contribute (if at all) towards the (under)development of both the oil industry and the host-communities in Nigeria.

As was stated above, leases and licenses for the exploitation of petroleum minerals are granted by the Nigerian government through its state-owned oil corporation – the Nigerian National Petroleum Corporation (NNPC). However, the Nigerian government may also transfer these contractual rights to private Nigerian oil corporations, who will then execute the necessary contracts with foreign oil corporations. The contracts recognize the rights of two primary stakeholders; the Nigerian government (usually represented by the NNPC) and that of the oil MNCs. Since the Nigerian state is vested with exclusive rights over the land where the petroleum resources are founded, it assumes the responsibility of negotiating the contracts with the corporations.[156]

The following is an analysis of the provisions of four of such petroleum contracts between the Nigerian government and some oil MNCs. These contracts are; the 1988 Operating Agreement between the NNPC and Texaco; the Participation Agreement of 12 January 2005 for Oil Mining Lease No. 113 between the NNPC (represented by Yinka Folawiyo Petroleum Company Limited) and Syntroleum Limited, Lindin Petroleum BV and Palace Exploration Company; the Participation Agreement between the NNPC and Elf Nigeria Limited in 1985 and; the Production Sharing Contract between the NNPC and Ashland oil in 1986.[157]

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[156] Okechukwu Ejims, 'The Impact of Nigerian International Petroleum Contracts on Environmental and Human Rights of Indigenous Communities' (2013) *African Journal of International and Comparative Law* Vol. 21 (3) 345-377 at 356

[157] It is important to note that it was not possible for this researcher to obtain actual copies of these agreements as the parties to the contracts were not willing to release them for this research. Information analysed in this section, therefore, were obtained mainly from the following secondary sources; 'Operating Agreement Between Nigerian National Petroleum Corporation And TOPCON Company (Texaco Overseas) 1988', Barrows Company (ed.), *North African Oil Law and Concession Contracts, Vol. 1*(Petroleum Legislation Inc. New York, 2009); 'Participation Agreement Dated 12 January 2005 for Oil Mining Lease No. 113 Among Yinka Folawiyo Petroleum Company Limited, Syntroleum Limited, Lindin Petroleum B.V, Palace Exploration Company, Challenger Minerals Inc., Providence Resources P.L.C and Howard Energy Co., Inc. January 12, 2005', Barrows Company (ed.), *North African Oil Law and Concession Contracts, Vol. 1*(Petroleum Legislation Inc. New York, 2009); Okechukwu Ejims, 'The Impact of Nigerian International Petroleum Contracts on Environmental and Human Rights of Indigenous Communities' (2013) *African Journal of International and Comparative Law* Vol. 21 (3) 345-377; Maxwell M. Gidado, *Petroleum Development Contracts with Multinational Corporations: Focus on the Nigerian Oil Industry* (PhD Thesis submitted to the School of Law, University of Warwick 1992)

There are certain contractual stipulations which are found in two or more of the contracts. These terms (though worded differently in the contracts) include;

Acquisition and Transfer of Petroleum Rights: The Participation Agreements (e.g. the NNPC/ Elf Participation Agreement and the Participation Agreement of 12 January 2005 between the NNPC and Syntroleum Limited, Lindin Petroleum BV and Palace Exploration Company) contain provisions which transfer oil mining rights from the Nigerian state to the oil corporations. The agreements state that the corporations undertaking actual mining operations will be entitled to an agreed amount of revenue as a result of their acquisition of the mining rights.[158]

Control and Management of Operations: The contracts provide for the party that will be in actual control and management of exploration and mining. In the Participation Contracts, the control and management of operations are usually entrusted to the oil MNCs. For example, the control and management of the petroleum contracts between the NNPC and Texaco and that between the NNPC and Elf stipulate that the operators of the leases (Texaco and Elf) shall have and be responsible for the control and management of the operations contemplated in the agreement, as well as its execution.[159] In this context, the contracts clearly spell out the duties, rights and responsibilities of each contracting party. As Gidado submits, these contracts 'explain the legitimacy of these rights, obligations and responsibilities within the context of petroleum exploration and exploitation, by stating that all the parties to the contracts have undertaken obligations to successfully carry out the exploration and exploitation of petroleum'.[160]

Recovery of Operating Cost: All the contracts have provisions for the recovery of costs and expenses incurred by the operator appointed by the parties. For example, Article 10.1.1 of the 1988 Operating Agreement between the NNPC and Texaco provides that all costs and expenses suffered by the operator (in this case the MNC) shall be assumed by the parties to the agreement according to their individual and particular participating interests. In similar vein, Clause 4 of the 1986 Production

[158] For instance, article 2 (1) (a) of the Participation Agreement between the NNPC (represented by Yinka Folawiyo Petroleum Company Limited) and Syntroleum Limited, Lindin Petroleum BV and Palace Exploration Company etc.

[159] Article 6.1.1 of the 1988 Operating Agreement between the NNPC and Texaco

[160] Maxwell M. Gidado (n 157)

Sharing Contract between the NNPC and Ashland Oil made provisions for the costs and expenses of the contract and how they are to be recovered.

Reimbursement of Expenses: The petroleum mining contracts all provided for the parties to be reimbursed according to their 'cost bearing participations', so that they will be compensated for their operational expenses. As a result, the NNPC/ Elf Participation Agreement of January 2005 provided that the parties will be entitled to a proportionate reimbursement which will be sufficient to cover their operational costs.[161] So did the 1986 PSC between NNPC and Ashland and the Operating Agreement between the NNPC and Texaco.

For Ejims, these reimbursement clauses seem 'to be attractive to oil companies because it enables them to obtain a quick recovery of expenses of exploration, development, and other operating costs they have incurred'.[162]

Arbitration Agreements; Most of the petroleum contracts contain provisions for the settlement of disputes between the Nigerian government and the MNCs. Accordingly, article 12.2 of the 2005 Participation Agreement states that:

> Any and all claims, demands, causes of action, disputes, controversies and other matters in question arising out of or relating to the Agreement, including any question regarding its breach, existence, validity or termination, which the parties do not resolve amicably within a period of thirty days, shall be resolved by arbitration.[163]

Similarly, the 1988 Operating Agreement between the NNPC and Texaco, in article 21 provides that;

> In case any dispute shall at any time arise between two or more of the parties with respect to interpretation application or effect of any provision of this agreement and if the parties hereto fail to settle such dispute by amicable agreement, then either party may serve on the other a demand for arbitration.[164]

[161] Article 2.2 (a) (i) of the Participation Agreement 2005
[162] Okechukwu Ejims (n 156)
[163] See article 12.2, 2005 Participation Agreement
[164] Article 21, Operating Agreement between NNPC and Texaco

In this context, the arbitration clauses in these contracts stipulate that parties failing to settle any dispute amicably should resolve their disputes through arbitral tribunals.[165]

The Implications of the Petroleum Contracts

Before looking at the implications of the petroleum contracts, it is again necessary to point out that the obligations which these petroleum contracts confer on the parties (in this case the oil MNCs) are treated differently from the obligations undertaken under corporate social responsibility. While the focus of the thesis is on the 'voluntary' social responsibility practices of oil MNCs in the Niger Delta, the duty to act according to the provisions of the contracts is dictated by the terms of the contract, and not voluntarily. However, as was observed in the section dealing with the effectiveness of Nigerian legislations in regulating the oil industry, there may sometimes be an over-lap between the contractual obligations and the voluntary CSR obligations. As a result and for the purpose of comprehensiveness, it is considered relevant to evaluate the implications of these petroleum contracts in the development of the Nigerian oil industry and the Niger Delta environment.

In looking at the implications of the petroleum contracts, especially on how they deal with the host-communities and their environment, two inferences can be drawn from their contents. The first is that despite the fact that they contain specific provisions on the nature of rights and obligations assumed by the contractual parties, they neither make provisions for the inclusion of members of the host-communities nor acknowledge their interests in the process of petroleum exploitations.[166] This exclusion of host-communities, according to Ejims, are 'indicative of the fact that the contracts are based on commercial needs and merely include predictable rules that allow for effective satisfaction of the interests of the parties to the contracts'.[167]

[165]The importance and uses of the arbitration clauses in these agreements are further discussed below.
[166] M. A. Heller, 'The Tragedy of the Anti-Commons: Property in the Transition From Marx to Markets' (1998) *Harvard Law Review* Vol. 111 622–87
[167] Okechukwu Ejims (n 156)

Secondly, it is also argued that the contracts treat environmental issues casually and indifferently. They failed to provide for the operational mechanisms necessary for implementing the 'precautionary approach' to oil mining. The precautionary approach emphasizes that the impact of mining operations on communities and the environment should be determined first, before operations are commenced. This will help to prevent from the source any possibility of environmental degradation and prepare operators for possible consequences of environmental breaches. According to Ejims, the inability of the petroleum contracts to incorporate comprehensive environmental provisions may in part be responsible for the environmental problems faced by Niger Delta communities.[168]

In this context, the 1985 contract between NNPC and Shell makes no mention of the environment at all. The same can be said of the 1986 PSC between the NNPC and Ashland Oil. Though the 1988 Operating Agreement between the NNPC and Texaco contains a brief statement in article 6.1.2 that 'the operator shall conduct all Joint Operations with utmost good faith in a good and workmanlike manner in accordance with good industry practice', it equally did not expressly mention the environment.[169] As Ejims argues;

> The fact that the Operating Agreement only provides for good petroleum practice in terms of environmental protection means that substantive measures of environmental risk assessment are not required. Thus, this contract suggests a casual attitude towards environmental protection.[170]

Again, the 2005 Participation Agreement between the NNPC (represented by Yinka Folawiyo Petroleum Company Limited) and Syntroleum Limited, Lindin Petroleum BV and Palace Exploration Company neither contains an express provision for the protection of the environment nor mandates MNCs to consider the social and ecological impacts of their activities on the communities. Instead, the contract in the only section where the environment is mentioned states that;

[168] ibid

[169] Article 6.1.2 of the 1988 Operating Agreement between the NNPC and Texaco

[170] Okechukwu Ejims (n 156)

> No orders, notices or directives have been issued by the Government and no claims have been threatened or made by the Government or any other person or entity in respect of environmental matters (including, without limitations, allegations of environmental contamination, noncompliance with abandonment and reclamation obligations or noncompliance with any applicable laws or regulations pertaining to health, safety and the environment) in connection to the lease.[171]

Essentially, the fact that the government issued no orders, notices or directives in connection with the lease should have been a reason to expressly include the environmental objectives or obligations which the participating MNCs are expected to comply with in the contract. Surprisingly, this is not the case and the contract makes no further provisions for the protection of the environment.[172]

The failure of these agreements to contain adequate provisions for the protection of the environment is contrary to recent developments in international investment contracts where national governments are beginning to take environmental issues seriously and are now making adequate provisions in investment contracts for the protection of the environment. For instance, Article 11 of the investment agreement between Canada and Peru states that;

> Parties recognize that it is inappropriate to encourage investment by relaxing domestic health, safety or environmental measures. Accordingly, a party should not waive or otherwise derogate from, or offer to waive or otherwise derogate from, such measures as an encouragement for the establishment, acquisition, expansion or retention in its territory of an investment of an investor. If a party considers that the other party has offered such an encouragement, it may request consultations with the other party and the two parties shall consult with a view to avoiding any such encouragement.[173]

[171] Article 7(1)(a)(xii) of the 2005 Participation Agreement

[172] For instance specific preventive or precautionary measures

[173] Agreement between the Canada and the Republic of Peru for the Promotion and Protection of Investments (2006) <http://www.wipo.int/wipolex/en/other_treaties/details.jsp?group_id=23&treaty_id=759> accessed 31 January 2015

Again, article 12 of the investment treaty between the United States and Uruguay are equally worded in similar fashion.[174] In the same vein, the Canadian and United States model investment agreements contain provisions stating that 'the non-discriminatory measures of a party that are designed and applied to protect legitimate public welfare objectives, such as health, safety and the environment shall not constitute indirect expropriation'.[175]

In analyzing the implications of the petroleum contracts governing the relationship between the Nigerian government and oil MNCs, it has been suggested that the government has a significant portion of the blame for the environmental challenges in the Niger Delta region.[176] As was noted above, most of the contracts seldom make adequate provisions for the protection of the environment and the ones that mentioned the environment at all treated it casually and in passing. In this situation, despite the wide-spread environmental issues in the Niger Delta, no claim has ever been made by the government against the oil MNCs.[177]

In fact, the argument is that the Nigerian government appears to be so indifferent to the activities of oil MNCs (apart from receiving rents and royalties accruable to it) that it has failed to take any pro-active steps to include the protection and preservation of the environment in the petroleum contracts it has entered into with the MNCs. This apparent failure to be pro-active (due mainly to the reasons enumerated in the section on Nigerian legislations and the effective regulation of the oil industry discussed above) means that the MNCs themselves have not instituted any arbitral claim against any measure from the government protecting the environment, unlike what is obtainable in other jurisdictions and countries where MNCs operate.[178]

In these other jurisdictions, arbitration cases have been instituted by foreign investors against national governments who introduce measures for the protection of the environment, alleging that

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[174] See Treaty between the United States of America and the Oriental Republic of Uruguay concerning the Encouragement and Reciprocal Protection of Investment (2004) <www.sice.oas.org/BITS/URYUSA2005_e.pdf> accessed 31 January 2015

[175] See Annex B.13 (1) (c) of the Canadian Model BIT (2004) < http://italaw.com/documents/Canadian2004-FIPA-model-en.pdf> accessed 31 January 2015; see also Annex B (4) (b) of the US Model BIT <www.state.gov/documents/organization/117601.pdf> accessed 31 January 2015

[176] Dele Babalola, The Underdevelopment of Nigeria's Niger Delta Region: Who is to Blame? (2014) *Journal of Sustainable Development* Vol. 7 (3) 118-128 at 123

[177] ibid

[178] Okechukwu Ejims (n 156)

such measures adversely affect their commercial interests.[179] Many of these arbitration cases have been brought because the national governments have been pro-active enough to invoke the obligation to defend the environment as a reason for adopting positive measures. This has not been the case with Nigeria, as successive governments appear to have failed to rise to the challenge of taking active and effective steps towards protecting and preserving the environment from the activities of MNCs.

In *Methanex Corporation v United States*,[180] the state of California introduced a legislation which banned methanol from the State. Methanex brought a claim against California, alleging that its rights under an investment agreement have been expropriated. The arbitral tribunal held that in the interpretation of any expropriating provision, the approach adopted should not be one that encumbers the right of governments to impose environmental measures for the safety and good health of its citizens. The tribunal, therefore, held that the prohibition on methanol which was taken to preserve the quality of water was a legitimate legislation for the protection of the environment and did not amount to an expropriation. The Tribunal also ordered Methanex to pay the United States' legal fees and arbitral expenses in the amount of approximately US$ 4 million.

Again, in *Glamis Gold Ltd v United States of America*,[181] the California government introduced laws for the protection of the environment and cultural rights of the indigenous people of the State. Glamis argued that the law was a breach of the expropriation provision in the contract it had entered with the State of California. The arbitral tribunal disagreed, holding that the steps taken by the Californian government in this respect did not expropriate the rights of the MNC.

In *Biwater v Tanzania*,[182] similar issues arose. The MNC contracted with the Tanzanian government to supply water to its capital city, Dares Salaam. When the corporation could not meet its obligations, the government in order to improve the quality of water provided for the city, terminated the contract. Biwater took the dispute to arbitration. Though the tribunal found in favor of the

[179]However, there are no recorded cases where governments have brought claims against corporations for environmental breaches

[180] UNCITRAL, Arbitration Final Award (2005) <www.italaw.com/cases/683> accessed 31 January 2015

[181] UNCIRAL, Arbitration Final Award (2009) <http://italaw.com/sites/default/files/case-documents/ita0378.pdf> accessed 31 January 2015

[182] ICSID Case No ARB/05/22 <https://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=showDoc&docId=DC770_En&caseId=C67> accessed 31 January 2015

corporation (after an examination of all the relevant documents and all surrounding circumstances), the fact is that Tanzania took a pro-active step to remedy a wrong which it felt was suffered by its citizens.

In *Metalclad Corporation v Mexico*,[183] the government of Mexico introduced a decree which was aimed at protecting the environment and people's health. Metalclad felt that the effect of this decree was to indirectly expropriate its right under an investment agreement. Though the arbitral tribunal agreed with the MNC and held that the decree was an indirect expropriation, the point is that the Municipal government, at least, was able to introduce a pro-active legislation aimed at protecting the environment and the people.

In similar vein, in *Suez, Sociedad General and Vivendi Universal v. Argentine Republic*,[184] the government of Argentina also took measures to protect its people and the environment and this resulted in an arbitration dispute. In many other instances in different jurisdictions, parties have resorted to arbitration to settle international investment disputes. In a majority of these cases, foreign investors allege that their rights under contractual agreements have been expropriated by national governments, who from all intents and purposes were positive enough to invoke pro-active measures for the protection of their environment.[185]

Juxtaposing the above situation with what is obtainable in Nigeria, it will be seen that successive Nigerian governments have failed to institute any arbitration claim against oil MNCs for environmental breaches, despite wide-spread acceptance by the corporations themselves that their activities have, in many instances, impacted adversely on the Nigerian environment. There are also no recorded instances of the corporations instituting claims against the Nigerian government for taking positive measures to protect the environment. The inference to be drawn from this, therefore, is that

[183] ICSID Case No ARB(AF)/97/1 (2001) <www.italaw.com/cases/671> accessed 31 January 2015
[184] ICSID Case No ARB/03/19 < http://icsidreview.oxfordjournals.org/content/24/1/243.extract> accessed 31 January 2015; see also (2009) ICSID Review Vol. 24 (1) 243-266
[185] See *Lemire v Ukraine*, ICSID Case No ARB/06/18, Decision on Liability (2010) <http://ita.lawunic.ca/news.htm> accessed 31 January 2015; *Chemtura v Canada* UNCITRAL (NAFTA) Award (2010) <http://ita.lawunic.ca/news.htm> accessed 31 January 2015; *AWG V Argentina* ICSID Case No. ARB/03/19 (2010) <http://ita.lawunic.ca/news.htm> accessed 31 January 2015

the Nigerian government has not been positive enough to combat the excesses of corporate activities, especially those that impact negatively on the environment.

Therefore, it appears reasonable to think that from an environmental perspective, these petroleum contracts contain little or no provisions for the protection of the Nigerian (Niger Delta) environment. In the final analysis, because of the weak environmental provisions of these contracts and the reluctance of the Nigerian government to introduce pro-active terms in these contracts, oil corporations have no compelling obligation to tackle environmental challenges with the seriousness they deserve. In this context, Sornarajah contends 'that the strong investment protection in the contracts portray neoliberal values in that they do not consider other competing issues such as the environment'.[186]

III

THE ROLE OF THE NIGERIAN STATE IN THE NIGER DELTA CRISIS

As was discussed earlier, international instruments vesting ownership of natural resources on the state usually provide that the resources should be used for the welfare of its citizens. In Nigeria, all mineral oil in the country is vested in the federal government, which is expected to utilize the natural resource for the benefit of all Nigerians, especially those on whose lands the resource is situated. The federal government receives payments from the oil corporations and decides how this is distributed between the three tiers of government.

It is clear that the allocation of oil revenue is one of the major reasons for the struggles in the Niger Delta. The amount of oil revenues credited to the oil host-communities in the region has varied over time and as was pointed out earlier, the current derivation formula for them is 13 per cent. Nevertheless, many of the inhabitants feel that the current revenue allocation formula is neither

[186] M. Sornarajah, 'Mutations of Neo-Liberalism in International Investment Law' (2011) *Trade, Law and Development* Vol. 3 (1) 203

adequate nor commensurate with the sustainable development needs of the people.[187] In this situation, it appears that most parties involved are more focused on the percentage accruable to each party, instead of concentrating on how to utilize the available resources effectively.[188]

In this state of affairs, the fact that the 13 per cent derivation allocated to the Niger Delta states if applied effectively can help to alleviate the plight of the people in the region is obscured. As Nigeria's political economy continues to be dominated by a federal system seen fundamentally as a means for the re-distribution of centrally amassed oil wealth, issues of public governance have become avenues through which money is distributed to political allies and clients.[189]

As Hyden contends, in a system that operates in this mode of governance, the provision of public employment and the distribution of goods are seen and applied first and foremost as resources belonging to particular individuals or groups and not for the benefit of the general public. In this sense, those who control political offices are pressurized into rewarding their clients and supporters and in doing this, creates a governance regime propelled and directed by patronage and 'patrimonialism', rather than effective and efficient policy directive. The consequence, as a result, is civil strife and violence, much like what is happening in the Niger Delta[190]

Patronage system has greatly undermined the ability of the Nigerian government to equitably distribute the wealth generated from oil and to amicably settle conflicts arising from the interactions between individuals and groups within its territory. Indeed, the argument is that the patronage driven governance of the Nigerian state is a major reason for the government's inability to effectively regulate the interaction between oil corporations and oil host-communities in the past. The consequence of this failure, it is argued, is that the negative externalities from oil production are and have not been adequately addressed. It also prevents the government from moving against the intensification of high levels of rent-seeking and corruption and leads to the establishment of an

[187] What amounts to sustainable development for the Niger Delta region is defined in chapter Two
[188]T.R. Suberu, *Ethnic Minority Conflicts and Governance in Nigeria* (Ibadan: Spectrum Books 1996) 27
[189]ibid
[190] G. Hyden, *African Politics in Comparative Perspective (Cambridge:* Cambridge University Press 2005) 10

inflated bureaucratic regime created as a result of the necessity to compensate clients, supporters and allies.[191]

Furthermore, there is very little transparency and accountability in the governance regime of the Nigerian state, especially as they concern how public expenditures are prosecuted. A major challenge that has always confronted successive governments in Nigeria is how to utilize the resources of the country in a transparent and efficient way, for the sustainable development of the Niger Delta specifically and the country in general.[192]

In this context, therefore, it is strongly argued that the government of Nigeria has played a major role in the escalation of violence in the Niger Delta through its inability to properly allocate and manage the natural resources in its territory. Equally, it appears reasonable to think that the role of the Nigerian state is central to creating peace between the host-communities and the oil MNCs. Through the inability to perform its expected role in ensuring the optimal utilization of the country's natural resources for the benefit of its citizens, the Nigerian state appears to have abandoned its responsibilities and has become unable to create an environment conducive for the continued mining of oil minerals in the Niger Delta.[193]

The Role of Oil MNCs

Multinational corporations rule the international financial system. More than half of the world's biggest markets 'by turn over' are made up of corporations, as opposed to states.[194] Multinational corporations possess an ever-increasing amount of influence and power in international economics

[191] Patrick Chabal and Jean Pascal Daloz '*Africa Works: Disorder as Political Instrument* (Bloomington: Indiana University Press 1999) 23

[192] Uwafiokun Idemudia, 'Corporate Partnerships and Community Development in the Nigerian Oil Industry' (2007) *United Nations Research Institute for Social Development* <www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/D7737BEE64BC48B0C12572C90045372E/$file/Idemudia.pdf> accessed 30 January 2015

[193] ibid

[194] D Wheeler and M SillanPaa, *The Stakeholder Corporation: A Blue Print for Maximising Stakeholder Value* (London: Pitman 1997) 24

and also undertake the provision of a wide-range of products and services, catering for an 'emerging' international market.[195] The growing power of MNCs is evidenced in the fact that out of the 100 largest economies in the world, 51 of them are corporations. By way of example, it has been pointed out that the economy of Toyota is bigger than that of Norway, while the assets of General Motors are more than that of Denmark.[196] Commenting on their influence in international economics, Utting submits that the joint assets of five corporate entities in 2006 were more than double that of the aggregate Gross Domestic Product (GDP) of the world's one hundred poorest nations.[197]

According to Ikelegbe, oil MNCs contribute positively to economic development, through their activities as the principal agents of foreign direct investment (FDI) and capital flow. Their involvements in national economies increase 'the flow of technology, economic production, efficiency and productivity, expertise, manpower development, managerial skills, employment opportunities, incomes and philanthropy'.[198] In similar vein, by paying taxes and royalties, rents and fees, they also impact positively of the economies where they operate.[199]

By reason of the enormous wealth, coupled with the economic and political power possessed by corporations in modern times, it is impracticable to view their 'decision-making' capacities and powers of persuasion as that of mere private individuals.[200] Their character is discernible from the level of impacts they have, not only in the progress of national economies, but also in their ability to enmesh themselves (either directly or indirectly, through their commercial partners and subsidiaries) in wide-spread environmental and social struggles. The argument is that the huge resources at their disposal are often used to influence national governments in areas where they have interests.[201]

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[195] ibid

[196] I Odeleye, 'Corporate Social Responsibility and the In-house Counsel' in R Mullerat and D. Brennan (eds.) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (Hague: Kluwer Law International 2005) 450

[197] Peter Utting, *The Next Step in Social Development* (Geneva: United Nations Research Institute for Social Development 2000) 60

[198] A. Ikelegbe, 'Civil Society, Oil and Conflict in the Niger Delta Region of Nigeria: Ramifications of Civil Society for a Regional Resource Control' (2001) *Journal of Modern African Studies* Vol. 39 (3) 332

[199] ibid

[200] I Odeleye (n 196) 450

[201] T Voon, 'Multinational Enterprises and State Sovereignty under International Law' (1999) *21 Adelaide Law Review* 219 234-41 ; See also M. K. Addo (ed.) *Human Rights Standards and the Responsibility of Transnational Corporations* (Leiden: Brill Academic Publishers 1999) 4

In Nigeria, oil MNCs and other private corporations are expected to contribute positively towards the sustainable development of the host-communities. Apart from performing their obligations under national legislations and according to the provisions of the contracts governing their commercial activities, they are also expected to act in a socially responsible manner. Social responsibility, in this sense, amounts to the moral minimum (different from law or contract) which they are expected to comply with, and extends beyond mere corporate philanthropy to an obligation which offers a social license to operate.[202]

In pursuing this role of contributing to the sustainable development of the Niger Delta, oil MNCs claim to have undertaken numerous obligations as evidence of their social responsibility practices.[203] Nevertheless, the corporations are also alleged to have contributed to the dynamics of the conflict in the region. Generally speaking, the MNCs are accused of degrading the environment through their oil operations and situating oil installations without any regard for international safety standards and regulations which prescribe a minimum of one kilometre between such installations and residential houses.[204]

Furthermore, the oil corporations are accused of manipulating successive Nigerian governments into making policies favourable to them. As Okonta argues, the MNCs (especially Shell) have constantly displayed their informed 'self-interest' by pointing to the close and cosy affiliation they enjoy with an 'alliance of military rulers, top echelons of the civic bureaucracy and the business sector'.[205] Again, he accuses them of being deeply enmeshed in the country's 'political and economic' arrangements, due to their multiple connections with the state, even at the highest levels of government.[206]

The MNCs are also alleged to have encouraged and contributed to the growing inter-community dimension of the conflict, supplying funds to some militant groups, in some cases to

[202] JG Frynas, 'The False Development Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies' (2005) *International Affairs* 81

[203] See chapter Two for a discussion of these practices

[204] V Ukaogo, 'Transnational Business Ethics, Government Policies & the Crisis of Pollution & Under Development in the Niger Delta' in A Osuntokun (ed.) *Environmental Problems of the Niger Delta* (Lagos: Frederick Ebert Foundation 2000) 22

[205] ibid

[206] ibid

‘pacify’ them, and in other instances as part of a divide and rule strategy aimed at pitching communities against one another. Finally, the CSR activities of MNCs often themselves engender bitterness and anger between communities. These occur when corporations make donations to one community and do not extend same to neighbouring communities. The inability of one community to benefit from such ‘largesse’ creates animosity and hostility between the benefitting community and those excluded from the benefits.[207]

The Role of the Host-Communities

For many inhabitants of the Niger Delta, the continued exploitation of oil mineral in the area, with its attendant environmental problems has rendered the people powerless and incapable of determining and charting the course of their existence. In this context, a significant proportion of these inhabitants believe that they have not legitimately benefitted from oil resources located in their land. Yet, they are made to bear the brunt of most of the negative consequences of oil exploitation, including pollution from oil spills, gas flares, forest fires, acid rains etc. To these people, environmental degradation lies at the heart of community discontent and has frequently pitched Niger Delta communities against the federal government and oil corporations. The decay and corrosion of the environment is one of the most observable forms of the negative impact of oil mining and sets the Niger Delta apart from other regions in the country. It is this state of frustration that has necessitated aggression, evidenced in the militant activities of the Niger Delta people.[208]

Nevertheless, while Niger Delta citizens have legitimate grievances, it is also suggested that some strategic groups have taken advantage of the sometimes chaotic situation in the area to perpetrate criminal and violent activities, thereby worsening an already volatile situation. In this context, the argument is that even though the pollution and degradation of the environment may be a

[207] GE Ezirim, ‘Resource Governance and Conflict in the Niger Delta: Implications for the Gulf of Guinea Region’ (2011) *African Journal of Political Science and International Relations* Vol. 5(2) 66

[208] See F Allen, *Implementation of Oil Related Environmental Policies in Nigeria: Government Inertia and Conflict in the Niger Delta* (Newcastle upon Tyne: Cambridge Scholars Publishing 2012) 12

justifiable cause of the host-communities' grievances, it also appears reasonable to think that some elements of the Niger Delta region are not primarily concerned with protecting and preserving the environment. These groups appear to have forgotten their original goal of promoting social justice and self-empowerment through environmental preservation and have focused instead on enriching themselves through criminal activities.[209] For these groups, the overriding principle is greed and selfishness, leading to the desire to extort as much money as possible from both the government and the oil corporations. In this situation, these individuals and groups are sometimes not genuinely provoked before they start attacking corporate personnel and facilities and in many instances, even their own people. They are ready to foment trouble and escalate the crisis if and when they feel that their 'right' to the enjoyment of oil proceeds is threatened. During times like this, they selfishly and arbitrarily unleash acts of violence which have led to the destruction of life and property.[210]

Violence emanating from the greed of this group of community members has also had a damaging effect on the levels of trust and the quantity of social capital in the region. Customary positions (like village chiefs) have been employed to win control over compensation payments from oil corporations, which in turn have led to many inhabitants regarding their traditional chiefs with suspicion. This, it is argued, has significantly contributed to the decline of the authority and legitimacy of community chiefs. When it is considered that these community chiefs are the custodians of customary law usually applied as a dispute settlement mechanism between members of the community, the destructive influence of the greed of some members of oil-host communities in the Niger Delta and how it acts as a damaging weight on existing social realities is brought to the fore.[211]

The activities of this group is further evidenced in; the theft of petroleum products on a gigantic scale; the kidnapping of oil workers; the stage management of gangs and application of violence in political and electoral crusades; the enjoyment of profits accumulated from protection of oil corporations and their facilities; and a flourishing derived market for the sale and purchase of weapons. These four factors, when combined, make the control of the method of violence extremely

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[209] Judith B. Asuni, *Understanding the Armed Groups of the Niger Delta* (New York NY: Council on Foreign Relations Working Paper 2009) 6

[210] C. I. Obi, 'Nigeria's Niger Delta: Understanding the Complex Drivers of Violent Oil-related Conflict' *(2009) Africa Development* Vol.34 (2) 103–128 at 107

[211] Judith B. Asuni (n 209) 13

lucrative and have led to a well-established ethos of spontaneous militarism with its own inescapable dynamic of crisis intensification and explosion.[212]

Furthermore, the draining-off and transporting of bunkered petroleum products is perpetrated by 'criminal' gangs and associations made up principally of militant youths, supported and protected by powerful community chiefs and politicians, military officers and local businessmen. As Watts contends, 'the selfish tendencies of these powerful local actors, coupled with the acknowledgment that the bunkering venture offers a source of revenue to restless and jobless youths have encouraged the involvement of Nigerian law enforcement authorities and others'.[213] According to him, from the community level, this has afforded many radical and combative bands and petty criminals with the capital to acquire significant supplies of sophisticated weapons, easily available for purchase in many of the Delta states.[214]

All these activities have contributed to the worsening of the Niger Delta crisis.

Concluding Remarks

This chapter has offered a brief narrative of the Nigeria oil industry (including the Niger Delta region). It began with a critical assessment of the oil industry in Nigeria and the various legislations, licences and contracts which regulate the sector. While stating that there is a difference between the obligations conferred on oil MNCs by both statute and the petroleum contracts on the one hand and the voluntary obligations assumed by corporations under CSR on the other hand, the chapter argues that as a result of many factors which are present in the Nigerian socio-political system, the various legislations appear ineffective as a regulatory mechanism for the conduct of oil exploitation in the country. The chapter also suggested that, by implication, the petroleum contracts which govern the

[212] ibid

[213] Michael Watts, 'Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria' (2004) *Geopolitics* Vol. 9 (1) 13

[214] Michael Watts, 'Crisis in Nigeria: Oil Inferno' (2007) *Counterpunch* <www.counterpunch.org/2007/01/02/oil-inferno/> accessed 30 January 2015

conduct and operations of oil MNCs in the country affords them the freedom to operate without due regard to the host-communities and their environment. To this end, the Nigerian government has a lot of the blame for its inability to provide for the protection of the environment through appropriate implementation of existing legislations and the inclusion of pro-active provisions for the protection of the environment in the petroleum contracts it has entered into with oil MNCs. The chapter also looked at the roles of the Nigerian government, the oil MNCs and the host communities in the Niger Delta conflict and contends that all the parties have played significant parts in the escalation of the crisis in the region.

Chapter Two

MNCs and CSR in the Niger Delta

Introduction

Multinational corporations control key sectors of the Nigerian economy, including those of manufacturing, construction, petrochemicals and telecommunications. However, they are most influential in the oil sector.[1] The foremost MNCs entered Nigeria during colonialism and as a former British Colony; the country's legal and administrative systems mirror in many ways those of Britain. This means that corporate regulation in Nigeria[2] is heavily influenced by the English legal system introduced during colonialism.[3]

Oil exploration activities started in Nigerian around the beginning of the twentieth century, when the British Royal Navy began its transformation from coal power to fuel energy.[4] In pursuit of the objective of locating oil within the Commonwealth, in 1907, the colonial government in Southern Nigeria gave J.S. Bergheim[5] permission to explore for oil, and he subsequently acquired monopoly rights to all drilling activities in the area. In September 1912, Bergheim died in a car crash and oil exploration was halted, thereby, ending the first phase of the search for oil in the country. The second phase began in 1937, when an Anglo-Dutch consortium, Shell D'Arcy came to Nigeria and was granted the whole country as one concession.[6] Between 1953 and 1955, Shell drilled 13 additional

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[1] Kenneth Amaeshi and Olufemi O Amao, 'Corporate Social Responsibility (CSR) in Transnational Spaces: An Institutionalist Deconstruction of MNCs' Practices in the Nigerian Oil and Gas Sector' (2008) *CSGR Working Paper* 248/08, 10 <http://wrap.warwick.ac.uk/1860/1/WRAP_Amaeshi_24808.pdf> accessed 1 May 2013

[2] Discussed in details in chapter Four

[3] Kenneth Amaeshi and Olufemi O Amao (n 1) above

[4] P Steyn, Oil Exploration in Colonial Nigeria, C.1903-1958' (2009) *University of Stirling Academic Publication* <https://dspace.stir.ac.uk/bitstream/1893/2735/1/Oil%20exploration%20in%20colonial%20Nigeria.pdf> accessed 14 August 2011

[5] A British Business man

[6] ibid

wells and eventually struck its first commercial well in 1956 at Oloibiri in present-day Bayelsa State.[7] Towards the later part of 1956, more oil was discovered at Afam in present day Rivers State. Thereafter, oil pipelines were constructed from Oloibiri to Port-Harcourt in order to ease movement and aid export. The first cargo of crude oil was exported from Port-Harcourt on 17 February 1958.[8]

The success of Shell led to an influx of other foreign corporations into the country. According to Obasi, the achievements recorded by Shell persuaded other MNCs to participate in oil exploration and by 1968 oil had become a very important source of energy. By this time (i.e. 1960), the quantity of oil produced in the country had more than tripled from what it used to be in 1958.[9] As a result, other oil MNCs including ExxonMobil, Tenneco, Texaco, Gulf (now Chevron), Safrap (now Elf), Agip, Philip and Esso equally started operations in Nigeria and by the late 1960s and early 1970s, these already established MNCs were joined by others including Japan Petroleum, Occidental, Deminex, Union Oil, Niger Petroleum and Niger Oil Resources. At the peak of the period, the Nigerian National Oil Corporation (NNOC) – the forerunner to the NNPC – was formed. At this time also in July 1971, Nigeria became a member of the Organisation of Petroleum Exporting Countries (OPEC).[10]

According to the Nigerian Investment Promotion Commission (NIPC), there are over 30 MNCs currently in the country, with 18 of them operating in the oil sector. These corporations are mainly from Europe, the US, Japan and China.[11] Other sectors with considerable amounts of multinational presence include; the construction sector – Julius Berger, Arab Contractors, Reynolds Construction (RCC) and Siemens (amongst others) – and the telecommunication sector – MTN, Globacom, Etisalat and Zain.[12]

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[7] NK Obasi, 'Nigeria and Oil' (2010) *Nigeria online publication* <www.onlinenigeria.com/links/adv.asp?blurb=493> accessed 2 June 2011

[8] ibid

[9] C Udosen, AS Etok and IN George, 'Fifty Years of Oil Exploration in Nigeria: The Paradox of Plenty' (2009) *Global Journal of Social Sciences* Vol. 8 (2) 37-47

[10] ME Aluko, 'Nigeria and Her Membership of OPEC' (2008) *African Economic Analysis* <www.africaeconomicanalysis.org/articles/gen/opec.html> accessed 15 May 2013

[11] Contained in NIPC website <http://www.nipc.gov.ng/opportunities.html> accessed 26 April 2012

[12] CE Erunke and H Kigbu, 'Globalization, Multinational Corporation and the Nigerian Economy' (2012) *International Journal of Social Science Tomorrow* Vol. 1 (2) 3

This chapter reviews existing literature on the CSR practices of MNCs in the Niger Delta and what amounts to sustainable development for the people of the region. The chapter then proceeds to look at the internationalization of the Niger Delta conflict and the growing international pressures exerted on oil corporations by such groups as the Human Rights Watch, Amnesty International, the Green Peace, Friends of the Earth, the United Nations' Human Rights Commission (UNHRC) etc. It contends that the MNCs eventually resorted to CSR as a reaction to these pressures.

It goes on to investigate the various CSR claims of the four major oil MNCs in the region and how these claims are viewed by the host-communities. It then suggests a distinction between the performance of positive obligations or philanthropy such as the building of schools, roads, hospitals etc. and the more demanding CSR duty to refrain from harming the ecosystem – duty to care for the environment. The chapter contends that the failure by oil MNCs to perform the latter duty is at the heart of the crisis in the region. In this context, it suggests that the seeming inability of oil corporations to care for host communities' environment has led to a negative perception of corporate activities by host-communities. Based on existing realities in the Niger Delta, the chapter argues that there are good reasons for thinking that oil MNCs' CSR claims in the region are ineffective.

I

REVIEW OF EXISTING LITERATURE

Review of General CSR Literature

Generally, current literatures on CSR have deliberated on the changing relationship between corporations and society in general. Even though corporations began to engage in social responsibility tasks from the nineteenth century, it was only in the 1990s that the concept of CSR in its contemporary form developed. The recent expansion of the concept is evidenced in the increasing number of Corporate Codes of Conduct, CSR Reports and in-house organizational arrangements

dealing with issues of CSR. As well as becoming more institutionalized, the recent revival of the concept is characterized by its international recognition and convergence. According to Muhle, the international nature of contemporary CSR is additionally reflected in the growing acknowledgement of its global relevance and endorsement by international organizations like the United Nations (UN).[13] Subjects which are part of the CSR agenda include the environment, labour, community relations and human rights.[14]

The social pressures exerted on corporations by local and international non-governmental organizations (NGOs)[15] greatly influenced the processes whereby the former began to adopt social responsibility codes in the 1990s. For Swanson, external pressures from civil society organizations, coupled with the tactical business decisions of managers, led to the emergence of modern CSR. The prevailing understanding of the concept appears to be premised on the argument that as business activities inevitably impinge on community interests, it is imperative that businesses are accountable to those who are affected by their operations. The multifaceted interactions between corporations and society trigger responsibilities for firms in situations where their activities cause social problems.[16]

As McWilliams and Siegel opine, however, contemporary CSR deals not with legal regulations but the voluntary responsibilities assumed by corporations towards the communities where they operate. According to them, although CSR is presented as something which is in the interests of society at large, it is also argued that CSR practices are equally in the interests of the corporations themselves.[17] This is in line with the enlightened self interest notion of CSR, in which CSR is thought to bring benefits to the corporations themselves: reputational gains, better employee recruitment and retention, increase in sales, the avoidance of risks and so on.[18]

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[13] U Mühle, *The Politics of Corporate Social Responsibility: The Rise of a Global Business Norm* (Frankfurt am Main: Campus Verlag 2010) 30-31

[14] Maria Feil, *Global Governance and Corporate Social Responsibility in Conflict Zones* (Basingstoke: Palgrave Macmillan 2012) 36-40

[15] Including Amnesty International, Human Rights Watch (HRW), Friends of the Earth etc.

[16] DL Swanson, 'Addressing a Theoretical Problem by Reorienting the Corporate Social Performance Model' (1995) *Academy of Management Review* Vol. 20 43-64

[17] A McWilliams and D Siegel, 'Corporate Social Responsibility: A Theory of the Firm Perspective' (2001) *Academy of Management Review Vol.* 26 117-127

[18] DB Turban and DW Greening, 'Corporate Social Performance and Organizational Attractiveness to Prospective Employees' (1997) *Academy of Management Journal* Vol. 40 658-763

Notwithstanding the increasing prominence of CSR in modern corporate governance, however, there is no agreement on its precise definition. The term CSR means different things to different people and has become a broad and all-encompassing concept which embraces everything from corporate philanthropy to corporate citizenship to corporate social performance.[19] As Carroll submits;

> ...to some it conveys the idea of legal responsibility or liability; to others, it means socially responsible behaviour in an ethical sense; to still others, the meaning transmitted is that of 'responsible for', in a causal mode; many simply equate it with a charitable contribution; some take it to mean socially conscious; many of those who embrace it most fervently see it as a mere synonym for 'legitimacy', in the context of 'belonging' or being proper or valid; a few see it as a sort of fiduciary duty imposing higher standards of behaviour on businessmen than on citizens at large.[20]

For Smith, corporate social responsibility is seen as an economic arrangement that facilitates the production and distribution of wealth, through the execution and incorporation of ethical practices and sustainable management habits.[21] As good a definition as any is probably that adopted by the European Commission, which has defined CSR as 'the responsibility of enterprises for their impacts on society'.[22] It is a notion, the Commission argues, which enjoins corporations to 'have in place, a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in collaboration with their stakeholders'.[23]

Does CSR inevitably involve de-prioritising the interests of shareholders? Here the debates surrounding CSR cross into those surrounding corporate governance. In general terms, in recent years

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[19] Maria Feil (n 14*)*

[20] A. B. Carroll, 'Corporate Social Responsibility – Evolution of a Definitional Construction' (1999) *Business and Society* Vol. 38(3) 268– 295

[21] Richard E. Smith, 'Defining Corporate Social Responsibility: A Systems Approach for Socially Responsible Capitalism' (2011) *University of Pennsylvania Scholarly Commons* 1-115 at 11

[22] European Commission, 'Corporate Social Responsibility' (2011) *Enterprise and Industry*, <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm> accessed 10 February 2014

[23] Ibid.

two broad approaches to corporate governance have been jostling for dominance: one asserts shareholder primacy, the other a so-called 'stakeholder' approach.

For supporters of shareholder primacy, the responsibility of business is to maximize returns for shareholders[24]and the sole responsibility of managers is to seek to maximize shareholders' profits and to advance their interests.[25] From this perspective, any diminution of pursuit of the interests of shareholders by managers represents a kind of fraud. They must not let vague talk about CSR distract them from actualizing the main objective, which is profit maximization. For the shareholder theorists, only democratically elected governments are legitimately empowered to tackle social problems. Any attempt by corporations to 'pursue social ends' is seen 'as theft of funds belonging to its shareholders'.[26]

The shareholder value theory argues that tackling social responsibility matters comes at a cost to corporations. In the event that corporations are forced to internalize the costs of socially responsible practices, they hurt their competitive position relative to other businesses. The injurious nature of CSR to corporate profits is made more compelling as a result of the global competitive environment in which modern corporations operate. In this sense, where a business in a particular country expends corporate profits in tackling social and environmental issues, it will incur losses if a similar business in another country does not act in like manner.[27]

The implication of the belief that corporations should profit maximize, according to its advocates, is exemplified in the claim that corporate governance is a simple agency problem; how do you get corporate managers to act in the interests of inactive and often dispersed shareholders? In this context, the agency theory acknowledges that the corporation is made up of a principal who assigns

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[24] Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits' (September 13, 1970) *The New York Times Magazine* <www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html> accessed 22 April 2013

[25] MC Jensen, 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function' (2010) *Journal of Applied Corporate Finance* Vol. 22 (1) 32-42; See also MC Jensen and WH Meckling, 'Theory of the Firm: Managerial Behaviour, Agency Cost and Ownership Structure' (1976) *Journal of Financial Economics* Vol. 3(4) 305-360

[26] AD Smith, 'Making the Case for the Competitive Advantage of Corporate Social Responsibility' (2007) *Business Strategy Series* Vol. 8 (3) 186-195

[27] A. B. Carroll and A.K. Buchholtz, *Business and Society: Ethics and Stakeholder Management (*5th ed. Australia: Thomson South-Western 2003) 32

work to another person referred to as the agent. Accordingly, the corporation is identified as 'a nexus of contracts between principals and agents, with shareholders being the principals and managers being their agents. The corporation must be run by the manager agents in the sole interests of the principal shareholders.

Finding solutions to the agency problem has resulted in the development of various corporate governance mechanisms, aimed at monitoring the activities of corporate managers and aligning their interest with that of their principals. While some of the mechanisms operate from within corporations – things such as performance related pay and the use of Non-Executive Directors to monitor managers –; others operate externally, such as the markets for corporate control. These mechanisms incentivize corporate managers to maximize shareholder profits and raise the share price of corporations as high as possible.[28]

As Mallin explains;

> In the context of corporations and issues of corporate control, agency theory views corporate governance mechanisms, especially the board of directors as being an essential monitoring device to try to ensure that any problems that may be brought about by the principal-agent relationship are minimized.[29]

However, the argument that corporations should profit maximize has to be linked to the rise to prominence of the wider neoliberal theories of development which came into prominence in the 1970s. The neoliberal, market-based model of economic and social development, with its emphasis on free trade, freedom of movement for capital and limited state intervention in and regulation of economic affairs, encourages precisely the pursuit of shareholder value and the de-prioritization of other interests. To this end, the shareholder value theory is part and parcel of the wider neoliberal theories of economic and social development.[30]

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[28] See chapter Four

[29] Christine Mallin, *Corporate Governance* (London: OUP 2013) 17

[30] Paddy Ireland and RG Pillay 'Corporate Social Responsibility in a Neoliberal Age' in P Ytting, and J Marques, (eds.) *Corporate Social Responsibility and Regulatory Governance* (Hampshire: Palgrave Macmillan 2009) 85

Again, it is also argued that the shareholder theory is supported by a powerful interest group whom Ireland refers to as the 'power of resurgent finance' or the 're-asserted power of finance'.[31] The reach and power of these financial interests took on frightening dimensions with the rise to prominence of the neoliberal theories of social and economic development. The activities of the power of resurgent finance have led to the intensification of what Gill and Schneiderman have labelled disciplinary neoliberalism and the new constitutionalism respectively.[32] According to Ireland and Pillay, this 'power of resurgent finance', - with a strong bias for capital accumulation, – champions precisely the type of market mechanisms which promote shareholder value and the maximization of shareholder profits.[33]

Supporters of stake-holding, on the other hand, presume that corporations should generate value for all of those with interests affected by corporate activities. In this sense, therefore, the interests of employees, customers, communities and governments should be considered when corporate decisions are made. Agents of stake-holding argue that in contemporary societies, the effects of neoliberal restructurings have led to the decreasing power of the nation-state, and by implication that of national governments. The diminishing powers of national governments mean that they appear to be incapable of effectively addressing the problems of extra-territorial commercial activities promoted by neoliberalism. In this situation, MNCs are expected to be the purveyors of responsible behaviour and solution providers to the social and economic challenges facing humanity. Since transnational corporations have huge resources and advanced technologies at their disposal, they are expected to devote a significant part of these resources towards addressing these challenges.[34]

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[31] Paddy Ireland, 'Financialization and Corporate Governance' (2009) *Northern Ireland Legal Quarterly* Vol. 60 (1) 4

[32] Stephen Gill, *The Constitution of Global Capitalism* (Paper presented to a Panel: The Capitalist World, Past and Present at the International Studies Association Annual Convention, Los Angeles, 2000) <www.uv.es/~mperezs/intpoleco/Lecturcomp/Geoeconomia%20y%20Globalizacion/Constitution%20of%20Global%20Capitalism%20S%20Gill.pdf> accessed 20 October 2013; David Schneiderman, 'Investment Rules and the New Constitutionalism'(2000) *25 Law and the Social Inquiry*, 757

[33]See Paddy Ireland, 'Financialization and Corporate Governance' (2009) *Northern Ireland Legal Quarterly* Vol. 60 (1) 4; see also chapter Five

[34] Adolf Berle and Gardener C Means, *The Modern Corporation and Private Property* (New York: Transaction Books 1932) 46

The supporters of the stakeholder theory hold that the purpose of the corporation is not merely to maximize profits for shareholders, because the primary function of corporations at their inception was to provide social services, which small businesses (sole traders and partnerships) could not easily provide. Accordingly, the wealth that is created by the corporation should be distributed to every interest that is affected in the course of the operations of the business. When this is done, society in general benefits. In this sense, when wealth is distributed to employees in the form of wages, or materials are acquired from suppliers, or taxes are paid to the government, or corporations engage in environmentally friendly activities, they are merely fulfilling their obligations to the society.[35]

Most stakeholders do not deny that corporations have economic responsibilities which have to be satisfied, including responsibilities towards shareholders. They argue, however, that corporate managers should be bound to take into account the interests of other stakeholders. The supporters of stake-holding see the corporation as at least in part a social institution – as part of society – with the wider obligations which logically flow from this. As a result, equity demands that those affected, either directly or indirectly by corporate activities, should be considered when developing corporate strategies.[36]

For Carroll and Bucholtz, corporate stakeholders may be broadly classified into two; primary and secondary stakeholders. A corporation's primary stakeholders are those individuals and groups that have some direct stake in the activities of the enterprise (including shareholders, employees, communities, customers etc). On the other hand, secondary stakeholders are 'public or special interest groups that do not have a direct stake in the organization, but are still affected by its operations (for example local and federal governments, regulatory bodies, civic institutions etc)'.[37]

There is, however, another emerging theory, which attempts to reconcile the shareholder and stakeholder theories. This is what we might call the 'business case' theory. This encourages corporations and their managers to integrate CSR concerns into core strategic decision making processes on the grounds that it is in the best long-term financial interests of shareholders. Integrating

[35] R. Ackoff, 'The Corporation as a Community, not as a Corpus' (2002) *Reflections* Vol. 4(1) 14-21
[36] RA Phillips, *Stakeholder Theory and Organizational Ethics* (San Francisco: Barrett-Koehler 2003)
[37] A. B. Carroll and A.K. Bucholtz (n 27) 71

these sorts of issues into decision-making, it is argued, will prevent long-term financial and reputational risks and also allow corporations to acquire an enduring ‘set of rules by pre-empting change in turbulent environments’.[38]

Review of Existing CSR Literature in the Niger Delta

Analytical research into CSR in the Niger Delta is only just beginning to emerge. As yet, there have been relatively few studies scrutinizing community expectations of CSR in the Niger Delta, using the perspective of cultural, political and administrative frameworks.[39] Most of the earlier studies concentrated on describing issues surrounding the struggles, corporate-community interactions, and environmental accountability.[40] As a result, much of the existing literature in the area is largely descriptive in nature. Moreover, a considerable number of the studies of CSR in the region have been undertaken by outsiders, who arguably lack a full appreciation of the basic experiences of Niger Delta inhabitants.[41]

CSR projects in the Niger Delta started in the 1960s and 1970s, when the first MNCs began oil exploration and production. Corporations began by making philanthropic gestures - cash payments, award of scholarships, construction of classroom blocks, roads, hospitals, and the supply of agricultural equipment. The first wave of such projects seems to have been motivated largely by

[38] S Bonini and others, ‘When Social Issues Become Strategic: Executives Ignore Socio-Political Debates at Their Own Peril’ (2006) *McKinsey Quarterly Newsletter* Vol.1 2006 2

[39] There are however, a growing number of Nigerian scholars who are pioneering the critical analysis of MNCs’ CSR initiatives in the Niger Delta. See for instance Uwafiokun Idemudia and UE Ite, ‘Corporate- Community Relations in Nigeria’s Oil Industry: Challenges and Imperatives’ (2006) *Corporate Social Responsibility and Environmental Management* 13, 199; UE Ite, ‘Multinationals and Corporate Social Responsibility in Developing Countries: A Case Study of Nigeria (2004) *Corporate Social Responsibility and Environmental Management, Vol. 11*(1) 1-11; Kenneth Amaeshi and OO Amao, ‘Corporate Social Responsibility in Transnational Spaces: Exploring Influences of Varieties of Capitalism on Expressions of Corporate Codes of Conduct in Nigeria’ (2009) *Journal of Business Ethics* Vol. 86 230

[40] CNC Ugochukwu and J Ertel, ‘Negative Impacts of Oil Exploration on Biodiversity Management in the Niger Delta Area of Nigeria’ *(2008) Impact Assessment and Project Appraisal Vol. 26*(2) 139–147

[41] Daniel Ogula, ‘Corporate Social Responsibility: Case Study of Community Expectations and the Administrative Systems, Niger Delta’ (2012) *The Qualitative Report* Vol. 17 (73) 5

business considerations and sought to do little more than satisfy 'the most-minimal' moral obligations. Since then, these corporations have adopted various approaches towards CSR. These include community assistance and development projects (philanthropy) and, more recently, partnership approaches. The dominant partnership approaches include government-business partnerships, business-NGO partnerships and corporate-community partnerships facilitated by NGOs.[42]

The Two Opposing Views on the Nature of CSR in the Niger Delta

There are two divergent views on the nature and effectiveness of the oil MNCs' social responsibility practices in the Niger Delta. According to Aaron, the debate on CSR in the Niger Delta has polarised around two very different positions. The first states that CSR operates as a medium for providing 'sustainable community development' to deprived oil host-communities in the region. The second holds that CSR has failed, and is failing, to provide meaningful development.[43]

For those who believe CSR is making a significant difference, MNCs have been seriously committed to the execution of meaningful CSR obligations and have implemented successful policies for all stakeholders. Unsurprisingly, this is the view of MNCs themselves.[44] Corroborating the commitment of MNCs in this regard, Eweje maintains that MNCs have adopted developmental schemes principally to prove that they are socially responsible. According to him, they have done this through the provision of scholarships, classrooms and teachers for local communities.[45] Similarly, for

[42] KK Aaron, 'Two Theses on Corporate Social Responsibility Performance in the Niger Delta' in KK Aaron and G Dawari (eds.) *Placebo as medicine: The Poverty of Development Intervention and Conflict Resolution Strategies in the Niger Delta Region of Nigeria* (Nigeria: Kemuela Publications, 2010) 158–77; See also U Idemudia, 'Oil Extraction and Poverty Reduction in the Niger Delta: A Critical Examination of Partnership Initiatives' (2009) *Journal of Business Ethics*, 90; U Idemudia, 'Rethinking the Role of Corporate Social Responsibility in the Nigerian Oil Conflict: The Limits of CSR' (2010) *Journal of International Development* Vol. 22 (7) 833-845

[43] K. K. Aaron, 'New Corporate Social Responsibility Models for Oil Companies in Nigeria's Delta Region: What Challenges for Sustainability?' (2012) *Progress in Development Studies Vol.*12(4) 259-273

[44] See below

[45] Gabriel Eweje, 'Multinational Oil Companies' CSR Initiatives in Nigeria' (2007*) Management Law*, Vol. 49(56) 23; See also Gabriel Eweje, 'The Role of MNEs in Community Development Initiative in Developing Countries:

Idemudia, from the moment concerns about community development and poverty reduction shifted from the fringes of business thoughts to the centre, MNCs reacted progressively by embracing 'partnership strategies' geared towards poverty alleviation.[46] Contributing further, Ite maintains that it is not in doubt that MNCs in the region[47] have consistently acknowledged their social obligations to host-communities. Accordingly, they have continued to adopt CSR projects for the development of these communities.[48] Aaron blames commentators for peddling the misconception that MNCs are not socially responsible. For him, most of the current literature on CSR initiatives in the area does not highlight the fact that some oil MNCs did initiate projects which have fostered relative peace in the area. These commentators, he argues, obscure the fact that some of the schemes introduced by the corporations are functioning successfully and for the benefit of host- communities.[49]

However, apart from these few observers, the predominant view – including the studies undertaken by Frynas[50] and Akpan[51] – disclose a number of flaws intrinsic to the CSR projects of MNCs in the Niger Delta.[52] In the first instance, by relying on the restricted goal of providing just the moral minimum, MNCs precluded themselves from inventing practical measures for the execution of effective CSR projects. Underpinning this flawed strategy is the presumption that the commercial objectives of corporations are irreconcilable with the developmental needs of host-communities. As a result, the practices of MNCs rarely differed from the stipulations of law and in supplying the 'moral minimum'.[53] This is the reason why many view the millions of dollars MNCs spent on CSR projects as cosmetic attempts to preserve corporate reputation. Moreover, the CSR programmes executed by

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Corporate Social Responsibility at Work in Nigeria and South Africa' (2006) *Business and Society Vol.* 45 93–129.

[46] Uwafiokun Idemudia, 'Oil Extraction and Poverty Reduction in the Niger Delta: A Critical Examination of Partnership Initiatives' (2009) *Journal of Business Ethics* Vol. 90 91-116 at 91

[47] Represented here by Shell Petroleum

[48] Uwem E Ite, 'Changing Times and Strategies: Shell's contribution to Sustainable Community Development in the Niger Delta, Nigeria' (2007) *Sustainable Development* Vol. 15 12

[49] KK Aaron, 'Two Theses on Corporate Social Responsibility Performance in the Niger (n 42)

[50] JG Frynas, 'Corporate and State Responses to Anti-Oil Protests in the Niger Delta' (2001) *African Affairs Vol.* 100 27–54

[51] W Akpan, 'Between Responsibility and Rhetoric: Some Consequences of CSR Practice in Nigeria's Oil Province' (2006) *Development Southern Africa* 23(2) 223–240.

[52] KK Aaron and JM Patrick, 'Corporate Social Responsibility Patterns and Conflicts in Nigeria's Oil-Rich Region' (2013) *International Area Studies Review* Vol.16(4) 341–356 at 342

[53] J DesJardins, *An Introduction to Business Ethics* (2nd ed., New York, NY: McGraw-Hill 2006) 211

the MNCs were not intended to tackle pressing economic, environmental and social problems. Evidencing this point is the fact that the construction of school blocks and health clinics by MNCs were made as 'one time offers instead of as sustainable projects'.[54]

Again, it is contended that MNCs' early approaches to sustainable development in the Niger Delta failed to appreciate the relationship between business and society. Corporations failed to understand that business is not all about accumulating profits whatever the cost and then handing down a fraction of it to society. It has to do with how a corporation makes its money, how it operates and how it relates with society.[55] Idemudia and Ite submit that no amount of class room, road or hospital construction will adequately compensate for the health injuries caused by oil pollution, acid rain and gas flaring. In the same way, no amount of cash can compensate for the future loss of sources of livelihood.[56]

At the centre of the CSR debate in the Niger Delta is the contention that positive affirmative duties[57]and the duty to care for the environment[58]operate reciprocally. By fulfilling the duty of care not to damage the environment, value is created. The value thus created is further advanced and consolidated through the performance of affirmative duties. As a result, the crisis in the Niger Delta is attributed to the failure of current sustainable development efforts to fulfil the negative injunction duties not to damage the environment.[59] Thus, Ukpongson and Onu argue that it is incumbent on MNCs to understand that CSR is not only about creating new sources of livelihood through social

[54] Uwem E Ite, 'Multinationals and Corporate Social Responsibility in Developing Countries: A Case Study of Nigeria (2004) *Corporate Social Responsibility and Environmental Management Vol. 11*(1) 1-11

[55] P Swanson, 'Corporate Social Responsibility and the Oil Sector' (2002) *CEPML Internet Journal* Vol. 11(1) <www.dundee.ac.uk/cepmlp/journal/html/vol11/article11-1.html> accessed 25 September 2011

[56]Uwafiokun Idemudia and Uwem E Ite 'Demystifying the Niger Delta Conflict: Towards an Integrated Explanation (2006) *Review of African Political Economy* Vol.33 (108)56-65

[57] This includes the duty to build schools, hospitals, roads etc.

[58] The duty to refrain from polluting rivers and creeks, to stop gas flaring, to prevent acid rains and not to harm the environment generally –Otherwise known as the negative injunction duties

[59] Daniel Ogula (n 41)

investments, but also about embracing the duty to ensure that existing sources of survival are not ruined or wasted as a result of corporate actions.[60]

Furthermore, the incorporation of 'community development and self-help projects' into the CSR agenda of MNCs only occurred in the mid-1990s, and available evidence suggests initial efforts at community-help schemes and infrastructure development were kneejerk and unconsidered. The lack of an extensive emergency response strategy for tackling issues of pollution in the region exemplifies this point. Oil MNCs' reactions when environmental calamities like oil spills occur,[61] hardly ever go further than the communities within the MNCs' immediate locality. Those communities 'downstream', whose farms and rivers may have been polluted as well, were forgotten.[62]

Besides, the inability of MNCs to design 'a coordinated strategic approach' to the execution of CSR programmes has generated lopsided outcomes and had insignificant effects on Niger Delta people.[63] For Evuleocha, the millions of dollars expended on scholarships, schools and agricultural extension projects have not had any significant impact on poverty alleviation or the socio-economic development of the region. MNCs have also not been able to expand their projects to reach 'the poorest and most ecologically devastated communities in the region'.[64]

For Amaeshi and others, most MNCs in the Niger Delta neither appreciate nor acknowledge home-communities peculiarities and local interpretations of CSR, but instead concentrate either on CSR directives from their home-countries or on CSR actions that are primarily aimed at the goal of profit maximization.[65] To other commentators, the informal execution of CSR undertakings and the

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[60] M Ukpongson and D Onu, 'Development Efforts of Oil Companies as Perceived by Rural Households in Selected Oil Producing Communities of Rivers State, Nigeria' (2004) *Journal of Agriculture and Social Research* Vol. 4(1)47-61

[61] That is when they react at all

[62] SU Evuleocha, 'Managing Indigenous Relations: Corporate Social Responsibility in a New Age of Activism' (2005) *Corporate Communications Vol. 10*(4) 328-340

[63] Uwafiokun Idemudia and UE Ite, 'Corporate–Community Relations in Nigeria's Oil Industry: Challenges and Imperatives' (2006) *Corporate Social Responsibility and Environmental Management Vol. 13* 194–206

[64] SU Evuleocha (n 62)

[65] K Amaeshi, BC Adi, C Ogbechie and OO Amao, 'Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?' (2006) *International Centre for Corporate Social Responsibility (ICCSR)* Research Paper Series 39 4 <http://195.130.87.21:8080/dspace/bitstream/123456789/1091/1/39-Corporate%20Social%20Responsibility%20(CSR)%20in%20Nigeria%20western%20mimicry%20or%20indigenous%20practice.pdf> accessed 13 May 2013

inability of the Nigerian state to react to the needs of the people have 'left the burden of dealing with the negative consequences of oil extraction on the communities'.[66] Oil MNCs included CSR in their corporate strategies only after hostilities against their activities intensified, beginning from the early 1990s.[67]

'Effective CSR' and Sustainable Development in the Niger Delta

Effective CSR (for the purposes of this thesis) is seen as the social responsibility practices of corporations that function as a core part of public governance and sets the parameters of how expenses and rewards are expended. It is the corporate action which clearly defines the various actors in the economic process and the respective roles they are expected to play in the production and distribution of wealth. As a result, effective CSR will stipulate the duties and responsibilities of the MNCs, as well as the rights and obligations of corporate stakeholders, including its employees, host-communities, the environment and the state that is expected to regulate their activities.[68]

In this context, effective CSR is the social responsibility obligation that contributes to sustainable development. What then is sustainable development? Many scholars, institutions and practitioners have tried to articulate and promote their own alternative definitions of sustainable development; yet a clear, fixed, and immutable meaning remains elusive. According to Kates and others 'the concrete challenges of (defining) sustainable development are at least as heterogeneous and complex as the diversity of human societies and natural ecosystems around the world'.[69]

However, since the concept of development itself is seen as the 'multidimensional changes involving progress or improvements in structures, institutions, the general aspects of life of a given people and entails the acceleration of economic growth, decline of poverty, and the reduction of

[66] SU Evuleocha (n 62)

[67] Uwem E Ite, 'Multinationals and Corporate Social Responsibility (n 54)

[68] Uwafiokun Idemudia 'Oil extraction and Poverty Reduction in the Niger Delta: A Critical Examination of Partnership Initiatives' (2009) *Journal of Business Ethics* Vol. 90 (1) *91-116 at 112*

[69] R. W. Kates, T. M. Parris, and A. A. Leiserowitz, 'What is Sustainable Development?: Goals, Indicators, Values and Practice' (2005) *Environment: Science and Policy for Sustainable Development* Vol. 47 (3) 8–21 at 20

inequality', sustainable development (for the purposes of this thesis) may be taken to mean the ability of society to maintain these improvements in structures and institutions, without destroying the balance between business and the environment.[70]

As good a definition of sustainable development is that of the Brundtland Report, produced by the World Commission on Environment and Development (WCED)[71] which defines the concept as the development that 'meets the needs of the present without compromising the ability of future generations to meet their own needs'.[72]

Furthermore, the Report states that;

> The environment does not exist as a sphere separate from human actions, ambitions and needs, and attempts to defend it in isolation from human concerns have given the very word "environment" a connotation of naivety in some political circles. The word "development" has also been narrowed by some into a very limited focus, along the lines of "what poor nations should do to become richer," and this again is automatically dismissed by many in the international arena as being a concern of specialists, of those involved in questions of "development assistance." But the "environment" is where we live; and "development" is what we all do in attempting to improve our lot within that abode. The two are inseparable.[73]

Sustainable development requires people to see the world as a system in which both space and time are connected. For the International Institute for Sustainable Development (IISD), seeing the world as a system extending across a given space makes it easier for actors to understand that pollution in one part of the world, for instance, may affect the quality of air in another part. The institute further argues that seeing development as a system over time leads to the realization that the decisions of people who

[70] M. P. Todaro and S.C. Smith, *Economic Development (*8th Edition, Harrow: Pearson Addison Wesley 2003)
[71] Initiated by the General Assembly of the United Nations in 1982
[72] World Commission on Environment and Development (WCED), *Our Common Future* (New York: Oxford University Press 1987) 11
[73] ibid

lived a hundred years ago may affect the lives of those who are living in the world today and that the actions of people today may affect the lives of the next generation.[74]

Sustainable development is the development which 'not only generates economic growth, but distributes its benefits equitably; regenerates the environment instead of destroying it; empowers people rather than marginalizing them; gives priority to the poor, enlarging their choices and opportunities, and provides for their participation in decisions affecting them'.[75]

According to the Brundtland Report, it is necessary for the world to work harmoniously towards creating a new path to development that will sustain human progress in the years to come, while simultaneously allowing economic actors to pursue their commercial interests. Accordingly;

> The concept of sustainable development does imply limits—not absolute limits but limitations imposed by the present state of technology and social organization on environmental resources and by the ability of the biosphere to absorb the effects of human activities.[76]

In 1992, the United Nations organized a world conference on the environment in Rio de Janeiro, Brazil.[77] The Conference was held to mark the 20 years of an earlier Conference on the Environment, held in Stockholm, Sweden in 1972. The 1992 Conference issued the Rio Declaration, which tried to reconcile global economic development with protection of the environment. The Declaration acknowledged that the only way the global community could enjoy long-term social and economic progress will be to connect economic progress with environmental protection and to establish even-handed international partnerships between governments and major players in the civil society and business sector, including international investors and multinational corporations.

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[74] International Institute for Sustainable Development, 'Sustainable Development: Environmental, Economic and Social Well-Being for Today and Tomorrow' (2007) <www.iisd.org/sd/> accessed 25 January 2015

[75] ibid

[76] WCED (n 72) 8

[77] The United Nations organised the World Conference on the Environment and Development Otherwise known as the Earth Summit

The Declaration equally advocated for the implementation of the 'polluter pays principle', through which any actor who pollutes an environment will have to bear the costs of pollution. It also advocated for the extensive use of the 'precautionary principle', which enjoins economic actors (especially multinational corporations) to undertake environmental assessments to identify adverse impacts of proposed actions and eliminate any potential harm from a project before such a project is commenced. The Declaration insisted that current developmental initiatives should not undermine the resource base of future generations and encouraged developed countries to accept the special responsibility of making this happen. According to it, developed countries should be saddled with this responsibility because of the pressures their societies place on the global environment and the technologies and financial resources at their disposal. Even though strong environmental policies are necessary, the Declaration warned that it should not be used as an excuse for restricting international trade and cutting-off trade between the developed and developing nations. Nevertheless, it urged nations to eliminate all forms of progressions in the economic process which lead to unsustainable development.[78]

The argument is that for effective CSR to lead to sustainable development, all stakeholders' interests (investors, lenders, employees, consumers, non-governmental organizations, debtors, suppliers and government) must be considered before any corporate decision is made. This is because these decisions generally have a direct impact on many or all of the other stakeholders. As such, the corporation needs to appreciate the importance of these other constituencies and take their interests into account when implementing commercial decisions that directly affect them.[79]

The pursuit of only shareholder profits by corporations (for instance, by terminating employees contracts unilaterally) may enhance shareholders profits, but will in the long run impact negatively on the economy and lead to unsustainable development. The same consequence follows when a corporation operates without due regard to the environmental needs of the communities where it functions. The host-community, frustrated by such careless assignment, may react negatively towards the corporation. The reaction, which may be in the form of aggressive and violent conduct (as

[78] WCED (n 72) 8

[79] R. Ackoff (n 35) above

witnessed in the Niger Delta), could lead to the cessation of corporate operations which in turn will affect the economy adversely.[80]

In this sense, when corporate executives see the maximization of profits as the primary business of the corporation, they usually make short-term decisions which harm and deplete the environment. For sustainable development to be realized, therefore, economic actors must operate within the environmental limits of the locality where they operate. This is taken to mean that corporations will strive to meet the diverse needs of people in existing and future communities, promote their personal wellbeing, create equal opportunities and foster social cohesion and inclusion between and among them.

From the foregoing, it is apparent that the interplay between the environment and the economy remains at the heart of sustainable development. Poverty is seen as one of the major determinants of how a particular society engages in sustainable development, mainly because it is seen as the propellant of unsustainable development. As a result, the 2002 UN World Summit on sustainable development, held in Johannesburg, urged states not only to take immediate steps to make progress in the formulation and elaboration of national strategies for sustainable development, but also to push for poverty eradication, as it is crucial to the attainment of environmental sustainability.[81]

What then amounts to sustainable development in the Niger Delta region? Sustainable development in the region is the present ability of the Nigerian government, the oil MNCs and the host-communities to efficiently exploit natural resources in the area for the benefit of all parties, without jeopardizing the future chances of the communities. It is seen as the preservation of the 'carrying capacity' of the delicate Niger Delta ecosystem and the 'progressive elimination of objective conditions that limit the capacity of the region's environment, as well as the reduction of fears and

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[80] ibid

[81] United Nations Division for Sustainable Development (UNDSD), 'Indicators of Sustainable Development: Guidelines and Methodologies' (2007) *National Sustainable Development Strategies* <*www.un.org/esa/sustdev/natlinfo/indicators/guidelines.pdf*> accessed 28 January 2015

anxieties about the ability of the environment to cater for the people who rely on it for their sustenance'.[82]

It is the realization that an unsustainable exploitation of crude oil, with its devastation of farmland and fishing waters, threatens the livelihood of both the individuals and the communities in the region. The concept advocates that MNCs in the region should embark on major oil exploration activities only after conducting Environmental Impact Assessments (EIA) to understand the effects of their operations on the Niger Delta communities and environment. In this context, sustainable development in the area is the protection of all parties concerned from poverty, exploitation, disease, bio-chemical contamination, injustice and human rights abuses. Essentially, the 'exploitation' of mineral oil and the attendant destruction of farmland and fishing waters jeopardizes the movement of sources of revenue for both individuals and communities. This, it is suggested, amounts to unsustainable development.[83]

From the foregoing, it is clear that all the parties involved in the crisis have various roles to play in realizing sustainable development in the region. In the first instance, government will have to provide an effective and conducive framework for the mining of oil in the area. It will have to support the activities of the corporations, while co-operating with the communities through quality leadership to enhance their social and economic well-being.[84]

Secondly, the oil MNCs will have to conduct their activities in accordance with the laws of the country. They will endeavour to use environmentally friendly equipment and processes in the conduct of their operations and immediately clean-up spills where and when they occur. They will also need to apply precautionary measures to make sure that their activities do not destroy the natural ecosystem of the host-communities and pay adequate compensation in cases where there activities injure the people and their communities.[85]

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[82] O Ibeanu, 'Oiling the Friction: Environmental Conflict Management in the Niger Delta, Nigeria' (2000) *Environmental Change & Security Project Report* Vol. 6 20

[83] O Ibeanu, 'Ogoni- Oil, Resource Flow and Conflict' in T Granfelt (ed.) *Managing the Globalised Environment* (London: Intermediate technologies Publications 1999) 23

[84] ibid

[85] Peter Utting, *The Next Step in Social Development* (Geneva: United Nations Research Institute for Social Development 2000) 60

Finally, the host-communities will have to co-operate with both the government and the oil corporations to actualize the interests of all parties. They should see the corporations as partners in development and not as opportunities for extortions and unjust enrichment. They will have to apply compensation funds to development projects and not use them to enrich their private pockets. It is on this premise of all the parties working together in harmony that sustainable development will be realized in the Niger Delta.[86]

Nigeria: A Privatised State?

One of the roles of the government is to mediate between conflicting interests of members in its territory and, as far as possible to reconcile them.[87] The relevant question in this context is; what role has the Nigerian government played in the Niger Delta conflict, considering that the crisis in the region is predicated on the conflicting interests between the host-communities and the oil MNCs? The suggestion is that instead of mediating between the two conflicting groups (and their conflicting interests); the government has sided with the MNCs – in significant part because it is dependent on them for its revenues.

Ibeanu contends that in contemporary societies, different groups interact with and oppose each other, as they struggle to satisfy their interests. The argument is that the principal function of the government is to reconcile conflicting interests and to confine them within the limits of acceptability.[88] In order to achieve this task, such government has to try to stand above different interest groups and strive to be an 'impartial arbiter', seeking to build consensus. In that situation, it becomes feasible for government to curtail the use of force in its supervision of the various

[86] Judith B. Asuni, *Understanding the Armed Groups of the Niger Delta* (New York NY: Council on Foreign Relations Working Paper 2009) 6

[87] S Amin, 'Preface: The State and the Question of Development' in PA Nyong'o (ed.) *Popular Struggles for Democracy in Africa* (London: Zed Press and United Nations University 1985) 3-5

[88] O Ibeanu, 'Oiling the Friction: Environmental Conflict Management in the Niger Delta, Nigeria' (2000) *Environmental Change & Security Project Report* Vol. 6 22

interactions. Thus, the management of opposing and contradicting social interactions throw up 'the problematic' of state autonomy.[89]

On the part of oil host-communities in Nigeria, their interest is seen as the preservation of the regenerative ability of the delicate Niger Delta ecosystem. From their perspective, the misuse of oil mining opportunities is indefensible, because the resultant devastation to farmlands and fishing waters' endanger the movement of resources and jeopardizes the survival of the people and their communities in general. Scarcity, caused by oil mining activities, is a major source of worry for oil producing communities who feel that their source of livelihood is being endangered.[90]

To the oil corporations, on the other hand, their interest is characterized by a continuous, ceaseless and unbroken production of crude oil at cut-throat prices. Encouraged by a pro-growth philosophy, they are interested only in the exploitation of oil to enhance and advance corporate profits, notwithstanding the 'environmental consequences and long term economic irrationality' of their actions.[91]

The argument is that the Nigerian government has been unable to carry out its functions in the Niger Delta region. Rather than acting and being seen as representing 'the general interests of the people', it is suggested that the Nigerian government has in effect, been 'privatized' and 'parcelled out' for the benefit of a special group, the oil MNCs. Many see this as an important contributory factor in the 'social struggles' witnessed in the Niger Delta and in the inability of the Nigerian state to reconcile the opposing forces in the crisis.[92]

It is suggested that the Nigerian government has metamorphosed into a tool at the disposal of the multinationals in their social struggles against the host-communities. Crucial here, of course, is the financial dependence of the state on the revenues delivered by the MNCs. The belligerence of the

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[89]See C Ake, 'The Future of the State in Africa' (1985) *International Political Science Review* Vol. 6 (1), 24; See also A Gramsci, *Selections from the Prison Notebooks* (London: Lawrence and Wishart 1971); See also, T Lumumba –Kasongo, *The Problematic of Liberal Democracy and Democratic Process: Lesson for Deconstructing & Building African Democracies in Liberal Democracy and Its Critics, Political Dysfunction and the Struggle for Social Progress* (Senegal: Codesira 2005) 8

[90]O Ibeanu, 'Ogoni- Oil, Resource Flow and Conflict' in T Granfelt (ed.) *Managing the Globalised Environment* (London: Intermediate technologies Publications 1999) 23

[91] KE Orji, 'National Security and Sustainable Development in Nigeria: Challenges from the Niger Delta' (2012) *African Research Review*, Vol. 6(1) Serial No. 24 199 25-26

[92] O Ibeanu, 'Oiling the Friction' (n 82) above, 25

host-communities poses a threat to state security. The argument is that what sometimes appears as intra-group conflict is, in fact, conflict between the state and the host-communities. Stated in another way, it is state aggression against a targeted group, and not the aggression of one group against another, that is to be found in the Niger Delta. Hence the belief held by many, that government involvement in the struggle, instead of helping to mediate and resolve the conflicts has in reality promoted and worsened the crisis.[93]

Ezirim asserts that the federal government has over the years supported the oil corporations. To him, this is not surprising, considering that the government collects rents from them. It has already been stated that through the combination of a set of local legislations, government expropriated both lands and mineral deposits located within the territory of Nigeria. The implication of this is that decisions concerning oil and gas exploitation are made directly by the government and the multinationals, to the exclusion of the host-communities. This has bred a growing feeling of alienation and neglect. The 'hobnobbing' between the government and multinationals has given the latter the opportunity of getting things done their way. The oil multinationals have fed the Nigerian state in an unequal partnership which has been formalized through joint agreements in the oil sector.[94]

Clearly, the strategic position of oil corporations in the country's economy has allowed them to form a lobby group capable not only of influencing but of shaping government policies, actions and decisions concerning the activities and development of host-communities. In short, the government appears to be more interested in the rents that are remitted to it by the corporations, than in fashioning out policies that check the excesses of the oil conglomerates and genuinely seek to reconcile the conflicting interests of the MNCs and the host-communities.[95]

Indeed, according to political commentators, the Nigerian government sees the conflicts in the Niger Delta as 'acts of insubordination' which challenge the sovereignty of the nation. For the government, this insubordination has to be curbed through the deployment of control measures,

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[93] ibid

[94] GE Ezirim, 'Resource Governance and Conflict in the Niger Delta: Implications for the Gulf of Guinea Region' (2011) *African Journal of Political Science and International Relations* Vol. 5(2) 64

[95] FC Anyim and others, 'Conflict and Environmental Challenges Facing the Oil Companies in Nigeria, Niger-Delta Region' (2012) *International Journal of Business and Management Tomorrow* Vol. 2(3) 4

including force and coercion, threats and intimidations, arrests and detentions, and outright invasion and destruction of lives and villages. The application of extreme force is utilized against community uprisings so as 'to force the aggrieved people into quiescence'.[96]

This has led to the indictment of the federal government as the principal reason for the under-development of the Niger Delta. Oil reserves are allowed to be extracted using 'expropriating laws and decrees', dispossessing host-communities of their rights to receive royalties. The federal government continues to stipulate not only how much is remitted by the multinational corporations but also how these payments are accumulated and disbursed. Moreover, the 'expropriating laws and decrees' deal only with 'operational issues' which serve the interests of the government and the multinationals, with little or no consideration for the interest of the local communities. This has led to the description of the Nigerian government as 'an unconscionable usurper and landlord' and the multinationals as 'exploitative illegal tenants'.[97]

Since the government relies heavily on oil for its public revenues, the argument is that it has 'deliberately' refused to enforce existing environmental legislations that would make the corporations behave more responsibly. The allegation is that government has failed to enforce these legislations because it hopes to draw more investors into the oil industry, while obtaining 'personal, political and economic' rewards from the multinationals.[98] Noticing the weakness on the part of government, MNCs have taken advantage of the ambiguity in Nigeria's legal framework to 'wreck havoc' on the natural environment, using and continuing to use weak national enforcement mechanisms to free themselves of responsibility for damages occasioned by oil spills and pollution in the area.[99]

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[96] RN Okoh, 'Conflict Management in the Niger Delta Region of Nigeria: A Participatory Approach' (2007) *Mercury Publishing <mercury.ethz.ch/serviceengine/Files/ISN/98107/.../Chapter5.pdf>* accessed 12 March 2013

[97] CS Ugoh and IW Ukpere, 'Oil Politics and the Niger Delta Development Conundrum' (2010) *African Journal of Business Management*, Vol.4 (6) 1170

[98] V Ojakorotu, *The Internationalisation of a Domestic Crisis: a Case Study of the Niger Delta in Nigeria, 1993-2003* (Draft Doctoral Thesis Department of International Relations, Wits University Johannesburg 2004) 101

[99] FN Ikome, 'Conflict in the Niger Delta: Issues and Dynamics' (2005) *Global Insight* Vol. 44 4

II

THE TURN TO CSR IN THE NIGER DELTA[100]

There is evidence that there was a kind of 'cooperative relationship' between MNCs and host-communities prior to the rise of violent struggles in the region. The case of *Nzekwu & another v AG East Central State & another* (1972),[101] is illustrative of the processes whereby relations between the two sides deteriorated. In the case, after agreeing to a particular sum as compensation for acquired land, the plaintiff family cooperated with Shell and Total when the MNCs acquired their family land for oil related activities. Problems arose when the government of the then East Central State of Nigeria acquired a bigger portion of the same family's land and offered compensation which the family considered to be inadequate, when compared to what the oil corporations had paid earlier. The family refused the government's 'small' compensation and went to court. This marked the beginning of a series of disagreements over natural resources between the people and the government. Indeed, it is believed that the government's stance over the acquisition of communal land set the stage for the violence witnessed today.[102]

The introduction by the Nigerian government of the enforced land and minerals expropriating legislations, and of a minimal or no compensation policy (discussed above) undoubtedly contributed to the distrust of both the government and oil corporations by host-communities. This distrust eventually led to the formation of indigenous, strong and radical civil society movements, like the Movement for the Survival of the Ogoni People (MOSOP) in 1990 and the Ijaw Youth Council (IYC)

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[100] For a detailed narrative of the history and course of the Niger Delta crisis, see; CI Obi, 'Globalization and Local Resistance: the Case of the Ogoni and Shell' (1997) *New Political Economy* Vol. 2 (1) 127-148; JG Frynas, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village* (Hamburg-London: LIT Publishers 2000) 55-56; C Ukeje, 'Oil Communities and Political Violence: the Case of Ethnic Ijaws in Nigeria's Delta Region' (2001) Terrorism and Political Violence Vol. 13 (4)15-36

[101] (1972) LPELR-SC.547/1966; See also *Ereku V Military Governor of Mid Western State* (1974) 10 SC 59

[102] C Ukeje (n 100) 26-27

in 1997-1998. The formation of these civil society organizations eventually led to the transformation of non-violent protests to violent conflicts.[103]

However, another significant factor that may have acted as a catalyst in the escalation of the Niger Delta crisis and the subsequent formation of social movements was the effects of neoliberal restructuring in Nigeria. The introduction of neoliberal principles and policies led to the occurrence of two different phenomena, which both stoked the fire of conflict in the region. Firstly, beginning from the late 1970s, neoliberal reorganization led corporations to pursue profit maximizing policies with greater ferocity. Corporations and corporate managers were placed under immense pressures to cut costs, not only by down-sizing, but also by leaving many facilities unmaintained. This naturally and inevitably led to increased oil spills and pollutions, gas flaring, forest and community fires, environmental degradations, unemployment and eventual deaths. As the search for profits was intensified, Ukeje asserts that the corporate duty of care towards both the environment and humans was de-prioritized.[104]

Notwithstanding the fact that all sections of the country's civil society were subjected to the damaging effects of the neoliberal structural adjustment programmes (SAPs), the oil host-communities in the Niger Delta suffered particularly badly. Considering the unfavourable nature of the Niger Delta ecology – the communities inhabit a suffocating and hostile territory made up of dense mangrove forests and swamps – and the effects of the increased exploitation of oil at the time of the SAPs, it was, perhaps, inevitable that the friction between the people and the corporations would get worse.[105]

Secondly, there can be little doubt that neoliberal restructuring contributed to the formation, explosion and reinforcement of 'social movements' in the same way that it strengthened 'the culture of mobilization' amongst civil society organizations in the country. The sustained contracting of 'the

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[103] There was, however, an isolated violent protest in 1966 in the Niger Delta. In the protest, rebelling youths led by Isaac Adaka Boro, under the aegis of the Niger Delta Volunteers Force (NDVF), queried the foundation of the 'fiscal and resource allocation' process in the country and campaigned for minorities' empowerment and political emancipation. The violent demonstration interrupted oil business for 12 days before it was suppressed by the Nigerian armed forces. It later came to be known as the Boro Revolution; See C Ukeje (n 100) 26-27

[104] C Ukeje (n 100) above, 20-22

[105] CI Obi, 'Globalization and Local Resistance: the Case of the Ogoni and Shell' (1997) *New Political Economy* Vol. 2 (11) 23

economic and political spaces' that came with neoliberal restructuring promoted the establishment of a 'coalition of active civil society organizations' opposed to the implementation of the SAPs. The disappointments of the neoliberal SAPs, introduced in Nigeria in 1986, together with disenchantment with long-lasting (un)democratic disasters, according to Ukeje, propelled many into forming 'largely informal, private, sectarian and ethnic groupings'.[106]

These groups and civil society organizations later became the focal point of the host-communities' resistance to oil activities in the area. Widespread and unchecked human rights violations by the government pushed many people deeper into poverty and deprivation, fuelled conflict, and led to a pervasive sense of powerlessness and frustration. Indeed, borrowing from the frustration-aggression theory,[107] it could be argued that much of the trouble in the Niger Delta is predicated on frustration. According to the theory, aggression usually has its foundation in the disappointment that actors experience when goals are not achieved. Disagreements and disputes occur as a consequence of the inability of one or more actor(s) to fulfil the aspirations and goals of an individual or group. This leads to a state of frustration, generating aggression.[108]

What is witnessed in the area becomes what Rosenau referred to as a 'pervasive authority crisis'.[109] This is a product of a gradual decline of belief in the 'existing social, political and economic' institutions. In these circumstances, he argues, people often transfer allegiance and power 'to ethnic minorities, local governments, single-issue organizations, religious and linguistic groups and political factions'.[110]This sub-grouping connotes the profound empathy individuals acquire 'for the associations, organizations and sub-cultures with which they have been historically, professionally, economically, socially or politically linked' and which gives them value (ibid).[111]

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[106] C Ukeje (n 100) above, 20

[107] See F Allen, *Implementation of Oil Related Environmental Policies in Nigeria: Government Inertia and Conflict in the Niger Delta* (Newcastle upon Tyne: Cambridge Scholars Publishing 2012) 12

[108] ibid

[109] JN Rosenau, 'Security in a Turbulent World' (May, 2005) *Current History* Vol. 592 193-200

[109] ibid

[110] Cyril I Obi, 'The Changing Forms of Identity Politics in Nigeria under Economic Adjustment: The Case of the Oil Minorities Movement of the Niger Delta' (2001) *Uppsala: Nordiska Afrikainstitutet, Research Report* No. 119 87 <liu.diva-portal.org/smash/get/diva2:246011/FULLTEXT01> accessed 15 March 2013

[111111] ibid

As was stated above, the establishment of the Movement for the Survival of Ogoni People (MOSOP) and the subsequent production of the Ogoni Bill of Rights in August, 1991 contributed significantly to the internationalization of the Niger Delta struggle, the subsequent involvement of international non-governmental organizations (NGOs) and the eventual adoption of corporate social responsibility (CSR) codes by multinationals in the region.

An appendix to the Ogoni Bill of Rights had mandated MOSOP to 'internationalize' the Ogoni resistance, while approving the Movement's non-violent techniques and modus operandi. In pursuit of non-violent resistance, the movement presented its case to the Unrepresented Nations and Peoples Organization (UNPO) at The Hague in 1992. At this conference, Ken Saro-Wiwa was able to draw compassion and approval from international bodies and was able to make contacts with international non-governmental organizations concerned with environmental and human rights issues. Images depicting the level of environmental degradation of Niger Delta communities at the Conference of the United Nations Human Rights in Vienna also exposed the predicament of the communities.[112]

International exposures of this sort, accompanied by the growing access to information and communication technologies were instrumental in propelling the resistance beyond local politics and into the international arena. The accessibility of phones, fax machines and the internet, together with the launching of substantive offices in the US and Europe offered MOSOP the opportunity to express its mandate and underscore the dilemma of the Niger Delta communities in the presence of global spectators. The IYC utilized comparable tactics to those of MOSOP by launching secretariats in Europe. The Council also applied information and communication technologies to make contact with concerned listeners within the country and overseas.[113]

[112] V Ojakorotu, 'The internationalisation of Oil Violence in the Niger Delta' (2008) *Alternatives: Turkish Journal of International Relations* Vol. 7 (1) 99

[113] ibid

The Involvement and Role of International NGOs

Through the activism of local civil society movements, numerous international human and environmental rights' non-governmental organizations became aware of the Niger Delta struggle. These international organizations offered significant financial support to the indigenous civil movements. For instance, the Movement for the Survival of Ogoni People (MOSOP) benefitted from foreign grants which made it possible for the Movement to strengthen its resistance and to increase the pressure being placed on both the Nigerian government and the multinational corporations, particularly Shell Petroleum. The Ijaw Youth Council, in collaboration with other civil society groups, worked in partnership with international non-governmental organizations for the provision of community assistance projects in the Niger Delta, including those in Anyama, Sangama and Okoroba.[114]

Since the civil society movements represented the persona of 'persecuted tribal minorities' internationally, the 'globalization' of the Niger Delta conflict made it possible for associations such as the Human Rights Watch (HRW), Amnesty International, Greenpeace, Friends of the Earth and many other international associations[115] to align strongly with and acknowledge the efforts of the resistance movements. Some of these international non-governmental organizations (INGOs) specialise in different areas of 'environmental politics'. A succession of 'fact-finding missions' sent to the region as part of the global 'environmental rights advocacy' of the organizations concerned indicted the Nigerian government and multinational corporations. Even the UN and the Commonwealth of Nations became involved.[116]

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[114] Cyril I Obi, 'Oil Minority Rights versus the Nigerian State: Conflict and Transcendence' (2001) *University of Leipzig Papers on Africa, Politics and Economics* Series No. 53 28

[115] Including the Africa Policy Information Centre, Book Aid International, Both Ends, Delta, World Council of Churches, Trocaire, the Rainforest Action Group, Bodyshop and the Committee for Writers in Prison of International PEN.

[116] V. Ojakorotu, 'The internationalisation of Oil Violence in the Niger Delta' (n 112) above 105; The Commonwealth Heads of Government Meeting (CHOGM) had suspended the country in their meeting holding in New Zealand at the time of the execution of the 'Ogoni nine'. The UN GA did adopt Resolution 50/199

Some of the non-governmental organizations, in addition to supporting and encouraging indigenous civil society organizations also took it upon themselves to report the activities of the multinational corporations in the Niger Delta. They sent out personnel to the troubled region to verify some of the alleged abuses. By sending out fact-finding missions, they were able to witness first-hand what was going on, enabling them to draw conclusions devoid of bias. This helped to give credence to the stories of the civil society movements. Some of the international movements petitioned the home-countries of the multinational corporations against inhuman corporate acts and assisted in broadcasting the plight of the communities to the whole world. Amnesty International and Friends of the Earth, for instance, submitted a written complaint to the UK and Dutch National Contact Point of the OECD in 2011, stating that Shell in the Niger Delta of Nigeria was in breach of many provisions of the OECD Guidelines for Multinational Enterprises.[117] They were also able to report isolated cases as they occurred and warned the global community of the dangers occasioned by the violence.[118] The organization helped to broadcast some of the abuses taking place in the area and how the multinational corporations were masterminding these events.[119]

Reactions to International Opinion: The Nigerian State

The globalization of the Niger Delta struggle highlighted the failure of the Nigerian government to reconcile the rival interests in the Delta region. Indeed, it became clear that the government's stance in the conflict had served to stimulate and animate the resolve of the resistant movements in their quest for self-determination. Nevertheless, notwithstanding the wide condemnation of its policies, by both

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dealing with 'the poor human rights record of the Nigerian government' on the 22 December, 1995; See <http://www.hrw.org/reports/1999/nigeria/Nigew991-12.htm> accessed 15 March 2013

[117] *Amnesty International and Friends of the Earth International V Royal Dutch Shell in the Niger Delta*, Complaint to the UK and Dutch National Contact Points under the Specific Instance Procedure of the OECD Guidelines for Multinational Enterprises 25 January 2011 <www.foei.org/en/resources/publications/pdfs/2011/oecd-submission> accessed 17 February 2013

[118] Human Rights Watch (HRW), 'The Destruction of Odi and Rape in Choba' (22 December 1999) *Executive Summary* </www.hrw.org/legacy/press/1999/dec/nibg1299.htm> accessed 5 March 2013

[119] ibid

NGOs and civil society organizations, the Nigerian government continues to attribute the root causes of underdevelopment in the area to the region's difficult terrain and people. It claims that as a result of the brittle nature of the delta environment, oil extraction has the capacity of upsetting the 'delicate balance between land, water and life'. [120]

The internationalization of the Niger Delta crisis generated various reactions from both the oil corporations and the government. By getting the international community involved, the indigenous civil movements stimulated the anger and rage of the multinationals, which in turn indicted the Nigerian government for incompetence in managing and restraining the actions of the local movements. The government reacted to this indictment in two ways; firstly it intensified its attempted suppression of the host-communities (this simply served to confirm and underline the influence of the corporations and their power to manage the affairs of the Nigerian state) and secondly, when force did not work, it then attempted to address some of the agitations of the civil movements.[121]

As a result, succeeding governments have initiated processes towards tackling some of the concerns raised by the civil movements. In the first instance, the government claims to have adjusted the allocation of revenues in the country in ways which favour states in the region. In the second instance, it appears reasonable to think that the resulting changes to government policy, through the creation of development agencies, represent the legacy of the opposition movements and the internationalization of the Niger Delta struggle.[122]

In this context, successive governments have established various bodies and government agencies to cater for the needs of the communities, including the Niger Delta Basin Development Authority (NDBDA), [123] established in August 1976; the Oil Mineral Producing Areas Development Commission (OMPADEC), established in 1992 by Ibrahim Babangida; and the Niger Delta

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[120] See CS Ugoh and IW Ukpere (n 97) above 1171

[121] CI Obi, 'Global, State and Local Intersections: Power, Authority, and Conflict in the Niger Delta Oil Communities' in T Callaghy, R Kassimir and R Latham (eds.) *Intervention and Transnationalism in Africa* (Cambridge: Cambridge University Press 2001) 173

[122] GT Akwen and DT Gever, 'Challenges of Democracy and Development in Nigeria's Niger Delta Region: An Appraisal' (2012) *European Scientific Journal* Vol. 8 (16) 60

[123]See NDBDA website < http://ndbda.blogspot.co.uk/> accessed 10 February 2014

Development Commission (NDDC),[124] established in 2000 by the civilian administration of Olusegun Obasanjo. These agencies were established to alleviate poverty in the region and to help foster peace between the communities, the government and the oil corporations. OMPADEC and NDDC were created in direct response to growing international pressures arising out of the escalation of conflict in the area. The NDDC is the current federal government agency 'helping to alleviate' poverty in the area at the time of this study.[125]

These boards and agencies have neither succeeded in alleviating poverty, nor brought peace and stability to the region. The reasons for their failures are not difficult to identify. In the first instance, they were mostly established with political motives. Those created by the military were established as 'public relations gestures to calm the brewing' conflict in the area.[126] Those created by civilian administrations became avenues for the 'settlement' of political cronies and loyalists. Most of the agencies lacked clearly defined plans of action and clearly defined objectives. As a result, they ended up engaging in 'white elephant projects' created to lure people into a false sense of contentment. The creation of hundreds of uncompleted projects, with little or no direct relevance to people's everyday lives is the legacy of these boards (particularly OMPADEC). And yet, huge amounts of money were expended in the projects.[127]

Secondly, the inefficiency and corruption of board members made it virtually impossible for them to succeed and eventually contributed to their failure. The agencies became avenues for officials to make quick money, with many colluding with multinational corporations to pillage and milk the region. In 1998 for instance, Eric Opia, the sole administrator of OMPADEC was sacked for his inability to account for ₦6.7 billion, then worth about US$80 million.[128] Critics have argued that the

[124]See the Agency's website <www.nddc.gov.ng/> accessed 10 February 2014

[125]BO Amadi and H Abdullah, 'Poverty Alleviation through Corporate Social Responsibility in Niger Delta, Nigeria' (2012) *Asian Social Science* Vol. 8(4) 58

[126]CI Obi, 'Changing Forms' (n 110)

[127]Ike Okonta and Oronto Douglass, *Where Vultures Feast; Shell, Human Rights and Oil* (London: Verso Books 2003) 5

[128]JG Frynas, 'Corporate and State Responses to Anti-Oil Protests in the Niger Delta' (2001) *African Affairs* Vol. 100 (398) 31

fact that Opia was not prosecuted, despite wide-spread allegations of corruption and collusion with Shell to dominate oil host-communities, is a major example of how corruption thrives in the county.[129]

Thirdly, the communities themselves were not consulted when the boards were constituted and were not involved in mapping out their objectives. People from non-oil producing areas of the country were drafted-in as board members while people from the oil-bearing communities themselves were under-represented. Host-communities continued to be starved of projects, meaning that while local people got poorer, non-indigenes got richer through board membership. Finally, the boards were dogged by extreme and sometimes unwarranted political interventions, erratic financial support, bureaucratic ambiguity and unaccountability, as well as by excessive operating costs.[130]

The current agency, the NDDC is also proving largely ineffective. There has been some progress – the board has completed some projects including the provision of basic social amenities, such as electricity, pipe-borne water, and building of roads, to various communities in the area – but the structure of the organization continues to limit its effectiveness. As a result of its status being advisory, it lacks the powers needed to implement its policies. Again, lack of funds poses real problems, making it impossible for the Board to complete some of its projects. The operation of NDDC is also not immune from political interference.[131]

Reactions to International Opinion: MNCs and Resort to CSR

The internationalization of the Niger Delta struggle contributed to the ‘perceived’ change in the ‘social investment approach’ of multinationals towards community development. They adopted social responsibility codes as part of their business engagements and expanded their corporate-community arrangements, from the provision of social amenities alone to that of community empowerment. According to Pegg, in 1997 Shell became the first of the oil multinationals to declare publicly its

[129]Ike Okonta and Oronto Douglas (n 127) 35
[130]BO Amadi and H Abdullah (n 125) above 59
[131] ibid 60

support for the Universal Declaration of Human Rights, and the corporation has addressed this issue in subsequent years in its reports on the corporation's financial, social and environmental duties.[132] The internationalization of the conflict has also led to the introduction and implementation of the Global Memorandum of Understandings (GMoUs)[133] between oil multinationals and host-communities in recent years.[134] According to Ojakorotu;

> In this way, the internationalisation of the Niger Delta crisis has forced the major key players in the crisis – the Nigerian state and the MNOCs – to review their attitudes towards the region's plight. However, their response has been two-fold: both hard and soft. On the soft side, there have been some efforts on the part of the state to address the developmental needs of the people through agencies like the NDDC while some of the oil companies (such as Shell) have increased their direct intervention efforts in community development and social responsibility.[135]

The presumption is usually that the emergence of CSR is connected to the phenomenon of globalization and an attendant anticipation that corporations will invariably plug the holes caused by global governance failures. The agitation for corporate social responsibility intensified as soon as it became possible for civil society groups and non-governmental organizations (NGOs) to uncover and publicize destructive and damaging corporate behaviour even in remote parts of the world. As a result, corporations have been subjected to growing public pressure, prompting them to respond more positively to calls for greater social engagement.[136]

It is clear that corporations engage in CSR for various reasons, including obtaining competitive advantage, maintaining a stable working environment, managing external perceptions,

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[132] S Pegg, 'The Cost of Doing Business: Transnational Corporations and Violence in Nigeria' (1999) *Security Dialogue* Vol. 30 (4) 474-475

[133] Discussed below

[134] This has been specifically used by Shell and Chevron to deal with the communities in the Niger Delta as part of their social responsibility practices.

[135] V Ojakorotu (n 126) above 114-115

[136] J.G Frynas, 'The False Development Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies' (2005) *International Affairs* Vol. 81 583

and keeping employees happy.[137] Doane extends the reasons further by asserting that the key drivers compelling corporations to engage in CSR include managing risks and reputations, protecting human capital assets, responding to consumer demands and avoiding regulation.[138]

Before the embrace of social responsibility codes, MNCs in Nigeria claimed to be devoted to balancing economic performance with social responsibility and environmental protection. Ite reports that the corporations claimed that since they performed their commercial activities honestly, professionally, competently, and in accordance with local legislations, they could not be expected to do more. These commercial activities, they insisted, produces wealth for the Nigerian state, generating 'royalties and taxes,' as well as direct and indirect employment.[139]

As a result, oil corporations argued that it was not their responsibility to cater for the people's welfare. They pointed accusing fingers at the government and directed host-communities to hold their leaders accountable for the under-development of their communities.[140] As the pressure being exerted by international organizations grew, however, this uncompromising attitude gradually changed. The corporations began to embrace social responsibility codes and practices. In pursuance of the social responsibility principles, oil corporations have now adopted General Business Principles or Codes of Conduct which govern their behaviour and affairs.[141]

The history of corporate principles and codes is traced to the International Labour Organization's (ILO) Tripartite Declaration of Principles Concerning Multinational Enterprises and

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[137] Ibid

[138] D Doane, 'Beyond Corporate Social Responsibility: Minnows, Mammoths and Markets' (2005) *Futures* Vol. 37 215

[139] Uwem E Ite, 'Changing Times and Strategies: Shell's Contribution to Sustainable Community Development in the Niger Delta' (2007) *Sustainable Development* Vol. 15 7

[140] V. Ojakorotu and A Whetho, 'Multinational Corporations and Human Rights Abuses: A case Study of the Movement for the Survival of Ogoni People and Ijaw Youth Council of Nigeria' (2008) <http://rsmag.org/wp-content/uploads/2008/06/multinational200802.html> accessed 1 March 2013

[141] See for instance Royal Dutch Shell Plc., 'General Business Principles' <http://s06.static-shell.com/content/dam/shell/static/public/downloads/corporate-pkg/sgbp-english.pdf> accessed 9 March, 2013; ExxonMobil, 'Codes of Business Ethics' <http://www.exxonmobil.co.uk/corporate/files/corporate/investor_governance_ethics.pdf> accessed 9 March 2013; The Chevron Way, 'Getting Results Right' <http://www.chevron.com/documents/pdf/chevronwayenglish.pdf> accessed 12 April 2013

Social Policy, adopted by the ILO Governing Body in 1977. The declaration was drafted with the significant participation of the business sector. It affirms, amongst other things that:

> All Parties concerned by this Declaration should respect the sovereign rights of states, obey the national laws and regulations, give due consideration to local practices and respect relevant international standards. They should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly of the United Nations as well as the Constitution of the International Labour Organization and its principles according to which freedom of expression and association are essential to sustained progress. They should also honour commitments which they have freely entered into, in conformity with the national law and accepted international obligations.[142]

Other international principles and codes formulated for the adoption and use of MNCs include: the Wolfsberg Principles dealing with anti-money laundering guidelines to direct states and multinationals[143]; the Voluntary Principles for Security and Human Rights (VPSHR) initiated by the US State Department and the Foreign and Commonwealth Office of the United Kingdom in December 2000[144]; the Caux Round Table Principles for Responsible Business[145]; the OECD Guidelines on Multinational Corporations (2000, updated 2011); the OECD Bribery Convention on Combating Bribery of Foreign Officials in Conducting International Business[146] and the very recent Extractive Industries Transparency Initiative (EITI)[147]with its Nigerian arm; the Nigerian Extractive Industries Transparency Initiative (NEITI).[148]

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[142]Par. 8, (1978) ILO Document OB Vol. LXI, Series A, No.1; The ILO is a tripartite organization, with representatives of governments, business, and labour having admission to its executive branch as members of national delegations.

[143] See <www.wolfsberg-principles.com/statement_against_corruption.html> accessed on 11 March, 2013

[144] See <http://voluntaryprinciples.org/files/voluntary_principles_english.pdf> accessed 12 March 2013

[145] See Caux Round Table; Morality at Work available at www.cauxroundtable.org/index.cfm?menuid=8 accessed 11 March 2013

[146]See OECD website at <www.oecd.org/daf/inv/mne/48004323.pdf > accessed 12 March 2013 and <www.oecd.org/daf/anti-bribery/anti-briberyconvention/38028044.pdf> accessed 12 March 2013

[147]Extractive Industries Transparency Initiative (EITI) <http://eiti.org/> accessed 10 February 2014

[148] Nigerian Extractive Industries Transparency Initiative (NEITI) <http://neiti.org.ng/index.php?q=pages/about-neiti> accessed 10 February 2014

Codes of conduct have become 'common artefacts' in the modern business world. Their adoption has been championed by people with different perspectives: the moral perspective,[149] the professional norm perspective,[150] the business principles perspective[151] and the stakeholder perspective.[152] They are described as representing 'a heuristic tool through which companies enter into a discourse about themselves'.[153] They are the 'voluntary written declarations of companies' commitments to address the social and environmental conditions of their activities'.[154] They reveal a corporation's behavioural attitude towards society and the environment. The corporations not only create these principles but also assume responsibility for their implementation. They are not legally binding and, as such, allegedly introduce issues of ethics and morality into corporate management.[155]

The non-binding nature of principles and codes was confirmed by R.M Wiseman, the General Counsel and Company Secretary of Shell UK Limited, who wrote that after consulting 'widely' on the nature of general business principles of Shell, and the intentions of those who drafted the statement, the conclusion was that there was no intention to create a document for use in the courts.[156]

> It was intended to lay down a code of behaviour by which we think we should be judged by the public at large and in this respect perhaps define higher standards than some other commercial organisations impose upon themselves.[157]

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[149] MS Schwarz, 'A Code of Ethics for Corporate Code of Ethics' (2001) *Journal of Business Ethics* Vol. 41 27

[150] MS Frankel, 'Professional Codes: Why, How and with What Impact?' (1989) *Journal of Business Ethics* Vol.8 109

[151] C Forcese, *Commerce with Conscience? Human Rights and Business Codes of Conduct (*Montreal: International Centre for Human and Democratic Development Publication 1997) 1

[152] CC Langlois and BB Schlegelmich, 'Do Corporate Codes of Ethics Reflect National Character? Evidence from Europe and the United States' (1990) *Journal of International Business Studies* 4th Quarter 519

[153] E Bethoux, C Didry and A Mais, 'What Codes of Conduct Tell Us: Corporate Social Responsibility and the Nature of Multinational Corporations' (2007) *Corporate Governance: An International Review* Vol. 15(1) 77

[154] Kenneth Amaeshi and Olufemi Amao, 'Corporate Social Responsibility in Transnational Spaces' (2009) *Journal of Business Ethics* Vol. 86 226- 227

[155] Ibid

[156] GE Ezirim, 'Multinationals and Adherence to the United Nations' Global Compact: A Focus on Shell Petroleum Development Company in Nigeria' (2011) *Journal of Sustainable Development in Africa* Vol. 13 (3) 159

[157] RM Wiseman, cited in R Ekpu, 'Corporate Social Responsibility and Peace in Oil Producing Communities' (2007) *NNPC News: Monthly News Bulletin of Nigerian National Petroleum Corporation* Vol. 29 (9) 16

The underlying reason for corporate codes, as already stated, seem to lie in pressures from civil society and the desire to avoid external regulation. The effectiveness of codes in regulating the conduct of multinationals is, however, much disputed. This is because, as a result of their voluntary nature, codes are ineffective unless supported by corporate managers and executives with a strong level of commitment towards ethical issues – and by managers and executives who are willing to listen to pressures from non-governmental organizations and civil society groups. For a code to be effective, therefore, there is the need for all interest-holders to participate in its formulation. It is only on this premise of general participation, that the promise of codes can be realised significantly.[158]

Through these principles and codes, MNCs in the Niger Delta affirm their responsibilities to the communities and to the environment. Even though it is within the purview of government to provide social amenities and infrastructures for the people, it is also possible to make 'an ethical' case that the corporations too should embark on developmental activities in the areas where they operate. This is because oil corporations arguably require 'social licenses' to operate, especially in a conflict-prone zone such as the Niger Delta. MNCs have accordingly, increased their corporate responsibility activities over the years. They now claim to be corporate 'citizens', involved in the development of host-communities.[159]

III

OIL MNCs' CSR CLAIMS IN THE NIGER DELTA

Niger Delta oil fields increased from a mere 78 in the 1980s to more than 606 in the 1990s. This increase led to a high influx of MNCs into the region, which in turn led to a significant increase in the volume of interactions between host-communities and MNCs.[160] Idemudia and Ite suggest that the

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[158] T Donaldson, 'Moral Minimums for Multinationals' (1989) *Ethics and International Affairs* Vol. 3 (1) 28

[159] ibid 3

[160] PK Inokoba and DL Imbua, 'Vexation and Militancy in the Niger Delta: The Way Forward' (2010) *Journal of Human Ecology* Vol. 29(2) 102

intensification of oil activities caused a considerable amount of environmental and socio-economic upheaval for the people living in the region.[161]

As was suggested above, the internationalization of the Niger Delta conflict led NGOs and civil society organizations to exert pressures on oil MNCs in the region and led oil MNCs' to 'embrace' CSR as a direct response to the growing pressures. The NGOs and civil society movements argued that it was necessary for corporations to harmonize the 'intricate' relationship between alleviating socially damaging corporate actions and encouraging sustainable development in host-communities.[162] In this context, Frynas argued that by laying claim to CSR, oil MNCs declared their commitment towards evaluating the social and environmental impacts of their activities on the host-communities.[163]

The following sub-sections will now investigate the various CSR claims of the big four in the Niger Delta – Shell Petroleum, ExxonMobil, Chevron and Total oil.

Shell Petroleum and CSR in the Niger Delta

Shell Petroleum controls almost 50% of all oil explorations in Nigeria, thus, making it the biggest oil MNC in the country. For more than 60 years, the corporation has been at the forefront of oil production in Nigeria, with its operation expanding every year.[164] In 2011, it grossed nearly US$29 billion in profit, and over US$24 billion of this sum came from upstream activities.[165] The corporation continues to double the production of oil and natural gas liquids (NGL) in Nigeria. In 2010, it

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[161] Uwafiokun Idemudia and Uwem E Ite, 'Corporate- Community Relations in Nigeria's Oil Industry: Challenges and Imperatives' (2006) *Corporate Social Responsibility and Environmental Management* Vol. 13 199

[162] Rhuks T Ako, Lawrence O Obokoh and Patrick Okonma, 'Forging Peaceful Relationship between Oil Companies and Host-Communities in Nigeria's Delta Region: A Stakeholder's Perspective to CSR' (2009) *Journal of Enterprising Communities; People and Places in the Global Economy* Vol. 3(1) 206

[163] ibid

[164] B Gbinije, 'Between the Delta State Govt. and Shell' (26 April 2013) *Vanguard Newspapers* <www.vanguardngr.com/2013/04/between-the-delta-state-govt-and-shell/?utm_source=dlvr.it&utm_medium=twitter> accessed 1 May 2013

[165] Simon Pegg and N Zabbey, 'Oil and Water: The Bodo Spills and the Destruction of Traditional Livelihood Structures in the Niger Delta' (2013) *Community Development Journal* Vol. 48 (3) 391–405 at 393

produced 302,000 barrel per day (b/d) of crude oil and 587 million standard cubic feet (SCF) of natural gas. Oil production has reached some 500,000 b/d and is expected to increase to about 700,000 b/d. This is the reason why critics argue that Shell played (and continues to play) a vital role in the country's economic advancement.[166]

The corporation declares that in accordance with legal requirements, it donates a percentage of its annual earnings to the Niger Delta Development Commission (NDDC). In 2010, for instance, it claims to have donated over $59.80 million to the development agency as part of its obligations to the Nigerian government. This sum excludes the $22.85 million which it expended on specific CSR projects in the region.[167]

In terms of specific CSR projects in the region, the corporation states that it has made significant contributions to education through annual scholarships to more than 4,000 Nigerian undergraduates to study in Nigerian Universities and 10 annual scholarships to Nigerian students for post-graduate studies in three UK Universities; Imperial College London, University College London and the University of Leeds.[168]

On health-care, it claims to have contributed immensely towards the provision of adequate health-care to Niger Delta inhabitants. It states that it has more than 27 health facilities in the area, with over 880 community health-staff workers.[169] On youth empowerment, Shell states that it introduced a comprehensive youth empowerment scheme targeted at youths in Rivers, Bayelsa, Delta, Imo, Abia, Akwa Ibom and Edo states.[170] In 2009, the corporation expended over $710,000 to train 306 young people in a variety of tasks 'including welding, pipefitting and carpentry, enterprise and

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[166] Andrew Burger, 'Shell in Nigeria: Oil, Gas, Development & Corporate Social Responsibility' (2011) *Triple Pundit*: *People, Planet, Profit* <www.triplepundit.com/2011/07/shell-nigeria-csr-corporate-social-responsibility/> accessed 28 April 2012

[167] Gloria Udoh, 'Shell in Nigeria – Working in a Complex Environment' (21 July, 2011) *a Shell Interactive Session* <www.shelldialogues.com/sites/default/files/Nigeria%20Webchat%20-%20July%202011%20-%20Session%201.pdf> accessed 10 February 2014

[168] See <www.shell.com.ng/environment-society/shell-in-the-society/education-programmes/students/scholarships/university-scholarship.html> accessed 10 February 2014

[169] See <www.shell.com.ng/environment-society/shell-in-the-society/health.html> accessed 10 February 2014

[170] See <www.shell.com.ng/environment-society/shell-in-the-society/youth-development/youth-development-scheme.html> accessed 10 February, 2014

leadership development, and conflict management'.[171] Shell also claims to have introduced a micro-finance credit scheme to help those interested in business and the scheme has helped over 30,000 people to launch or develop their own businesses. In 2009, 27 new micro-credit opportunities were offered to 2,700 women and youths to set-up their own small-scale businesses.[172]

On environmental pollution and degradation, the corporations states that the bulk of oil spills in the area are caused by criminal activities and that it is committed to cleaning up oil spills when and wherever they occur , in line with very strict government regulations and Shell standards, which are comparable to other places in Europe and America.[173]

Apparently,[174] some Niger Delta inhabitants believe that Shell has been socially responsible. In an interview conducted by Tuodolo in a small number of communities, some of the inhabitants praised the corporation for its benevolence to them.[175] In similar vein, Ite asserts that an investigation in Ughoton community confirms that a group of elderly men and women see Shell as the main provider of basic amenities to Niger Delta villages, thus, reflecting the corporation's contributions to the development of indigenous communities in the area.[176]

ExxonMobil and CSR in the Niger Delta

ExxonMobil is one of the world's major oil MNCs with subsidiaries in almost 200 countries.[177] Through a definitive agreement signed in 1998,[178] two formerly distinct oil corporations, Exxon and

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[171] ibid

[172] See <www.shell.com.ng/environment-society/shell-in-the-society/business-development/micro-credit.html> accessed 10 February, 2014

[173] See statement of M Sunmonu, contained in Shell in Nigeria (n 168)

[174] Perhaps in view of the apparent neglect of the area by successive Nigerian Governments

[175] Felix Tuodolo, 'Corporate Social Responsibility: Between Civil Society and the Oil Industry in the Developing World' [2009] *ACME; An International E-Journal for Critical Geography* Vol. 8 (3) 536

[176] Uwem E Ite, 'Multinationals and Corporate Social Responsibility in Developing Countries: A Case Study of Nigeria' (2004) *Corporate Social Responsibility and Environmental Management* Vol. 11 3-4

[177] D Onu, 'Development Efforts in Oil Companies as Perceived by Rural Households in Selected Oil Producing Communities of Rivers State, Nigeria' (2004) *Journal Of Agriculture and Social Research* Vol. 4 (1) 60

[178] Worth around US $73.7 billion

Mobil merged to form ExxonMobil. The merger was completed on 30 November, 1999 and the new corporation arguably became the largest oil MNC in the world.[179]

In 2002, ExxonMobil officially replaced the earlier community assistance CSR approach (corporate philanthropy) with the local capacity building and economic empowerment strategy (LCBEES).[180] This modification became necessary because it became clear to the corporation that for a community to enjoy a strong and sustainable development, it has to create wealth through self-help and not through corporate 'redistribution of income, assets or gifts'.[181] This is in agreement with the argument that genuine social development is best realized through individual efforts and not through charity and corporate philanthropy.[182]

In line with the LCBEES strategy, ExxonMobil in April 2002 launched the Integrated Community Development Project (ICDP) in conjunction with the Akwa Ibom State government. The ICDP focuses on capacity building primarily through the provision of micro-credit schemes for individuals and corporate bodies. The operation of the ICDP is based on a support agreement and memorandum of understanding (MoU) signed by the various partners.[183] The MoU specifies the obligations of each collaborator. ExxonMobil supplies the requisite capital and participates in selecting the communities that will benefit from the project.[184] Furthermore, the corporation awards 10 overseas post-graduate scholarships annually to Nigerian students worth US$60,000 each for one year and US$80,000 for a two-year course.[185]

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[179] See <www.exxonmobil.com/Corporate/history/about_who_history.aspx> accessed 30 April 2012

[180] OJK Ogundele, *Management and Organisations: Theory and Practice* (Lagos: Molofin Alominee Publishers 2005) 78

[181] ibid

[182] J Moon, 'Business Social Responsibility; A Source of Social Capital' [2001] *Journal of Philosophy of Management* Vol. 1 (3) 386

[183] Various partners here mean the oil company, the state government, participating NGOs and the host-communities; See O Okoji, 'Corporate Social Responsibility of Multinational Oil Corporations to Host Communities in Niger Delta Nigeria' (1997) *Niger Delta Environmental Survey* <http://readperiodicals.com/201009/2087472391.html> accessed 27 April 2012

[184] JG Frynas, 'The False Development Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies' [2005] *International Affairs* Vol. 81 (3) 581; for a detailed list of the various CSR projects executed by ExxonMobil, see 'Mobil Community News Bulletin' (2009) Vol. 7(4) 2; See also D Mbat, E Ibok and E Daniel, 'Exxon-Mobil and Corporate Social Responsibility in Akwa Ibom State, Nigeria: Past and Present' (2013) *Public Policy and Administration Research*, Vol. 3(3) 25

[185] See < www.exxonmobil.com.ng/Nigeria-English/pa/community_education.aspx> accessed 10 February, 2013

ExxonMobil states that for almost a decade, it has been in the vanguard of the war against malaria in Nigeria. It says that it has used its local associate, MPN, to expend over $15 million dollars in the fight against malaria. Through the activities of the Family Health Care Association – a partner of ExxonMobil in Nigeria – it was able to distribute 85,000 mosquito nets and organize malaria control workshops for more than 3000 health workers and 120,000 community members. It also 'treated 1,670 pregnant women and used the rapid diagnostic test to examine and treat 27,310 people in rural communities'.[186]

ChevronTexaco and CSR in the Niger Delta

ChevronTexaco Nigeria Ltd is a product of the merger between two US oil corporations, Chevron and Texaco.[187] Chevron Nigeria Limited (CNL) was incorporated in the country in 1961. Two years later, it discovered the nation's first successful offshore oil field near Warri in Delta State.[188] As at 2006, the corporation's total daily production from 30 fields averaged 387,000 barrels of crude oil, 72 million cubic feet of natural gas and 5,000 barrels of liquefied petroleum gas (LPG).[189]

ChevronTexaco is the third-largest oil producer in Nigeria and one of its largest investors. The corporation states that it spends over US$3 billion every year in the country.[190] It maintains that it has always acted in a 'mature and socially responsible' manner towards host-communities and argues that

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[186] See <www.exxonmobil.com.ng/Nigeria-English/pa/community_health.aspx> accessed 10 February, 2014

[187] L Okafor, 'Enhancing Business-Community Relations: ChevronTexaco Case Study' (2003) *New Academy of Business*, <http://www.worldvolunteerweb.org/fileadmin/docs/old/pdf/2003/031201_EBCR_NGA_chevrontexaco.pdf> accessed 1 May 2012

[188] Chevron Nigeria Limited, '2010 CSR Report: People, Partnership and Progress' (2010) *Chevron Website* <www.chevron.com/documents/pdf/CNL-2010-CR-report.pdf> accessed 1 May 2012

[189] SA Faleti, 'Challenges of Chevron's GMOU Implementation in Itsekiri Communities of Western Niger Delta' (2007) *Peace & Conflict Studies Programme, Institute of African Studies, University of Ibadan* <www.ifra-nigeria.org/IMG/pdf/Stephen_FALETI_-_Challenges_of_Chevron_GMOU_Implementation_in_Itsekiri_Communities_of_Western_Niger_Delta.pdf> accessed 12 July 2013

[190] 'Chevron Nigeria launches 2012 Corporate Responsibility Report' (5 July, 2013) *Sweet Crude Reports: A Review of the Nigerian Energy Industry* <http://sweetcrudereports.com/2013/07/05/chevron-nigeria-launches-2012-corporate-responsibility-report/> accessed 10 February 2014

the significant US$56 billion it has expended in community investments since 1991 proves its social responsibility claims. This amount, expended in the building and refurbishing of schools, execution of health programmes, implementation of scholarship schemes and execution of progressive environmental initiatives, represents a high level of corporate concern for community welfare.[191] In 2005, the corporation adopted the Global Memorandum of Understanding (GMOU) approach to community development in the Niger Delta, which in contrast to the earlier corporate-community relationship (CCR) structure, is participatory as communities are allowed to take greater responsibilities for their development.[192]

The GMOUs have led to the execution of 200 projects in 425 communities, villages and chiefdoms. The scheme has also delivered loans to more than 2,000 persons in the Niger Delta. Chevron maintains that through its RDC scheme, it has overseen the commissioning of 29 projects, in various locations in the Niger Delta.[193]

On environmental conservation, the corporation insists that it has made 'the responsible management of environmental issues' an essential aspect of its main business. It limits the consequences of oil mining on the environment through the utilization of 'superior technology in its drilling and seismic' operations. It continues to take important steps towards the restoration and revitalization of the mangrove vegetation in the Niger Delta.[194]

TOTAL and CSR in the Niger Delta

Consecutive mergers between Total and Petrofina in 1999 and between Totalfina and Elf in 2001 resulted in the fourth largest oil MNC in Nigeria. The name Total was adopted after the merger was

[191] See Company's website (n 188) above
[192] SA Faleti (n 189) above
[193] See Corporation's website <www.chevron.com/countries/nigeria/> accessed 3 May 2012
[194] Chevron's '2011 Corporate Responsibility Report' <www.chevron.com/documents/pdf/corporateresponsibility/Chevron_CR_Report_2011.pdf> accessed 10 February 2014

formalized in May 2003 and Total Nigeria PLC is the Nigerian subsidiary of Total Corporation.[195] Prior to the merger, TOTAL and Elf traded separately in Nigeria.[196] Currently, there are three subsidiaries of TOTAL in Nigeria; Elf Petroleum Nigeria Limited (EPNL), TOTAL Upstream Nigeria Limited and TOTAL Liquefied Natural Gas Nigeria Limited. Elf Petroleum Nigeria Limited controls both offshore and onshore oil extraction and production in Akwa Ibom and River states.[197]

In its website, the corporation pledges its support for CSR and declares its desire to help Nigeria and its communities actualize sustainable development in the long term. It further expresses its commitment towards advancing the quality of life of the average Nigerian, by contributing to the long term sustainable development of host-communities.[198]

In 2002, the corporation – much like other MNCs in the region – modified its traditional method of community assistance and introduced a new corporate-community-relationship approach to CSR, in partnership with NGOs and host-communities. This change became necessary because community assistance and corporate philanthropy had failed to deliver meaningful development to host-communities.[199] In line with this new approach, the corporation asserts that between 2009 and 2012, it used its social responsibility scheme to train about 1,200 youths from Akwa Ibom, Delta and Rivers States in businesses, implemented a joint venture sponsored Community Free Health Programmes and built hospitals in various communities in the region.[200]

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[195] See the Company's website <http://www.total.com.ng/os/osnigeria.nsf/VS_OPM/0E691C67E600B0D0C125710400312497?OpenDocument > accessed 30 April 2012

[196] Kenneth Amaeshi and Olufemi O Amao, 'Corporate Social Responsibility in Transnational Spaces: Exploring Influences of varieties of Capitalism on Expressions of Corporate Codes of Conduct in Nigeria' (2009) *Journal of Business Ethics*, Vol. 86 230

[197] O Okoji (n 183)

[198] Total's website <http://www.ng.total.com/02_about_tepng/0201_about_tepng.htm> accessed 30 April 2012

[199] ibid

[200] ibid

IV

DIFFERENTIATING BETWEEN POSITIVE AFFIRMATIVE AND NEGATIVE INJUNCTION CSR DUTIES

From the evidence above, it is apparent that oil corporations in the Niger Delta have embarked on various projects – especially in the last decade – as proof of their socially responsible behaviour. They have initiated and executed development schemes for the benefit of host-communities. Nevertheless, it has also been suggested that oil activities have caused much harm to the Niger Delta environment. For the inhabitants of the region, therefore, in reality the harmful consequences of oil mining far-outweigh the positive CSR projects of oil corporations.[201]

In looking at the adverse consequences of oil mining, as opposed to the CSR projects of oil MNCs, commentators have suggested an important distinction between two different CSR obligations which oil MNCs are expected to comply with.[202] The first is the positive obligation or 'affirmative duty' and the second is the duty to care for the environment or 'negative injunction duty'. The affirmative duties are those obligations which corporations perform in aid of host-communities, including the building of roads, hospitals, schools, initiating and executing electrification projects and the commissioning of water boreholes, etc. On the other hand, negative injunction duties involve preventing and rectifying social injuries that may arise in the process of realizing business objectives – including oil spills, water and air pollutions, gas flaring, acid rains, forest fires etc. Meeting these negative injunction duties are fundamental aspects of CSR, because they make up the 'moral minimum' which every corporation is expected to observe.[203]

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[201] F Bird, *Wealth and Poverty in the Niger Delta: Reflections on the History of Shell's Operations in Nigeria* (Montreal: Concordia Press, 2004) 28

[202] See GU Ojo, 'Community Perception and Oil Companies Corporate Social Responsibility Initiative in the Niger Delta' (2012) *Studies in Sociology of Science,* Vol. 3(4) 13; See also Uwafiokun Idemudia and Uwem E Ite, 'Corporate- Community Relations in Nigeria's Oil Industry: Challenges and Imperatives' (2006) *Corporate Social Responsibility and Environmental Management* 13 199

[203] GJ Simon, WC Powers and PJ Gunnemann, 'The Responsibilities of Corporations and their Owners' in T.L. Beauchamp and N. E. Bowie (ed.) *Ethical Theory and Business* (Englewood Cliffs: Prentice-Hall 1972) 60-75

At the centre of the CSR debate in the Niger Delta is the contention that positive affirmative duties and the duty to care for the environment operate reciprocally. By fulfilling the duty of care not to damage the environment, value is created. The value thus created is further enhanced through the performance of affirmative duties.[204] The CSR practices of oil multinationals, it is suggested, are principally affirmative in nature. The crisis in the region is therefore, predicated mainly on the failure of MNCs to fulfil the negative injunction duties. As Ojo asserts, they seem to have over-concentrated on the affirmative obligations, to the detriment of the negative injunction duties.[205]

According to Duruigbo and others, host-communities continue to suffer from the adverse and obnoxious effects of oil activities, which may be social, economic or environmental.[206] These critics report that between 2000 and 2004, there were approximately 5,400 recorded occurrences of oil spills in the Niger Delta.[207] The fact that this number was recorded by the MNCs themselves mean that there may be more – especially when it is considered that obtaining information on events like oil spills in Nigeria are difficult.[208]

For Idemudia and Ite, the failure to fulfil the negative injunction duties lies at the heart of the crisis in the region. They contend that no amount of road construction or classroom renovation can offset the consequences of oil pollution and no amount of electrification project or award of scholarship can balance the effect of gas flaring on the host-communities.[209] What is the use of a classroom block built by an oil corporation, if a community's river is destroyed by the same corporation? According to Ukpongson and Onu, this is why it is necessary for the MNCs to

[204] Daniel Ogula 'Corporate Social Responsibility: Case Study of Community Expectations and the Administrative Systems, Niger Delta' (2012) *The Qualitative Report* Vol. 17 (73) 5

[205] GU Ojo (n 202)13 ; See also Uwafiokun Idemudia, 'Conceptualising the CSR Development Debate: Bridging Existing Analytical Gaps' (2008) *Journal of Corporate Citizenship Vol.* 28 101

[206] E Duruigbo, O Wozniak and M Leighton, *Oil development in Nigeria: a Critical Investigation of Chevron Corporation's Performance in the Niger River Delta* (Natural Heritage Institute-nautilus institute- Human Rights Advocates: Berkeley, 2001) cited in U. Idemudia and UE Ite (n 203)

[207] O Onwuchekwa, '5400 Spills Threaten Niger Delta' (24 November, 2004) *Daily Champion Newspapers* <http://allafrica.com/stories/printable/200411240494.html> accessed 9 May 2012

[208] E Duruigbo and others (n 206)

[209] U Idemudia and UE Ite, 'Corporate- Community Relations in Nigeria's Oil Industry: Challenges and Imperatives' (2006) *Corporate Social Responsibility and Environmental Management* Vol. 13 199

understand that CSR extends beyond investing in the creation of new sources of livelihood. It also includes the duty to protect and preserve existing sources of subsistence for the host-communities.[210]

In the final analysis, no amount of positive affirmative duties will replace the duty of adherence to the moral minimum – care for the environment.

Effects of Non-Performance of the Duty to the Environment: Oil Spills

The major consequence of corporate failure to fulfil the duty of care to the environment is oil spills. There are many recorded oil spills in the region leading to various litigations, both concluded and pending, between host-communities and oil corporations. The fact is that majority of the people in the region live on rural subsistence, which makes rivers, creeks, swamps and farmlands important aspects of their economy. Unfortunately, these same rivers, creeks, swamps and farmlands are consistently polluted by oil spills, killing life in the sea and polluting drinking waters.[211]

In 2010, John Vidal, the Environmental Editor of *The Observer*, a UK based newspaper undertook an investigative journey into the hinterlands of the Niger Delta, in order to obtain first-hand information of the situation in the region. These are excerpts from his report;

> We could smell the oil long before we saw it – the stench of garage forecourts and rotting vegetation hanging thickly in the air. The farther we travelled, the more nauseous it became. Soon we were swimming in pools of light Nigerian crude, the best-quality oil in the world. One of the many hundreds of 40-year-old pipelines that crisscross the Niger Delta had corroded and spewed oil for several months. Forests and farmlands were now covered in sheen of greasy oil. Drinking wells were polluted and people were distraught. No one knew how much oil had leaked... oil companies have

[210] M Ukpongson and D Onu, 'Development Efforts of Oil Companies as Perceived by Rural Households in Selected Oil Producing Communities of Rivers State, Nigeria' (2004) *Journal of Agriculture and Social Research*, Vol. 4(1)47-61

[211] See CEHRD's 'Report on the State of Human Rights Abuses & Violence in the Niger Delta Region Of Nigeria' (2008) *CEHRD Website*, 157 <www.cehrd.org> accessed 15 March 2011

> acted with such impunity and recklessness that much of the region has been devastated by leaks.[212]

Continuing, the report states that in May 2010, a broken ExxonMobil pipe in Ibeno, Akwa Ibom State led to the leak of over a million barrels of oil into the Delta Rivers. The leak lasted for more than seven days before it was shut-off. The inhabitants of the area, who protested against the leak, were allegedly attacked by security guards.[213]

For Ite and Ibok, in the last three decades, approximately 260,000 barrels of oil are spilled every year.[214] In a report by the Nigerian National Oil Spill Detection and Response Agency (NNOSDRA), it is estimated that over 2,400 oils spills occurred between 2006 and 2010 alone.[215] Between January and September 2013, Amnesty International reports that the Niger Delta has witnessed more than 600 oil spills and more than 2,500 between 2008 and 2012.[216]

On 5 August 2011, a report on the contamination of Ogoni land by the United Nations Environmental Programme (UNEP), indicted Shell for gross environmental pollution and concluded that it will take up to 30 years before the consequences of oil spills are eliminated from the area. The report stated that complete restoration of the Ogoni environment would entail the world's 'most wide-ranging and long-term oil clean-up' and will cost over US$1 billion. The report suggested that Ogoni communities faced a severe health risk, with many families' drinking water with high levels of cancer-causing agents.[217]

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[212] J Vidal, 'Nigeria's Agony Dwarfs the Gulf Oil Spill-The US and Europe Ignore It' (Sunday 30 May, 2010) *The Observer Newspaper*, available at <www.guardian.co.uk/world/2010/may/30/oil-spills-nigeria-niger-delta-shell> accessed 26 March 2013

[213] ibid

[214] AE Ite and UJ Ibok, 'Gas Flaring and Venting Associated with Petroleum Exploration and Production in the Nigeria's Niger Delta'(2013) *American Journal of Environmental Protection* Vol.1 (4) 70-77

[215] Energy Information Administration 'Country Analysis Brief, "Nigeria"' (August 2011) <http://www.eia.gov/EMEU/cabs/Nigeria/pdf.pdf> accessed 10 February, 2013

[216] Amnesty International, 'Shell's False Claims on Niger Delta Oil Spills Exposed' (November, 2013) *Amnesty International's Website* <www.amnesty.org/en/news/shell-s-false-claims-niger-delta-oil-spills-exposed-2013-11-07> accessed 10 February 2013

[217] See 'Environmental Assessment of Ogoni Land' (2011) *UNEP's Report* 1-246 <http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf> accessed 2 May 2013

Effects of Non-Performance of the Duty to Care for the Environment: Gas Flaring

The MNCs in the Niger Delta are also accused of failing to end gas flaring in the Niger Delta. Gas flaring is the process of smouldering-off natural gases which are derivatives of oil production. During extraction, crude oil is usually extracted with a mixture of naturally occurring gases known as Associated Gas (AG). The main constituent gas of AG is methane. In order to produce good quality oil for export purposes, the natural gas needs to be separated from the oil. When the separation process is completed, the gas is usually re-inserted into a container or 'underground formations' where it is 'collected and processed', before being emitted (flared) into the air. This is the process known as gas flaring. Flaring or venting Associated Gas is the cheapest means of disposing-off this 'unwelcome step-child' of oil.[218]

Globally, Nigeria is the second largest gas flaring country, after Russia. The NNPC estimates that 40 per cent of gas produced in Nigeria is flared and that this accounts for about 12.5 per cent of annual global flaring.[219] However, these estimates are regarded as conservative by environmentalists, who believe that more realistic estimates should put gas flared in Nigeria at about 23bcm annually, representing about 60 per cent of production.[220]

Gas flares are not only dangerous, but are capable and in the Nigerian case, have indeed produced millions of tons of both Methane and Carbon Monoxide.[221] Gas flaring in predominantly farming communities cause acid rains which damages and prevents the pollination and growth of crops. Since there are no proper machinery for the extraction and processing of natural gas in Nigeria,

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[218] T Stauffer, 'Natural Gas and Gulf Oil: Boon or Bane?' in G Nurakhmet, *Gas Flaring and Venting: What can Kazakhstan Learn from the Norwegian Experience?* (Dundee: *University of Dundee Website* 2010) <http://www.dundee.ac.uk/cepmlp/car/html/CAR10_ARTICLE14.PDF> accessed 30 July 2011

[219] Nigerian National Petroleum Corporation Website <www.nnpcgroup.com/development.htm> accessed 31 July 2011

[220] Environmental Rights Action/ Friends of the Earth, Fact Sheet: Harmful Gas Flaring In Nigeria (2008) <http://www.foe.org/pdf/GasFlaringNigeria_FS.pdf> accessed 31 July 2011

[221] Michael Watts, 'Resource Curse? Governmentality, Oil and Power in the Niger Delta' (2004) *Geo Politics* Vol. 9(1) 69

75 per cent of this gas is simply burned off.[222] Despite arguments against the process, oil corporations have continued to flare in the Niger Delta. The thinking is that they have continued to do this because it is more economical for them than to invest in the technology required to end it.[223] Again, they have persisted with gas flaring because the Nigerian government, because of its full dependency on oil revenue, lacks the coercive machinery to end the process. This inability is due in the main, to the government's corruption and the powers which oil MNCs wield over the Nigerian state and not necessarily because of the technical difficulties and costs associated with enforcing the regulations.[224]

Environmental degradation has meant that many residents of the Delta region can no longer live through subsistence means and this has caused more people to migrate to urban areas, instead of staying back in their communities to engage in agriculture.[225]

V

HOST COMMUNITIES' PERCEPTION OF MNCs' CSR CLAIMS

A survey conducted by Idemudia in 2007 shows that over 80 per cent of Niger Delta inhabitants believe that oil corporations are curses to them.[226] Oil host-communities do not believe in the efficacy of MNCs' CSR practices and in its ability to prevent the vicious and incessant destruction of the Niger Delta environment – and by implication the people's source of livelihood.[227]

Various reasons have been adduced for this negative perception of the CSR claims of oil MNCs. The first is that host-communities' prospects, aspirations and hopes have been left mostly

[222] JE Okeagu, JC Okeagu, A Adegoke and C Onuoha, 'The Environment and Social Impact of Petroleum and Natural Gas Exploration In Nigeria' (2006) *Journal of Third World Studies*, 13 (1) 199-218 at 202

[223] RA Buchholz, *Principles of Environmental Management: The Greening of Business* (2nd Edition New Jersey: Prentice Hall 1993) 33

[224] SI Oni and MA Oyewo, 'Gas Flaring, Transportation and Sustainable Energy Development in the Niger-Delta, Nigeria' (2011) *Journal of Human Ecology* Vol. 33(1) 23

[225] JE Okeagu and others (222)

[226] Uwafiokun Idemudia, 'Community Perceptions and Expectations: Reinventing the Wheels of Corporate social Responsibility Practices in the Nigerian Oil Industry' (2007) *Business and Society Review* Vol. 112 (3) 377

[227] ibid

unrealized. However, this disappointment is not entirely the fault of the corporations. The Nigerian government has a large chunk of the blame for the tragedy in the Niger Delta. Nevertheless, the reality is that MNCs operate inside the host-communities while in many cases, the government is usually outside and has no defined presence in the communities. The corporations then become 'de facto' governments, which means that most of the host-communities' frustrations are directed at them. It is also suggested that the earlier refusal of corporations to take issues of CSR seriously led to pessimism on the part of host-communities.[228]

The second reason is that host-communities believe that oil conglomerates are not effectively tackling their 'negative injunction' duties. Negative injunction duties, as discussed above, relate to the duty on corporations to prevent injury to both people and their environment. The communities allege that there is a 'geometric' rise in the number of oil spills recorded in the area every year. Yet, MNCs neither admit liability, nor pay compensation for the spills. The continued denial of responsibility for oil spills has giving rise to the saga of the 'mystery spills'.[229] For the communities, the first and most effective CSR is to care for the ecosystem and avoid damage to same.

The third reason is that host-communities allege that they are not usually consulted before the few 'corporate philanthropic' gestures initiated by the corporations are implemented. This creates the feeling of exclusion on the part of host-communities in the decision-making processes of these CSR

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[228] A Afinotan and V Ojakorotu, 'The Niger Delta Crisis: Issues, Challenges and Prospects' (2009) *African Journal of Political Science and International Relations* Vol. 3 (5) 195

[229] The mystery relates to the inability of the corporations to explain how the spills came about; See Uwafiokun Idemudia, 'Community Perceptions and Expectations' (n 227); It should be noted that on many occasions, courts in Nigeria and other parts of the world have held MNCs liable for oil spills in the Niger Delta. For example, in January, 2013, a Dutch Court held that Shell Petroleum was liable and should pay compensation to one of the five applicants in the case for spills from the corporations pipeline at Ikot Ada Udo – *Milieudefensie & Nigerian Farmers V Royal Dutch Shell ECLI:NL:RBDHA:2013:BY9854* (re oil spills near Ikot Ada Udo); also available at Milieudefensie (Friends of the Earth Netherlands) website: <http://www.milieudefensie.nl/english/shell/oil-leaks/courtcase/press> accessed 4 November 2013; In similar vein, the CNN reported in 2003 that a Nigerian High Court had granted the sum of $10 million to two communities in the Niger Delta as compensation for oil spills amounting to over 140 000 barrels, see CNN World, Exxon Mobil Fined $10 Million for Nigeria Oil Spill (10 December 2003) <http://www.cnn.com/2003/WORLD/africa/12/08/exxon.fine.ap/,2003> accessed 3 October 2011

projects, thus, engendering a state of alienation, which is worsened by the weak and inadequate status of the 'corporate-community-relationships' existing between the corporations and the communities.[230]

As a Youth leader in one of the communities stated;

> We do not have any say on how and when oil is explored from our land, and even the oil MNCs have neglected us and do not consult us for anything. Look at ExxonMobil, here in our community; we do not have any relationship with them. That is why they have brought mobile police.[231]

The fourth reason is that host-communities see the MNCs as corrupt and insincere. Observers working in the Niger Delta allege that a major cause of disagreements – between corporations and host-communities – is the use of the 'divide and rule' strategy by the MNCs to check-mate communal insurgencies. [232]

Apart from accusations of systematic segregation and intentional disregard of developmental responsibilities in host-communities, oil corporations are accused of using this strategy to pitch community groups against each other. They also use the strategy to collude with favoured and sympathetic community elders and elites against those perceived as unsympathetic to corporate actions. They use the strategy to stage-manage the 'election or selection' of favoured contestants as community leaders.[233]

In Ugborodo community, a villager states that;

> The reason why Chevron prefers [to do this] is clear. They (the favoured ones) are the ones who fight the people. They are the ones who take the compensation money and know how to give a few ones among us so that there can be no common ground with which to fight Chevron for destroying

[230] D Ogula, 'Corporate Social Responsibility: Case Study of Community Expectations and the Administrative Systems, Niger Delta' (2012) *The Qualitative Report*, Vol.17 (73) 11-12; See also A Odoemena, 'Social Consequences of Environmental Change in the Niger Delta of Nigeria' (2011) *Journal of Sustainable Development in Africa* Vol. 11(2) 123-135

[231] J Myda (Youth President of Inua Eyet Ikot community in the Niger Delta) in an Interview cited in Uwafiokun Idemudia, 'Community Perceptions and Expectations' (n 226) above 378

[232] SA Faleti (n 189) above 16

[233] ibid

> the socio-economic basis of the people in the last few decades. Chevron likes this, it does not want the people of Ugborodo to co-operate with one another because it fears that we'll demand for our rights. It's doing everything to make sure that we're not united; its way of doing this is to play us against each other.[234]

The 'divide and rule' strategy may be in the form of reverence to elders, financial disbursements to community executives and youths, sitting and ghost workers' allowances, Christmas and New Year gifts, rent/compensation for landlords, employments and award of contracts, etc. Dissenters are denied these dividends, thereby pitching them against beneficiaries. It has been suggested that this strategy is a deliberate ploy by MNCs to trigger division and generate doubt, suspicion and enmity amongst members of local communities.[235]

For one indigene of the Niger Delta;

> These oil multinationals have thrust a knife in our midst and we have fallen apart. The love for money and our political selfishness have set us against each other and we no longer see ourselves as brothers, fathers, chiefs, sisters. We disregard ourselves for temporary and temporal things, which have led to the formation of nocturnal and clandestine groups which has transformed [our community].[236]

For many critics, the divide and rule strategy is the major reason why host-communities view the CSR practices of MNCs as hypocritical. The argument is that corporations are regularly disinclined to connect with real issues in the conflict, while corporate pledges to encourage development in host-communities amount to mere window-dressing. Corporate approaches towards sustainable community

[234] Interview with an Ugborodo Town elder by Environmental Rights Action (ERA) Field Report 50 (January 12 2000) cited in SA Faleti (n 189)

[235] SA Faleti (n 189) 13; It should also be borne in mind that these activities are in contravention of the Anti-Corruption laws in Nigeria. For instance, they contravene Ss. 98, 99, 101 – 103 of the Nigerian Criminal Code, Cap 77 LFN, 2004. They are also in breach of Ss. 8 , 12, 13,17 and 18 of the Corrupt Practices and other Related Offenses Act 2000

[236] Interview with Niger Delta inhabitant in Felix Tuodolo, 'Corporate Social Responsibility: Between Civil Society and the Oil Industry in the Developing World' [2009] *ACME; An International E-Journal for Critical Geography* Vol. 8 (3) 536

development are insincere and corporations are only motivated by the need to dig up oil, amass profits and spend very little in the process.[237]

The fifth reason is anchored on the issue of setbacks and 'broken promises' on the part of oil corporations. According to the host-communities, in the last three decades, most of the projects promised by the MNCs were never executed or completed. This has led to a situation of mistrust and suspicion of corporate promises on the part of host-communities.[238]

As Myda declared;

> I do not trust ExxonMobil because they do not keep their promise. They promised to renovate and build new structures for the Qua Iboe church in Ukpenekang, over five years ago. Till date, they have done nothing.[239]

The sixth reason for the negative perception of MNCs' CSR claims in the Niger Delta is hinged on the inherently weak and inadequate corporate communications system. Communication streams between the corporations and the communities are very limited and in many instances, non-existent. This generates considerable amounts of 'misinterpretation and misinformation' which consistently contribute to an already strained corporate-community-relationship.[240]

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[237] D Ogula (n 230) 12-13

[238] See D Onigbinde, 'Natural Resource Management and its Implications on National and Sub-regional Security: The Case of the Niger Delta' (September 2008) *Kofi Annan International Peacekeeping Training Centre (KAIPTC)* Occasional Paper No. 22, 16 <www.kaiptc.org/Publications/Occasional-Papers/Documents/no_22.aspx> accessed 2 June 2013; On issues of broken promises, a US non-governmental delegation trip report in 1999 states for instance that in Iko, one of the local communities they visited in the Niger Delta, Shell promised to provide a "fish processing plant" to the community. In the corporation's website, it claimed that the 'company-built' facility was operational since 1996 but in reality, the facility at the time of their trip in 1999 was yet to be completed. Again, in the same community, the corporation had donated a manual cassava grating unit (as a large sign in front of it clearly indicates) which worked for only one week before packing up; See 'Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta' (September, 1999) *a US Non-Governmental Delegation Trip Report* <www.essentialaction.org/shell/Final_Report.pdf> accessed 26 May 2013

[239] J Myda cited in Uwafiokun Idemudia (n 226) above 379

[240] OO Onweazu, 'Multinational Oil Corporations' Corporate Integrity Ethics and Sustainable Development in Niger Delta, Nigeria' (2012) *Journal of Sustainable Development* Vol. 5 (10) 116; See also Uwafiokun Idemudia, 'Community Perceptions and Expectations' (n 226) above 380

In the final analysis, the suggestion is that many of the advantages enjoyed under the CSR schemes of the corporations are usually at huge costs to home-communities. In the case of Shell, either as a result of oversight or careless assignment, its overall corporate activities impacts negatively on the communities.[241] Numerous oil spills from well heads, flow stations and pipelines, release of drilling and extraction wastes and gas flares destroyed and continues to destroy the Niger Delta environment.[242]

The women of Ugborodo community, frustrated by the destruction of their environment through corporate activities, declared;

> We want Chevron to leave our land. We cannot farm. We cannot kill fishes and crayfish from the river again. Everywhere [is] polluted. Our farms are all gone. We used to farm cassava, okra, pepper, any food. Now the places where we farmed have all sank.[243]

This feeling, it is suggested, is replicated in majority of the Niger Delta communities, leading to the reasonable conclusion that the CSR practices of MNCs in the area are ineffective.

Concluding Remarks

This chapter began with a review of the existing literature on the CSR practices of MNCs in the Niger Delta and what amounts to sustainable development for the people of the region. It then proceeded to look at the internationalization of the Niger Delta conflict and the growing international pressures exerted on oil corporations by such groups as the Human Rights Watch, Amnesty International, the

[241] Felix Tuodolo (n 236) 536

[242] ibid

[243] AC Abiola, 'Chevron Ignores Demand of Women for Employment and Clean Environment' (14 July 2002) *ERA Field Report* 103 6 <www.waado.org/environment/OilCompanies/Women/Women2002Rebellion/ERAReports/ERA-ItsekiriWomen.html> accessed 2 May 2013

Green Peace, Friends of the Earth, the United Nations' Human Rights Commission (UNHRC) etc. It went on to suggest that as a direct response to pressures from these civil society movements and international non-governmental organizations, MNCs began to adopt self-enacted codes to regulate corporate activities. The chapter further argued that corporations embarked on CSR initiatives in order to protect corporate reputation, avoid external regulation, silence opposition from civil society and non-governmental organizations and reduce militancy from youths of host-communities.

It then went ahead to investigate the various CSR claims of the big four corporations in the region. It proceeded to draw a distinction between philanthropic CSR acts such as the building of schools, roads, hospitals etc., and the more demanding CSR duty to refrain from harming the ecosystem – sometimes referred to as the duty of care owed by MNCs to the environment. The chapter suggested that the host-communities' negative perception of the CSR claims of the MNCs stems from an alleged over-concentration on corporate philanthropy, as against fulfilling the duty of care to the environment. In this context, the chapter contended that in spite of the various CSR projects initiated and executed by MNCs, the unrest in the region continues unabated. Viewed from this perspective, the CSR practices of oil corporations and the huge investment layouts they claim to make (CSR in theory) do not support what is on ground (CSR in practice). Put in another way, there are good reasons for thinking that the CSR practices of MNCs in the Niger Delta region are ineffective.

Why is this so? In Part two, beginning from the next chapter, this thesis will identify and categorize for analytical purposes, the main reason why the CSR practices of MNCs in the Niger Delta appear ineffective – that is the existence and operations of the barriers to effective CSR.

PART TWO

The Barriers to Effective CSR

Chapter Three

Main Ideological Barriers to Effective CSR: Shareholder Value and Neoliberalism

Introduction

From the findings in chapter Two, it appears logical to conclude that the experiences of the people of the Niger Delta suggests that CSR has not been effective, despite the claims of the oil MNCs in the area. A rational question which follows from this is: why is it so? A number of different, but related barriers that make the realization of effective CSR difficult can be identified and separated for analytical purposes. The first (and perhaps most obvious) of these barriers is ideological.

As a result, the purpose of this chapter is to identify and analyze the main ideological barriers to effective CSR – neoliberalism and shareholder value, especially in its contemporary form. It argues that there is a fundamental tension between ideas about the desirability of socially responsible corporate behaviour (CSR) and the belief that it is to the benefit of society as a whole for corporations to be run solely in the interest of their shareholders, and for managers to seek to maximize shareholder value.[1]

In the past 30 years, the ideology of shareholder value (SV) has become a well-established code of corporate governance in many parts of the world. This governance 'rhetoric' has become the prevalent corporate philosophy in both the US and UK. Even in Japan and Germany, the emphasis on shareholder value seems to have triumphed and the principle is supported by many international organizations including the OECD, the IMF and the World Bank.[2]

This was not the situation before the 1980s. The absolute concentration on SV became 'notorious' during the 'economic revolutions' of Reagan and Thatcher in the US and UK respectively.

[1] See for instance, Milton Friedman's 'the social responsibility of corporations is to profit maximise' below

[2] W Lazonick and M O'Sullivan, 'Maximizing Shareholder Value: A New Ideology for Corporate Governance' (2001) *Economy and Society* Vol. 29 (1) 14

When they emerged in the seventeenth and eighteenth centuries, corporations provided services with public dimensions, which small businesses[3] could not easily undertake – thus necessitating the need for them to obtain royal charters and state authorization before commencing operations. However, with the introduction of limited liability and free incorporation in the middle of the nineteenth century, corporations came to be seen as purely private enterprises. The criticisms against this private form of business in the 1920s and 1930s – the conglomerates thus formed, had become large and powerful, with dispersed shareowners – led to the idea of the 'soulful' corporations which dominated the 1950s and 1960s. A backlash against the socially responsible corporations, in turn, led to the rise of the idea that corporate managers should be seeking to maximize 'shareholder value' and to the re-emergence of shareholder value.

How and why did this happen? What possibly transformed the idea of the socially responsible corporation in the 1950 and 1960s, to the currently dominant shareholder value ideology after the 1970s? How compatible is this idea with effective CSR?

The chapter focuses on the transformation of corporate purposes – from quasi-social institutions at inception to private enterprises after the introduction of free registration and then to quasi-social institutions again in the 1950s and 1960s and finally back to the private and highly financialized corporations, beginning from the 1970s. It suggests that the re-assertion of SV after the 1970s arose out of the progressive but radical transformation of the purpose of corporations, from one of production to that of high financialization. This cultural change is attributed to the power of resurgent finance, made possible by the liberation and protection of the interests of rentier investors – i.e. neoliberalism. It argues that the apparent domination of these ideas amount to ideological barriers to effective CSR.

The chapter begins by looking briefly at the history of early corporations – middle of the 19th century to about the 1900s.[4] It goes ahead to explore the culture of corporations from the 1900s to the 1940s, which incidentally was labelled the era of 'finance capitalism' – when corporations operated

[3] That is sole traders and partnerships

[4] Here, corporations went from quasi-social institutions with public dimensions to private enterprises with the introduction of limited liability and free incorporation between 1844-1856

within the realm of private enterprises. Then it proceeds to evaluate the culture of corporations from the 1950s to 1970. This was the era of 'managerial capitalism' – when corporations came to be seen as socially responsible corporations. However, a backlash against the socially responsible corporation in the 1970s led to the re-privatization of corporations and the apparent domination of the shareholder value ideology in corporate governance. The chapter suggests that this domination has given rise to the concept of 'investor capitalism' or new finance capitalism.

Nevertheless, the re-assertion of SV did not occur in isolation. It was part and parcel of the rise to prominence of the neoliberal theory of economic development in the international financial architecture, beginning from the 1970s. Therefore, the second part of the section will explore the neoliberal theory of social and economic development, its historical roots and the difference between it and classical liberalism, its intellectual foundations and the rationalist assumptions that helped to entrench it in the global financial system.

In the concluding part of section one, the chapter argues that neoliberalism is a developmental theory which champions free markets and takes an anti-state stance which is rhetorical. In this context, it encourages precisely the voluntarism and self-regulation which lies at the heart of contemporary CSR. For this reason, it is arguable that contemporary CSR is in consonant with the ideas of neoliberalism and shareholder value. In light of this supposition, the section argues that neoliberalism and shareholder value, by advocating for voluntary CSR, arguably amount to major ideological barriers to effective CSR.

Furthermore, the chapter in section two explores the reception of neoliberal and shareholder value ideas in the Nigerian socio-political economy. It offers a brief historical narrative of neoliberalism in Nigeria and analyses the post-neoliberal attitude of the Nigerian state to MNCs. By adopting and implementing neoliberal ideological reforms, including the application of the Anglo-American shareholder value model of corporate governance, the chapter suggests that Nigeria has introduced an ideological tension between these ideologies and that of effective CSR. In this context, with the continued application of the neoliberal free market ideas in the policy directives of the Nigerian state – especially as they relate to MNCs – any hope that the social responsibility practices of these corporations in the Niger Delta will be effective is seriously undermined.

Section One

I

ROAD TO SHAREHOLDER VALUE: Early Years of Corporations

Before the advent of Joint Stock Corporations (JSCs) – the precursor of today's large modern corporations – businesses were organized around small enterprises, managed either by a single owner (sole traders) or by a few partners (partnerships). In fact, even after the industrial revolution, partnerships continued to be the main form of business in most places. As Ireland recounts, a major characteristic of early business forms was that 'the industrial revolution of the late eighteenth and nineteenth centuries were predominantly carried out by "ordinary" partnerships, not because of the impediments to the formation of JSCs but because of the relatively modest capital requirements in most industries'.[5] The formation of JSCs was only legitimized by the turn of the seventeenth century, mainly because of the developments in rail transportation.

In the UK, before the introduction of free registration, the state strictly controlled the formation of corporations. It has been suggested that the state began to dominate corporate forms during the era of 'state-chartered companies in the Middle Ages'.[6] The domination of the state over JSCs was exemplified in the rule that before a business could publicly list its shares; it first had to obtain permission from the state.[7] Notwithstanding the overriding powers of the state over corporations, business actors often devised dubious means of circumventing the need to comply with rules and regulations.[8] This led to the passing of the Bubble Act 1719, which deemed illegal any act or attempt to act as a corporate body without legal authority.[9]

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[5] Paddy Ireland, 'Limited Liability, Rights of Control and the Problem of Corporate Irresponsibility' (2010) *Cambridge Journal of Economics* Vol. 34 (5) 839

[6] N Horn, 'Enterprise Organization Relating to Law on Shares in High Industrialization (1860-1920) Germany, France, and the USA in Comparison' in N Horn and J Kocka (eds.) *Law and the Formation of Big Enterprises in the 19th and Early 20th Centuries* (Gottingen: Vandenhoek & Ruprecht 1979) 123

[7] ibid

[8] M Smart, 'On Limited Liability and the Development of Capital Markets: An Historical Analysis' (June 1996) SSRN <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1175> accessed 16 April, 2013

[9] K Pistor, Y Keinan, J. Kleinheisterkamp and MD West, 'The Evolution of Corporate Law: A Cross-Country Comparison' (2002) *University of Pennsylvania Journal of International Economic Law* 791

The Bubble Act was repealed by the Joint Stock Companies Act of 1844, which established free incorporation subject only to registration. The Act did not, however, grant limited liability. It was only in 1855 that limited liability was recognized in English corporate law.[10] The free incorporation Act in England encouraged other European countries like France and Germany to introduce free registration in 1867 and 1870 respectively.[11]

One major characteristic of early JSCs was that permission to operate was only granted to enable them carry out beneficial services to the public. As a result, before any business could be granted permission to incorporate, it first had to prove that the service for which incorporation was needed will be for the public good. This, it has been suggested, accounts for why early JSCs were seen as quasi-social institutions.[12] The introduction of general incorporation by registration and limited liability diminished the public dimension of early JSCs and essentially turned them into private enterprises.[13]

In spite of well founded objections to the promulgation of the law on the limited liability of corporations,[14] by 1856, it had become entrenched in the legal systems of both the UK and the US. Having removed the risk attached to investing in stocks through legislation, there was no further impediment to the 'popular' general participation in the buying and selling of stocks and for those who are willing to make investments to 'diversify' their interests.[15]

By the beginning of the 1890s, there was an intensified reformation of the laws regulating the conduct of corporations. In the US, for instance, states such as Delaware and New Jersey reformed their corporate laws to attract valuable incorporation businesses. They abolished the rules that mandated corporations to register only for very limited purposes or to operate for a particular time-

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[10] Paddy Ireland (n 5) above, 839; On the 'Act for Limiting the Liability of Members of Certain Joint Stock Companies, 1855'; see K Pistor and others (n 9) above 12

[11] N Horn (n 6) above, 123

[12] J Taylor, *Creating Capitalism: Joint-Stock Enterprise in British Politics and Culture, 1800-1870* (London: Royal Historical Society Pub. 2006) 1-266 at 12

[13] ibid

[14] It was thought that incorporation will remove the hallowed principle of commercial enterprises, which is that every man is bound to pay for his debts as long as he could do so; see, Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (London: Constable and Robinson Limited 2005) 13

[15] Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (London: Constable and Robinson Limited 2005) 13

limit or within a particular locality. They loosened the rules on mergers and acquisitions and repealed legislations that one corporation cannot buy and own shares in another corporation. With the successes recorded in Delaware and New Jersey, other US states followed and dramatically loosened restrictions on incorporated businesses. These reforms 'prompted a flurry of incorporations as businesses sought the new freedoms and powers incorporation would grant them'.[16]

The repealed restrictions on mergers and acquisitions meant that smaller and medium-sized corporations could be taken over by bigger ones and many merged to form very large corporations. As Perrow recounts;

> ...in a few decades, the basic laws governing large organisations were remade. The national political leaders and then the lawyers in the legislatures and judges paved the way for untrammelled organisational growth and the accompanying centralization of wealth and power. Political values were remade, traditions were founded rapidly and the setting was ready for...really big organisations.[17]

This, it is suggested, was how JSCs, established originally to provide essential social services beyond the scope of small businesses, got transformed out of the public domain and into the realm of private enterprise.

Criticisms of Early Corporations

The transformation of corporations from quasi-social institutions to private enterprises created fear in the minds of many, both in the US and the UK. The anti-corporate group saw it as a route through which dubious business men could escape unscathed from the failures of their actions. To these critics, the corporation amounted to a structure erected to undermine the basic moral foundation of society. They therefore argued that the resultant social problems of corporate actions would

[16] ibid 13-14

[17] C Perrow, *Organising America: Wealth, Power and the Origins of Corporate Capitalism* (Princeton NJ: Princeton University Press 2002) 47

eventually outweigh the benefits society derive from them.[18] To these commentators, corporate actions threatened the very foundations of the 'social order'.[19]

Khurana writes that;

> ...the gigantic corporations that emerged.... towards the end of the nineteenth century not only altered the economic landscape but, along with other phenomena of the second industrial revolution, helped to transform a taken for granted way of life. This way of life was profoundly affected by the era's tremendous technological innovations and by socio-economic transformations, such as urbanization, immigration, and increased upward and downward economic mobility that accompanied these developments.[20]

The scope of corporate operations had become virtually untrammelled, as they could now undertake any activity and operate in any sector. This caused Lippmann to declare that, 'all the frictions of life are readily ascribed to a deliberate evil intelligence and men like Morgan and Rockefeller take on attributes of omnipotence'.[21]

Indeed, for critics of the corporate form, 'the nexus of social institutions within which' people 'lived had been radically transformed', and according to them, words such as 'virtue, benevolence and duty' meant nothing to corporations.[22] Big Businesses were so detached from society that they acted like machines and 'symbolised a body of strange customs and new traditions, where familiarity and trust were replaced by impersonality and guile'.[23] They were seen as 'soulless leviathans- uncaring, impersonal and amoral', enabling people 'to embark in trade with a limited chance of loss, but with an

[18] I Kristol, *Reflections of a Neoconservative: Looking Back, Looking Ahead* (New York: Basic Books 1983) 204. See also John Kenneth Galbraith, *American Capitalism: The Concept of Countervailing Power* (New York: Houghton Mifflin 1956) 91

[19] See for example, MJ Roe, *Strong Managers, Weak Owners: The Political Roots of American Corporate Finance* (Princeton NJ: Princeton University Press 1994) 25

[20] Rakesh Khurana, *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession* (Princeton, NJ: Princeton University Press 2007) 32

[21] W Lippmann, *Drift and Mastery: An attempt to Diagnose the Current Unrest* (Madison: University of Wisconsin Press 1914) 23-24

[22] R Marchand, *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business* (Los Angeles : University of California Press 1998) 9

[23] Rakesh Khurana (n 19) above 36

unlimited chance of gain', which in turn encourages a 'system of vicious and improvident speculation'.[24]

Faced with widespread backlash, corporate owners in the late nineteenth and early twentieth century, attempted to stem the tide of negativity towards them. Since many of these firms had become quite large, corporate actors came to appreciate that the only way to forestall external regulation was to engage in more acceptable conducts. The then President of General Electric, a leading corporation in the US, stated that 'organised industry should take the lead, recognising its responsibility to its employees, to the public, and to its shareholders, rather than that democratic society should act through its government'.[25] The legitimization of corporate activities, thus, became a priority.

Pursuing this objective of institutional change, leaders of corporations embarked on projects to give formal sanction to corporate activities. This led to the initiation of public relations stunts and the creation of PR departments, tasked with 'laundering' corporate images before the public. Concurrently, they initiated and began to implement socially responsible tasks in specific areas. In 1908 for instance, AT&T, the parent company of Bell Systems, introduced an advertising campaign to convince people to embrace the 'goodness' of the corporation. General Motors used words such as 'family' to run advertisements aimed at personalizing the corporate institution. Many US corporations, including General Electric, Eastman Kodak, National Cash Register, Standard Oil etc, all embraced the process of attaining 'an aura of institutionality'.[26] Several industrialists donated liberally to charities and philanthropic societies. Andrew Carnegie donated over US$300,000,000 (three hundred million) of his personal income to charitable organisations.[27]

Even at this early stage – similar to the later 1950s and 1960s when corporations were seen as soulful – corporations tried to improve corporate performance by setting up welfare schemes for

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[24] B Weiss, *The Hell of the English: Bankruptcy and the Victorian Novel* (Lewisburg: Bucknell University Press 1986) 148

[25] G Swope, *The Swope Plans: Details, Criticisms, Analysis* (New York: Business Bourse 1931) 22 contained in E M. Dodd, 'For Whom are Corporate Managers Trustees?' (1932) *Harvard Law Review* 45, 1147

[26] GF Davies, *Managed by the Markets: How Finance Re-shaped America*, (New York: Oxford University Press 2009) 70

[27] CW Carey Jnr., 'Corporations and Big Business; An Essay from Nineteenth Century US Newspaper Data Base' (2001) *Encyclopaedia of the United States in the Nineteenth Century* Vol. 3, 4 <www.gale.cengage.com/pdf/whitepapers/gdc/Corporations_whtppr.pdf> accessed 25 April 2013

employees' needs. Some owners declared they no longer ran their institutions merely as 'businesses', but also as 'social institutions'.[28] This attitude of corporate image laundering, in the shape of philanthropy with a semblance of social responsibility, supposedly became corporate form's own way of emphasising its capacity to 'do good', without the regulation, control and direction of government.[29]

Despite these PR overtures, however, many still queried corporate intentions and actions. Critics alleged that even though the philanthropy of corporations were motivated by the desire to 'do good', they were also motivated by enlightened self-interest. Corporate philanthropy, in the end was seen as a mechanism for obtaining submissive, enslaved employees that could be programmed into regimented actions which guaranteed sustained profits.[30]

The Era of Finance Capitalism: 1910s-1940s

Between the late nineteenth century and early twentieth century, the development and progression of 'the corporation' in the US had diverged significantly from that of the UK. Whereas corporations in the UK still operated as privately-owned family businesses until the 1930s,[31] the US corporations, equally dominated at inception by family businesses,[32] had witnessed the process of dispersed ownership by the turn of the 1900s.[33] It was only in the 1930s, following a 'succession of merger

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[28] AB Carroll, 'A History of Corporate Social Responsibility: Concepts and Practices' in Andre Crane and others (eds.)*The Oxford Handbook of Corporate Social Responsibility* (New York: Oxford University Press 2008) 21

[29] N Craig-Smith, 'Corporate Social Responsibility: Not Whether, But How?' (April, 2003) *Centre for Marketing (London Business School)* Working Paper No. 03-701 2 <www.london.edu/facultyandresearch/research/docs/03-701.pdf> accessed 25 April, 2013

[30] See J Styles, *Titus Salt and Saltaire: Industry and Virtue* (Shipley-England: Salts Estates Ltd 1994) 38

[31] S Toms and M Wright, 'Corporate Governance, Strategy and Structure in British Business History, 1950-2000' (July, 2002) *Business History* Vol. 44(3) 91-124

[32] See TR Navin, and MV Sears, 'The Rise of the Market for Industrial Securities, 1887-1902' (June, 1955) *The Business History Review* Vol. 29(2) 105-138

[33] See G Herrigel, 'Corporate Governance: History without Historians' in G. Jones and J Zeitlin (eds.) Handbook of Business History (Oxford: Oxford University Press 2006) 3-5; See also MA O'Sullivan, *Contests for Corporate Control: Corporate Governance and Economic Performance in the United States and Germany* (New York: Oxford University Press 2000) 3

waves', that 'dispersed ownership' began to prevail in Britain.[34] As a result, securities markets in the UK were considerable but frequently under exploited 'for much of the early period' of corporate transformation and the London capital market only developed appreciably 'in both depth and liquidity' from the middle of the twentieth century.[35]

The establishment of markets for corporate stocks led to the financialization of corporate interests and to the era of finance capitalism. Generally, this was possible because the growth of the corporate mode of commerce in the nineteenth century transformed 'capitalist property from personal property' to corporate assets. Title to capital shifted from that of 'direct ownership of enterprises to ownership' of financial assets. In this context, the corporation became a form of 'indirect ownership of businesses'.[36]

The process of financialization radically presented rentier investors with the openings to evade the dominant crisis usually associated with capital accumulation, made more intense by the innovation of advanced technologies and new products. The argument is that wealth, ingrained in the shape of a genuine 'productive enterprise', will always suffer from the risk of corrosion, caused not only by 'competition from new products', but also by the invention of new methods. To remain relevant as a wealth accumulator, rentier investors need to continually find avenues through which the hazards of 'innovation' could be avoided.[37]

For Kotz therefore;

> There are various ways to gain some protection against such threats, including the pursuit of monopoly power or protection by the state. However, shifting ownership of capital from real capital to financial capital is the best way to insulate against the inherent risks of the capitalist market place.[38]

[34]See J Franks and C Mayer, 'Ownership and Control of German Corporations' (2001) *The Review of Financial Studies* Vol. 14 (4) 943-977

[35] DM Ross, 'Commercial Banking in a Market Oriented Financial System: Britain Between the Wars' (1996) *Economic History Review* Vol. 49 (2) 314-335

[36] DM Kotz, *Neoliberalism and Financialization* (Paper presented in a Conference in Honour of Jane D'Arista at the Political Economy Research Institute, University of Massachusetts Amherst, May 2-3 2008) <http://people.umass.edu/dmkotz/Neolib_and_Fin_08_03.pdf> accessed on 12 February, 2013

[37] ibid 9

[38] ibid

With the increase in the number of corporations and the multiplication of the quantities of intangible financial properties made possible by incorporation, the corporate form (particularly in the US) became overshadowed by a 'small number of financiers and industrialists'.[39]

> Using a wide variety of devices – preference and non-voting shares, debentures, voting trusts and holding companies – these financiers were able to organise the financialized ownership structures of the new corporate behemoths in such a way that they were able to exercise disproportionate power, dominating them with minority holdings.[40]

It has been argued that when corporations became legitimate forms of business, they were established mainly for the production of goods and execution of specific services. However, with the establishment of a largely dispersed ownership class and the creation of markets for corporate shares, trade in intangible corporate properties took over and dominated the earlier purpose of production. This transformation in the purpose of corporations also led to a change in the culture and conduct of corporate activities. Share prices in capital markets became the priority for corporate managers. This major shift led to a raft of shady deals and dubious contracts as corporations competed to out-bid, out-price and out-profit each other.[41]

As Ireland asserts;

> It was widely believed that the financiers and investment banks that controlled many of the leading American corporations were not only engaging in self-seeking financial manipulations, such as stock watering and insider dealing, but appropriating a disproportionate share of the profits of the industry at the expense of the ordinary (middle class) investor.[42]

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[39] Paddy Ireland, 'Financialization and Corporate Governance' (2009*) Northern Ireland Legal Quarterly* Vol. 60 (1) 18

[40] ibid

[41] See for instance, J Kamensky, *The Exchange Artist: A Tale of High Flying Speculation and America's First Banking Collapse* (New York, Viking Publishers 2008) 71-140; See also JH Holton, *The Rogues and Rogueries of New York* (Seattle: CreateSpace Independent/Amazon Publishing 1969) 96-106

[42] Paddy Ireland (n 39) above 21

Decline of Finance Capitalism

Financialization of the corporate form was possible because the introduction of free incorporation by registration placed corporations within the exclusive realm of private enterprises. By the 1930s and 1940s, however, the sheer size and economic powers wielded by these conglomerates and the dispersal of the shareholders – making them ordinary rentiers – coupled with the rise of the professional managers, led to wide-spread condemnation of the rentier nature of the corporation and the 'financialized' culture of the 1910-1940s. Many critics began to advocate for a return to the pre-free registration era, when corporations were seen as quasi-social institutions. Those who criticised 'finance capitalism' in the US included, Louis Brandeis, William Ripley, Thorstein Veblen, Adolf Berle and Gardener Means.

For Berle,[43] in the wake of the increased, absolute and 'often finance-dominated managerial power' inherent in finance capitalism, the ordinary shareholder in a corporation had become susceptible to the whims and caprices of the directors of corporations, who 'were not only feathering their own nests', but were also directing the profits of the corporations to 'controlling minority shareholders against the interest' of smaller stockowners. Directors' powers had become so 'absolute' that they were able to decide the 'very content of the property rights' possessed by stockholders. In this regard, he argues, there was a need for more state regulation of corporations, especially since it had become apparent that judicial or self-regulation was failing to contain their excesses.[44]

In similar vein, Veblen[45] argued that the 'efficient production of useful goods and services', had fallen into the hands of corporations, whose sole aim was to make profits and not to produce goods. This leads to a decline in the efficient production of goods, as corporate owners become only interested in securing 'pecuniary' profits. The consequence of this is a shift from what he called a

[43] In what Ireland labels a conservative critique of financialized governance; see ibid

[44] Paddy Ireland (n 39) above

[45] Here, Ireland calls this a radical critique of financialized governance; see ibid, 22

'money economy', in which products are dominant, to a 'credit economy' where capital markets dominate.[46] This, to him, was not good for the economy.

Though the highly financialized corporation was introduced much later in the UK, it was also criticised by some 'labour party intellectuals', including R. H. Tawney and Harold Laski.[47] Tawney argued that corporations were 'promoting inherently pernicious and parasitic forms of intangible financial property' such as shares.[48] To him, the arguments for private property rights should not be extended to property forms like shares, particularly when they tended to separate profits from labour and 'reward from work'.[49] In his words;

> Unlike rights to tangible personal possessions, which could be defended on functional grounds, as indispensible to a life of decency and comfort and as encouraging industry and initiative, these new intangible, passive property forms – the rights to revenue which had proliferated in recent decades – were 'functionless'. Indeed, in directing productive activity towards 'acquisition' rather than 'service to society', they were positively dysfunctional, dissipating creative energy, 'corrupting the principle of industry' and distorting productive activity.[50]

Laski agreed with Tawney and asserted that the rationalization and ethical foundation for property rights rested in their capacity to execute socially beneficial functions. The rise of the corporations negated the very foundation of property rights, as property in this case became 'functionless'.[51] With the rise of JSCs, there emerged a distinct class of investors who were not concerned with the management of corporations, but were rather 'freed from the legal obligation to labour' and continued to be 'maintained in parasitic idleness'.[52] Despite the idle nature of this class, they had come to control societal institutions and were able to transform 'functionless property, whose objective was

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[46]Thorsten Veblen, *Absentee Ownership and Business Enterprise in Recent Times: The Case of America* (New York: BW Heubsch 1923) 214

[47] See P Ireland (n 39) above

[48] RH Tawney, 'The Acquisitive Society' (2010) *The Project Gutenberg EBook* <www.gutenberg.org/files/33741/33741-h/33741-h.htm> accessed 18 February 2013

[49] ibid

[50]ibid

[51]Harold Laski, *The Grammar of Politics* (London: George Allen and Unwin 1941)

[52] ibid

"simply the maximum profit"', into becoming 'the controlling factor in industrial production'.[53] This was not beneficial to society.

For many of these critics, the sheer size and functions of corporations had separated them from their owners and most of them had come under the full authority of managers, as opposed to shareholders. Considering their extended range and enormous powers, it was no longer appropriate to see them as exclusively under the domain of private enterprises. Corporate activities, they argued, impacted heavily on the public, such that it had become reasonable to liken them to social or public institutions. For Dodd, it was legitimately justifiable to take 'separate corporate personality more seriously' and treat the corporation and the owners as truly independent units. In this situation, he argued, it will be justified to hold that 'corporate directors owed duties not only to shareholders but to employees, consumers, creditors and society as a whole'.[54]According to Berle;

> The economic power in the hands of the few persons who control a giant corporation is a tremendous force which can harm or benefit a multitude of individuals, affect whole districts, shift the currents of trade, bring ruin to one community and prosperity to another. The organizations which they control have passed far beyond the realm of private enterprise - they have become more nearly social institutions.[55]

Ireland argues that, 'implicit in these ideas[56] of course, was [not only] a rejection of the principle of shareholder primacy and of the view that corporate governance was a simple matter of shareholder protection', but, equally inherent 'in them was a much more "socialized" conception of corporations and a rejection of the view that they were purely private enterprises'.[57] According to him, not a few commentators believed at the time that the 'socialization' of the corporation will eventually result in a corporate revolution. One of such commentators was John Maynard Keynes, who had written as early as the 1920s that there was a tendency for 'Joint Stock Institutions, when they [had] reached a certain

[53] See Paddy Ireland (n 39) above 25
[54] E Merrick Dodd, 'For Whom are Corporate Managers Trustees?' (1932) *Harvard Law Review* 45 1147
[55] Adolf Berle and Gardener C Means, *The Modern Corporation and Private Property* (New York: Transaction Books 1932) 46
[56] That corporations should be seen as public institutions
[57] Paddy Ireland (n 39) above 27

age and size, to approximate to the status of public corporations, rather than that of individualistic private enterprise'.[58] This situation occurs when owners of corporations have become so 'dissociated from the management', that it will not be justifiable to still think of them as sole owners, whose interests alone matter. At this stage, 'the direct personal interest of the (shareholder) in making of profit becomes quite secondary. Managers are then more concerned about the stability and reputation of the institution, where upon shareholders had to satisfy themselves with conventionally adequate dividends'.[59]

Corporate managers, already locked in a struggle with shareowners regarding who controls the corporations, supported the view that managers are trustees for all stakeholders and saw the so called 'socialization' as an avenue to actualize their ambitions. Beginning from the 1950s, therefore, the idea of corporations as public institutions had risen to prominence and corporate managers began to exercise considerable amounts of control over them.

The Era of Managerialism: 1950s -1970s

By the end of the Second World War in 1945, calls were made for a critical re-appraisal of the role of corporations and the functions of corporate managers. Corporations had contributed immensely to the war struggles, necessitating the call by many for them to play more central roles in the protection and development of society.[60] According to these commentators, allowing managers to run corporations as public institutions will be in the overall interest of society.[61]

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[58] John Maynard Keynes, *The General Theory of Employment, Interest and Money* (London: Macmillan 1936) cited in Paddy Ireland, Financialization and Corporate Governance (n 39) above 29

[59] ibid

[60] B Waddell, 'Corporate Influence and World War II: Resolving the New Deal Political Stalemate' (1999) *Journal of Policy History* 11(3) 223-256; See also 'Corporate America: The Arsenal of Democracy', a publication of the National WWII Memorial, Washington DC <www.wwiimemorial.com/?page=funding.asp&subpage=corpsfdns> accessed 28 April 2013

[61] Rakesh Khurana (n 20) above 199-201

Apart from their role in the war, it was equally contended that any business with conventional wisdom will always ensure that its managers balance conflicting varieties of interests. Instead of pushing solely for the accumulation of more profits for its shareholders, every conscientious organization takes into cognisance the interest of its employees, suppliers, dealers, local communities and the society in which it operates. Where a corporation is unable to take these varied interests into consideration, it will be adjudged to have failed in its commitments as a 'good corporate citizen'.[62]

Corporations, much like states, were seen as one of the long lasting features of the societal landscape and were looked at as financial territories, thrust directly into the care and control of a managerial cadre, whose current elevation downgraded shareholders to the status of mere providers of needed resources.[63] To some critics, corporations with superior managerial cadre will eventually come to rival states as the 'dominant institution of the modern world'.[64]

The vindication of the post-second world war corporation meant the vindication of corporate executives, who managed them. Khurana maintains that not a few began to link the survival of liberty and democracy to the ability of a country to manage, regulate and exploit the prospects of large corporations.[65] This predisposition towards managerial supremacy in the 1950s, made the then President of Harvard University to declare that;

> As never before, business needs men who appreciate the responsibilities of business to itself and to that unique society of free men which has been developed on this continent. Such men must understand not only the practical workings of business organisations, but also the economic and social climate in which business operates; they must be as well trained as our professional men in law and medicine.[66]

[62] A Carroll, 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) *Business and Society*, 38, 271

[63]Adolf Berle and Gardener C Means (n 55) above, 124

[64]ibid 356

[65] R Khurana (n 20) above, 203

[66] JB Conant, cited in R Khurana (n 20) above 202

The prominent position ascribed to managers replicated the important function that was eventually credited to them. As a result, it was not surprising that after the war, far-reaching powers were assigned to corporate managers and they were expected to use this power for the greater good of society, as opposed to that of only shareholders.

It is also imperative to note that in the 1950s, capitalism was 'at war' with communism. Economic analysts believed that 'a new and more rational conception' of managers and their functions in a corporation was required, if capitalism was to win the war against communism. This rational conception meant that managers came to be identified as 'systems designers', 'information processors' and 'programmers', saddled with the responsibility of 'regulating the interface between the organization and its environment.[67]

Kaysen states that specialized corporate executives subsequently metamorphosed into a class of compassionate leaders, whose priority was one of putting the interests of society first, before every other interest.

> No longer the agent of the proprietorship seeking to maximize return on investment, management sees itself as responsible to stockholders, employees, customers, the general public and, perhaps most important, the firm itself as an institution...[Moreover, its] responsibilities to the general public are wide spread: leadership in local charitable enterprises, concern with factory architecture and landscaping, provision of support for higher education, and even research in pure science, to name a few.[68]

This was the era of managerialism or managerial capitalism, when corporations came to be seen as being more responsive to the needs of society. The idea that shareholders were still corporate owners in the traditional sense of the word had taken a back-seat. On this development, Ireland and Pillay, quoting Edward Mason in a collection of essays he published in 1959,[69] stated that;

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[67] ibid 204

[68] C Kaysen, 'The Social Significance of the Modern Corporation' (1957) *American Economic Review* Vol. 47 313

[69] Edward S Mason, *Corporation in Modern Society* (Cambridge MA: Harvard University Press 1959) 14-15

> ...the traditional justification for private property ownership had gone forever. The old argument that private property ownership was essential to the full development of personality [and] to the maintenance of individual freedom might still be valid in relation to individual possessory holdings but it did not apply to corporations whose owners have been converted into rentiers.[70]

In his own contribution supporting managerial supremacy, Wedderburn asserted that corporate law should no longer treat the shareholder as a 'proprietor' entitled to control of the corporation. Rather, the shareholder's position should be seen in the same way as the position of a well secured creditor.[71]

The managerial theorists argued that since shareholders had become rentiers in the corporate process, managers are consequentially freed from the shackles and the pressures of the cut-throat, monopolistic market competitions which formerly restricted their activities. Freed from the shadows of shareholders, the overriding purpose of a corporation was no longer to maximize profit but to balance the divergent and sometimes conflicting interests of the different groups affected by corporate activities. This led to the creation of socially responsible corporations. According to Ireland;

> By 1950s and 60s, non-sectional managerialist ideas had become common place, underpinning claims that corporations were becoming more 'socially responsible' and 'soulful'. In 1955, for example, L.C.B. Gower, doyen of post war British company law, suggested that the emphasis that some still placed on 'the profit making element in corporate activity' now had 'a slightly old fashioned ring'.[72]

The concept of the socially responsible corporation in the 1950s and 60s found outlets in different forms; corporations engaged more in philanthropic gestures; they also created multi-constituency boards to run corporations (particularly in the US); employees were given more attention and their

[70] Paddy Ireland and Renginee G Pillay, 'Corporate Social Responsibility in a Neoliberal Age' in P Ytting, and J Marques, (eds.) *Corporate Social Responsibility and Regulatory Governance* (Hampshire: Palgrave Macmillan 2009) 82

[71]Quoted in Ireland and Pillay, ibid 83

[72] Paddy Ireland (n 39) above,30

welfare was taken into consideration when making corporate decisions and; in some organizations, attempts were made to create industrial democracies. [73]

According to Davies, in the US many economists began to assert that the country was no longer a capitalist economy in the strict sense of the word. To these 'optimists', the country had become a variant of an industrial economy in which those in control of business where guided by organizational imperatives, devoid of excessive profit-making mentality.[74] They pointed to the various mechanisms through which corporations had become central instruments in the realization of public policy objectives. These included environmental protection objectives, through the passage of the Environmental Protection Act of 1970; work place safety with the enactment of the Occupational Safety and Health Act of 1970; product safety with the passing of the Consumer Product Safety Act of 1972 and equitable employment practices, through the Equal Employment Opportunity Act of 1972.[75]

In the 1968 revised edition of *The Modern Corporation*,[76]Berle stated that corporate managers had become 'administrators of a community system', and held that corporations are no longer 'business devices', but should rather be seen as 'social institutions'.[77] In the same vein, Young and Scott argue that during the period, managers seemed to value the life and enduring success of the enterprise and saw this as the fundamental end. Satisfactory shareholder returns resulted from pursuing this prime goal.[78]

The culture of most corporations in the 1950s and 1960s can be summarised, therefore, as one in which business organizations were socially responsible. They were seen as 'soulful' enterprises, managed in the interest of the public.[79] They engaged in varied degrees of philanthropic gestures and attached importance to the welfare of their employees. Corporations also took into consideration, the interest of communities where they operated and concerned themselves with ensuring that the

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[73] R Khurana (n 20)

[74] GF Davies, 'Twilight of the Berle and Means Corporation' (2011) *Seattle University Law Review* Vol. 34 1126

[75]ibid 1126

[76] A Berle and G Means, *The Modern Corporation and Private Property* (2nd Rev. Edition, New York: Harcourt Brace & World 1968)

[77] 'Preface' to the Revised Edition ibid

[78] Don Young and Pat Scott, *Having Their Cake... How the City and Big Bosses are consuming UK Business* (London: Kogan Page Limited 2005) 20

[79] See C Kaysen (n 68) above 314

environment was not adversely affected by corporate activities. They became outlets through which certain 'civic' legislations were passed and enforced.

It is imperative to point out, however, that even during this period, the concept of profit-making was still an integral part of corporations and businesses were still set up for that purpose. The fact that corporations had become socially responsible did not dispense-with the purpose of profit-making. As Ireland submits;

> It is important not to overstate the extent to which corporate managers abandoned the shareholder interest and to which corporations really acted in a 'socially responsible' manner during this period. Finance was by no means stripped of power and, despite the dampening of competition associated with the rising levels of industrial concentration, the adoption of multi-divisional management structures by many large corporations saw the emergence within them of decentralised 'profit centres' which competed for capital.[80]

The point is that during the managerial era, pursuit of profit for the benefit of shareholders, though still an integral aspect of corporate capitalism, was not pursued ruthlessly and in total disregard of other stake-holders in society.

In Nigeria, commercial oil extraction and exportation started in the 1950s and by the 1960s, MNCs such as Shell, Chevron, AGIP and Exxon Mobil were already operating in the country. It is arguable that the idea of the socially responsible corporations also influenced the decisions and operations of these entities in Nigeria. Between 1958 and 1970 for instance, there were practically no recorded oil spills in Nigeria. The first batch of news on oil spills began to filter-in from the 1970s. At this time, the culture of corporations had transformed and the idea of the socially responsible organization, in the sense in which it was understood during the managerial era, was on a downward trajectory.[81]

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[80] Cited in P Ireland (n 39) above 32

[81] See Chapters Two and Six for a more detailed discussion of this point

Crisis of Managerialism: Markets for Corporate Control (MCCs) and the Rise of the Agency Theory

The position in the 1950s and 1960s, by which corporations were approximated to social institutions, was heavily criticized by a 'new liberal' group,[82] backed by powerful rentier investors. This group argued that the inclination towards the socially responsible corporation led to inefficiencies which work against the interest of society. The backlash against the 'soulful corporation' resulted in the re-privatisation of corporations beginning from the 1970s and was achieved mainly through the formulation of the agency theory and the preference for the establishment of markets for corporate control.[83]

Bakan observes that from the late 1960s to early 1970s, the world witnessed an intense economic meltdown. A perfect storm of external economic shocks, made the worse by a decline in productivity and growth, cost of living adjustment and an economy tilting towards the use of services more than the production of goods, dealt a big blow to the global economy.[84] As he recounts;

> In 1973, [national economies] were shaken by a surge in oil prices due to the formation of the Organisation of the Petroleum Exporting Countries (OPEC), which operated in cartel-like fashion to control the world's oil supply. High unemployment, runaway inflation, and deep recession soon followed. Prevailing economic policies, which, true to their New Deal lineage, had favoured regulation and other modes of government intervention, came under sustained attack for their inability to deal with the crisis.[85]

Furthermore, an excess of funds for business was unleashed on an international scale after the failure of 'the Bretton Woods agreements' in the early 1970s. According to Sennett, capital that hitherto had been restricted to indigenous or national purposes or which were deposited in 'national banks', were

[82] Including Henry Manne, Milton Friedman, M. Jensen, Eugenie Fama, etc.
[83] Discussed in details in the next chapter
[84] Joel Bakan (n 15) above 21
[85] ibid

released from the vaults and became easily transferrable internationally. Significantly, he continues, there was an increased desire to invest by both the 'oil rich countries' of the Gulf region and American investors. Japanese and German Banks, and even an assortment of Chinese business men in the Pacific got in on the act. Exploring offshore prospects increased drastically and this deluge of capitalist funds, seeking for investment opportunities, led to 'perfection' in the art of hostile takeovers. The consequence was a craving for 'short term rather than long term results, which symbolized the age of the 'impatient capital'.[86]

By the time Margaret Thatcher became the British Prime Minister in 1979 and Ronald Reagan, the President of the US in 1980, there was a clear signal that the 'economic era' which was the motivation behind the New Deal of President Roosevelt and his allied colleagues had come to its conclusive end. According to Bergin, this was the 1980s, when Michael Douglas declared that 'greed' was good in the film '*The Wall Street'*.[87] It was the period when Margaret Thatcher was pushing back the ability of the state to regulate economic activities and 'shareholder value' became the overriding management viewpoint.[88] In this context, Bakan explains that 'over the next two decades, governments pursued neoliberalism's core policies of deregulation, privatization, spending cuts and inflation reduction with increasing vigour'.[89] Neoliberalism had thus become the economic orthodoxy by the early 1990s.

However, even before the 1970s and Margaret Thatcher, some free market exponents had begun to write extensively against the socially responsible corporation. In 1965, Henry Manne had written that those who acknowledged the principle of managerial supremacy were too hasty in their judgement. According to him, when the existence of markets for corporate control is considered,[90] there was 'a limit to how far corporate managers could abuse their investors' in the guise of social responsibility. The notion of the 'market for corporate control' inferred that management of public corporations 'was always for sale in principle', thereby fixing the threshold of the extent to which

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[86] Richard Sennett, *The Culture of the New Capitalism* (New Haven: Yale University Press 2006) 39-40
[87] Tom Bergin, *Spills and Spin: The inside Story of BP* (London: Random House Business Books, 2011) 17
[88] ibid
[89] Joel Bakan (n 15) above, 21
[90] Albeit unrecognised and under-utilized

corporate administrators 'could ignore' the market price of shares. Since the market actually exists, the idea of the corporation as a social institution was untenable and already reaching its conclusive end.[91]

> The lower the stock price, relative to what it could be with more efficient management, the more attractive the take-over becomes to those who believe that they can manage the company more efficiently. And the potential return from the successful takeover and revitalization of a poorly run company can be enormous.[92]

Manne contended vigorously that 'managerial capitalism' was not efficient and beneficial to society, as Berle and Means had earlier written. Shrewd and prudent shareholders, being wiser than Berle and Means had portrayed, could not be expected to transfer their resources to a group of unaccountable corporate managers who neither listens to them, nor pursues their interests.[93] For as long as options exist, investors will not be deceived into following the 'destructive' path of transferring their resources to these group of irresponsible and selfish officers. Moreover, corporations that fail to draw financiers will not endure for long, because once the value of the corporation's stocks fall to a certain level, external interests like corporate competitors will use that as an opportunity to take-over the corporation and manage it more efficiently. This will result in a kind of Darwinian selection method, with a preference for shareholder-oriented corporations. Managerial capitalism, therefore, could not be the answer, but was rather the cause of most corporate problems.[94]

Manne's writings greatly influenced the subsequent works of the agency theorists, including Michael Jensen, William Meckling and Eugene Fama,[95] who implicated managers as the major protagonists in the economic problems encountered by corporate capitalism. Corporate managers – who would not 'voluntarily change' their ways – they argued, acted as obstacles to the efficient operation of competitive markets. Furthermore, corporate managers, who serve as agents of

[91] Henry G Manne, 'Mergers and the Market for Capital Control' (1965) *Journal of Political Economy* 73, 110
[92] ibid 113
[93] GF Davies, *Managed by the Markets: How Finance Re-shaped America* (New York: Oxford University Press 2009) 33
[94] ibid
[95] Aided by their fellow Neoliberal Chicago Boys like Milton Friedman and Meckling

shareholders by managing corporations on their behalf, have 'self interest motives' which are quite different from that of the shareholders. It will be difficult to monitor the conduct and behaviour of these managers, considering that the conditions upon which stock ownership is managed are both wide and complex. Accordingly, 'because managers' work is not easily observable, they will fail to pursue actions that maximize the value of the firm. The challenge, they argued therefore, is to create 'an alignment of incentives' in which managers personal financial interests will be aligned with those of the shareholders.[96]

The agency theorists embarked on a far-reaching evaluation of relationship capitalism and argued that the solution to the economic crisis of the 1970s lay in restructuring how corporations are managed.[97] Jensen and Meckling argued strongly that the overriding objective of corporations should be the 'theoretical justification for takeovers and the maximization of corporate value which is measured by share price'.[98] Accordingly, the absence or lack of an active market for corporate control was one of the factors responsible for the corporate indiscipline and unaccountability of corporate managers. Markets should be relied upon 'for the regulation of the overall economy and that of corporate governance'.[99]

The agency theorists argued that it was necessary to clearly re-define the purpose of corporations and transform its essence and principles.[100] Ontologically, they argued, the view that corporations are social institutions is rendered 'delusional' by the fact that the fundamental nature of corporations consists of formal associations. Corporations are mere legal inventions which function as 'a nexus' for a series of 'contracting relationships' between persons. In this situation, there is no

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[96] MC Jensen and WH Meckling, 'Theory of the Firm: Managerial Behaviour, Agency Cost and Ownership Structure' (1976) *Journal of Financial Economics* Vol. 3(4) 310-311

[97]It was not only corporate restructuring that was advocated, however. Another solution lay in minimising the government's role in the national economy. This is discussed in Chapter Five

[98] R Khurana (n 20) above 301

[99] ibid

[100] MC Jensen and WH Meckling, 'Theory of the Firm (n 96) 305; See also Eugenie Fama, 'Agency Problems and the Theory of the Firm' (1980) *Journal of Political Economy*, Vol. 88(2) 288-307; EF Fama and MC Jensen, 'Separation of Ownership and Control' (1983) *Journal of Law and Economics*, Vol. 26 (2) 301-325

justification for the attempt to differentiate between 'those things that are "inside" the firm (or any organisation)' and 'those things that are "outside" of it'.[101]

> There is in a very real sense only a multitude of complex relationships (i.e. contracts) between the legal fiction (the firm) and the owners of labour, material and capital inputs and the consumers of output...[102]

In pursuance of the objective of transforming the purpose of corporations, agency theorists, over time, formulated a variety of mechanisms aimed at solving the agency problem. The mechanisms include; (i) monitoring managerial performances; (ii) providing comprehensive economic incentives which will involve 'remunerating managers' with company stock and options; (iii) introducing the concept of Non-Executive Directors (NEDs); (iv) promoting an active market for corporate control (MCCs).[103]

Khurana states that after the Second World War – when Keynesianism was the economic orthodoxy – this type of market logic was considered extremist in nature. Gradually, however, more and more people 'sided with the free market or neoliberal economists in the belief that institutional investors and other shareholders were more trust-worthy than managers as custodians of the corporation'.[104]

Corporate raiders began to portray corporate executives as people only interested in satisfying their personal and selfish interests. T. B. Pickens, a well known corporate raider, wrote that;

> US executives aren't looking at takeovers as a means of enhancing shareholder value. They only look to takeovers as a threat to their salaries and perks. And the reasons they perceive it this way is that they generally own very little stock in their own companies. They don't relate to shareholders' interests because they aren't substantial shareholders themselves.[105]

[101]MC Jensen and WH Meckling (n 96) above 310-311

[102] ibid 311-312

[103] These mechanisms are discussed in details in the next chapter – chapter Four; see also R Khurana (n 20) above 318

[104] ibid 302

[105] TB Pickens, 'Shareholders: The Forgotten People' (1985) *Journal of Business Strategy* Vol. 6 (1) 4

In many articles and journals, written after the 1970s, as a prelude to the re-emergence of shareholder value, most business media readily blamed corporate managers for the prevailing economic crisis. Managers were depicted as 'unaccountable plutocrats', squandering the assets of corporations and using them for purposes not beneficial to shareholders. As more and more attacks were directed at corporate managers, 'the social and political context which had favoured managerialism since the progressive era, and was institutionalised in a variety of regulatory policies and normative practices that had virtually guaranteed managerial autonomy since then, was rapidly dismantled during the 1980s'.[106]

Re-Assertion of Shareholder Value and the Re-Privatization of Corporations

With the high level of deregulation witnessed after the 1970s, in line with the wishes of anti-managerialists, active markets for corporate control were created. The creation of these markets led arguably to the de-legitimization of the conglomerate forms of corporations. The balance in the control of corporations subsequently tilted in favour of financial actors, as opposed to corporate executives. As a result, many corporations were broken up, forced to voluntarily shed unrelated businesses or made to borrow funds to engage in stock buybacks, in order to enhance their share value and repel the claws of the aggressive corporate raiders.[107] Executive attention shifted from the business to the share price and by the end of the 1990s, 'spurring the share price to the highest level possible had become an end in itself for many, many executives, who would go to any lengths to achieve it'.[108]

According to Khurana;

[106] Michael Useem, *Executive Defense: Shareholder Power and Corporate Reorganisation* (Cambridge: Harvard University Press 1993) 13

[107] N Noriah, D Dyer and F Dalzell, *Changing Fortunes: Remaking the Industrial Corporation* (New York: Wiley 2002) 43

[108] Don Young and Pat Scott (n 78) 21

> ...with the creation of the shareholder value position as the key criterion for business success and the only way to maintain independence from corporate raiders, companies not only divested unrelated business but sought to lower costs by cutting out layers of management, improving processes and outsourcing non-core functions. Corporations downsized, dramatically reducing the middle management ranks that had been one of the defining characteristics of post war corporate America.[109]

The *New York Times* declared that ‘the new corporate order, eschews loyalty to workers, products, corporate structures, businesses, factories, communities, even the nation’ and that ‘all such allegiances are viewed as expendable under the new rules’, meaning that ‘with survival at stake, only market leadership, strong profits and a high stock price can be allowed to matter’.[110] Instead of the financial sector rotating around big business, big business (large corporations) began to spin around financial markets and the ‘signals they generated’.[111] According to Davies, this ‘Copernican Revolution’ became ‘the functionalist theory of corporate governance’.[112]

It has been suggested that the idea of shareholder primacy freed managers and corporate executives from responsibility to any other objective, other than the actualization of desired financial results. Corporations were now looked at as a combination of financial assets, arranged according to their value in the market.[113] In this new corporate economy, the argument that the corporation could be subordinate to any social arrangement, outside shareholder value, was derided as lacking normative value. With neoliberalism as a foundation for the new orthodoxy, the idea that ‘the relationship among managers, boards of directors, and equities markets should be mediated and evaluated primarily through the lens of the firm’s share price became institutionalized throughout the corporate and financial worlds’.[114] Corporations ceased to be seen as part of a connection of corresponding

[109] R Khurana (n 20) above 305

[110] S Prokesch, ‘Remaking the American CEO’ (January 1987) *New York Times*, <www.nytimes.com/1987/01/25/business/remaking-the-american-ceo.html?pagewanted=all&src=pm> accessed 28 April 2013

[111] GF Davies (n 93) 33-34

[112] ibid

[113] Michael Useem (n 106) above, 42

[114] B Holmstrom and SN Kaplan, ‘Corporate Governance and Merger Activity in the United States: Making Sense of the 1980s and 1990s’ (2001) *Journal of Economic Perspectives* Vol. 15(2) 132

institutions in society, but instead, became raised as 'the most important institution in society'.[115] The manager's function in the corporation was, in the final analysis, 'framed as serving shareholders and shareholders alone.'[116]

It has been equally argued that the culture inherent in this ideology makes corporate managers indifferent to moral issues. They dissociate themselves from the values of society, even though the rhetoric of shareholder primacy states that maximizing shareholder profit is beneficial to society. The image of corporate managers are transformed from 'one of a steady reliable caretaker of the corporation and its constituents to that of a swash-buckling, iconoclastic champion of shareholder value'.[117]In other words, they became reduced to no more than hired hands.[118]

The growing complexity of 'financial instruments like the leveraged buyout', supposes that shareowners have the power to 'make or break corporations' and corporate managers could do nothing about it.[119]

> Due to the emergence of sophisticated shareholder power, corporate generals at the top of the chain of command were not the generals they once were; a new source of lateral power had emerged at the top, often literally foreign, often otherwise indifferent, to the culture that long term associations and alliances had forged within the corporation.[120]

This pressure on corporate managers to maximize profits and satisfy shareholders means that everything is legitimate in the pursuit of profits – be it the use of child labour or sweat shops, sacking 15,000 employees or subjecting communities to colossal misery to exploit profits.[121]

The ascendancy of 'shareholder value primacy' and its apparent domination has led to the eventual demise of managerial capitalism. In its place, what is witnessed is the re-privatisation of the

[115] R Khurana (n 20) above 305
[116] ibid
[117]ibid
[118] ibid
[119] R. Sennett (n 86) 39
[120] ibid
[121] Anita Roddick cited in Joel Bakan (n 15) above

corporate form and the birth of 'investor capitalism', or what Ireland terms 'resurgent finance'.[122] According to him, re-privatised corporations are extremely susceptible to the evaluation of 'financial market participants' and to the indicators emanating from the markets themselves. Since 'financial markets' are subject to an ever increasing role, 'corporate strategies' in turn are progressively 'tied to a narrowly financial view' of the way corporations should be managed, 'one in which maximizing stock price trumps all other goals'.[123] The culture of corporations thus, has become radically financialized.

As all these were happening, technological innovations in communication and transportation also meant that the mobility and portability of corporations had become possible. Fast and large jet planes and new container shipping equipment (which allowed for sea-shipping to be smoothly integrated with rail and truck networks) drove down costs and increased the speed and efficiency of transportation. Communications were similarly enhanced with improvements in 'long distance phone networks, telex and fax technology, and more recently, the creation of the internet'.[124] Corporations, no longer bound to operate in their places of incorporation, could comb all parts of the globe in search of areas to produce goods and services at considerably lesser costs. It thus became possible to purchase cheap labour in poor countries with poor environmental and work standards,[125] while selling the finished products in wealthy countries, where 'people had disposable income and were prepared to pay decent prices for them'.[126]

[122] Paddy Ireland (n 39) above; He equally uses terms such as the 'new finance capitalism' and the 'second financial hegemony'.
[123] ibid
[124] Joel Bakan (n 15) above, 21
[125] On the 25 April 2013, a building supplying clothes to more than 25 High Street chains like Primark and Matalan collapsed in Bangladesh, killing over 1000 people. The collapsed building could have been evacuated long before the collapse if the work standards had been as high as in the developed countries. See J Brown and A Buncombe, '1000 Dead as High Street Fashion Chains Told to Put Lives Before Profits After Bangladeshi Factory Collapse' (Friday, 26 April, 2013) *The Daily Independent* <www.independent.co.uk/news/world/asia/290-dead-as-high-street-fashion-chains-told-to-put-lives-before-profits-after-bangladeshi-factory-collapse-8585698.html> accessed 27 April 2013
[126] Joel Bakan (n 15) above 22

II

SHAREHOLDER VALUE AND NEOLIBERALISM

As was suggested earlier, the re-assertion of shareholder primacy did not occur in isolation. It is part and parcel of the rise to prominence of the neoliberal theory of development, beginning from the 1970s. In order to better understand shareholder value with its predilection towards voluntary and self-regulatory CSR, an analysis of the wider neoliberal theories of economic and social development is considered necessary. This part of the section is, therefore, dedicated to an analysis of the wider neoliberal theory, its historical roots, the differences between it and classical liberalism and the rationalist assumptions for its 'normalizing' role in the global economy.

Meaning of Neoliberalism

Neoliberalism is an economic theory that advocates for the liberalization of trade and the intensification of market processes. It is a doctrine 'which champions precisely, the kind of market mechanisms through which modern finance exercises its coercive power'.[127] Harvey gives a detailed description of the term, with its different connotations. According to him, it is;

> A theory of political economic practise that proposes that human well-being can best be advanced by liberating individual entrepreneurial freedoms and skills within an institutional framework characterised by strong private property rights, free markets, and free trade. The role of the state is to create and preserve an institutional framework appropriate to such practices... Furthermore, if markets do not exist (in areas such as land, water, education, health care, social security or environmental pollution) then they must be created by state action, if necessary. But beyond these tasks, the state should not venture. State intervention in markets (once created) must be kept to the barest minimum because, according to the theory, the state cannot possibly

[127] Paddy Ireland (n 39) above 23

> possess enough information to second-guess market signals (prices) and because powerful interest groups will inevitably distort and bias state intervention (practically in democracies) for their own benefit.[128]

Neoliberalism is an ideology based on the idea that free markets operate to maximize aggregate wealth and welfare and that the best policies to be implemented by governments (especially the developing ones) are liberalized market policies. This means that economies are managed better when governments transform as many public institutions as possible, into private institutions. When this is done, social institutions become 'items' or commodities capable of being 'transacted with' in markets (the commodification of public goods). Systems that are governed by heavy privatization encourage 'investments and savings' by diminishing 'the cost of capital to business', thereby motivating 'the development of capital markets and promoting the efficient allocation of resources'.[129] The process of commoditizing social institutions, on its own, cannot be possible unless there is a complementary process of deregulation. The deregulation process will prevent intervention or unwarranted regulation from the state and will allow free markets to allocate resources according to individual actors' performances.[130]

According to neoliberal economists, the best economic policy is one where there is perfect market competition. The reason for this, they claim, is that there is a rationality which exists only in a free market. To this end, 'private contractual and economic ordering of the "unregulated" forces of supply and demand serves to maximize not only individual freedom but efficiency, growth, wealth and welfare'.[131]

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[128]David Harvey, *A Brief History of Neoliberalism* (Oxford England: Oxford University Press 2005) 2; It is a market driven approach to economic and social advancement based on neoclassical theories of economics. It stresses on the efficiency of private enterprises in economies where trade is liberalised and markets are relatively open. It insists that efficient private enterprises and free markets are necessary for the full realization of economic development and as such, emphasises the role of the private sector in determining the political and economic priorities of the state. It holds that as a developmental sine qua non, the functions of the state must be pushed back and all allocation of resources determined by market processes.

[129]Paddy Ireland, 'Law and the Neoliberal Vision: Financial Property, Pension Privatization and the Ownership Society' (2011) *Northern Ireland Legal Quarterly* 62 (1) 1-32

[130]ibid

[131]ibid; This economic ideology believes that 'there is a naturally functioning and naturally efficient market, predating the state, rooted in human nature', which as a matter of reason, controls the human aspiration and need to engage in exchange and batter.

It sees the state as interfering with the rationality of markets and as an unproductive, greedy assembly of self-seeking policy-makers, commonly used by special interest groups to advance their peculiar and pecuniary interests. The officials, who manage the affairs of state, are always under intense and constant pressure from these varied interest groups, making it impossible to make the right decisions. In this condition of imperfection, the state ends up in 'governmental failures' which include (but is not limited to) regulatory capture, rent seeking and corruption.[132]

This strong dislike for state interventions in economic policies – at least rhetorically – is extended to a universal dislike for the state as an institution. The dislike of the state as an institution has on its own, become so wide spread that in today's globalized world, 'many now see the states as at best an anachronism and at worst as an obstacle' to societal advancement. Politics, which is a natural consequence of 'state-ship', opens the door to sectional interests which distort the rationality of market systems. The solution to this aberration is to 'depoliticise the economy'.[133]

On a global scale, neoliberalism involves the process of ensuring that goods and services move freely across borders without interference from government. This, it is argued, will ensure that cheaper resources are utilized to maximize profits and efficiency. The free movement of goods and services across territories, borders and boundaries can only be achieved when certain interventionist policies of government are removed. These include tariffs, standards, laws, legislation and regulatory controls, restrictions on capital flows and investment.[134]

In pursuit of this ostensibly free and perfect market, neoliberals treat other aspects of law as merely reflecting the economic rationality of markets. As Ireland observes, 'this tendency has found

[132]Ha-Joon Chang, 'Breaking the Mould- An Institutionalist Political Economy Alternative to the Neo-Liberal Theory of the Market' (2002) *Cambridge Journal of Economics* Vol. 26 (5) 2; According to Chang, for neoliberals, no matter what governments say, its failures are far worse when compared with that of the markets. As such, it will amount to an aberration for the state to attempt regulating markets. Such interference or attempted regulation by an already 'failed state' worsens the consequences of market failures.
[133] ibid, 18; this can be done by limiting the scope of the state's operation through deregulating and privatizing most public institutions. It can equally be achieved by confining the powers of the state to a few policy areas and establishing independent agencies to run and manage affairs in those areas
[134]Anup Shah, ''A Primer on Neoliberalism' (2010) *Global Issues* <www.globalissues.org/article/39/a-primer-on-neoliberalism> accessed on 16 February 2013; At the same time however, neoliberalism also advocates for certain protectionist measures by governments for the protection of Foreign Direct Investments (FDIs). The purpose of this is 'to allow the free market to naturally balance itself via the pressures of market demands; a key to successful market-based economies'

its most vivid expression in the work of the law-and-economics movement... much of which is underlain by a belief in the trans-historical, purely economic, efficiency maximising rationality of the 'deregulated' market and in a 'classical evolutionary paradigm' of legal development'.[135] This has led to the neoliberal claim of 'legal convergence' and the need to import and imitate rules, particularly in the areas relating to trade. This process of legal transplant (where rules, which are seen as efficient are transferred to trade related areas) amounts to an 'economically determinist Darwinian paradigm of development'.[136]

According to the French writer, Bourdieu, 'neoliberalism is a programme for destroying collective structures which may impede the pure market logic'.[137] He sees the theory as a system which 'tends on the whole to favour severing the economy from social realities, thereby constructing in actuality, an economic system conforming to its description in pure theory, that is a sort of logical machine that presents itself as a chain of constrains regulating economic agents'.[138]

However, it has also been submitted that the anti-state stance of neoliberalism is merely rhetorical. This is because in reality and with the rise of neoliberalism, state activity has not diminished.[139] Rather, it has taken on a different pattern with less welfare, but more financial regulation in favour of powerful financial interests.[140]

Ideological Evolution: From Classical Liberalism to Neoliberalism

The development of neoliberalism can be traced to the theories of natural liberty and natural rights which emerged around the sixteenth century and replaced the divine right of the church and monarchs

[135]Paddy Ireland (n 129)

[136]ibid; this is because in the world of free markets, allocation of resources is carried out based on how efficient a particular participant is and in this way, it becomes a situation of survival of the fittest.

[137]Pierre Bourdieu, 'The Essence of Neoliberalism', (1998) *Le Monde Diplomatic* (English edition) <http://mondediplo.com/1998/12/08bourdieu> accessed 16 February 2011

[138] ibid

[139] Early neoliberals learnt from 'the mistakes' of the classical liberals and recognised that markets require state maintenance in order to function properly

[140] This point is discussed more in Chapter Five, dealing with the political barrier to effective CSR

by the end of the seventeenth century.[141] From Locke to Hume, Paley and Rousseau, these political philosophers emphasized the importance of the individual in the realization of the 'general will'. The notion of 'rights in the individual' was logically presumed and provided intellectual foundations for the emergence of 'rights in property' and to the liberty of the individual who is in possession, to do what he likes with the property he possesses.[142]

The philosophers, however, argued that the elevation of 'the individual' alone, might be at the expense of the progress of society. As a result, the 'individual will' had to be modified in a manner that will simultaneously suit the goals of the wider society. The result was the creation of an alignment between the individual and the society. Paley and Bentham had to borrow from the earlier works of Hume on 'utilitarian hedonism', to propound the philosophical doctrine of social utility. Rousseau took the 'social contract' from Locke and modified it to become the 'general will'.[143] The problem inherent in individualism was side-tracked by applying the concept of equality. Equality of men leads to equality in ownership of property, which in turn, leads to general security for all.[144]

The salient point discernible from the writings of these philosophers is the assumption that by the workings of 'natural laws', individuals engaged in the pursuit of their own personal interests 'with enlightenment' (in a free and unrestrained world), will always promote the general interest of society at the same time.[145] Since every free man strives for his own good, every man strives for the good of society at the same time. In this way, "I" becomes the same as "all" and society benefits in the end.

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[141] There is the argument, however, that theories of the individual and natural rights had taken root even before the sixteenth century, in the writings of Stoic philosophers like Marcus Aurelius and Zeno; See WD Grampp, '*The Stoic Origins of Liberalism: Economic Liberalism, Vol.1' (*New York: Random House 1965) 1-2

[142] John Maynard Keynes, 'The End of Laissez-Faire' (1926) *Multimania Publication* <http://membres.multimania.fr/yannickperez/site/Keynes%20la%20fin%20du%20laissez%20Faire.PDF> accessed 13 November 2011; Keynes suggests that the reason for the promotion of the 'individual right' was to depose the authority of both the monarch and that of the church. It was felt that their rule over men had become autocratic, despotic and arbitrary. Every individual should, in consequence, be allowed to enjoy rights emanating from his 'human rationality', as against privileges handed out by autocratic despots.

[143] ibid

[144] ibid

[145] This, links to the idea of free markets as 'natural' and not requiring state constitution and maintenance.

This was the foundation on which classical liberal theorists, like David Ricardo and Adam Smith built their economic paradigm.[146]

Classical liberal theory is predicated on the principal pillars of 'comparative advantage', a notion attributed to David Ricardo, and the 'invisible hand,' ascribed to Adam Smith. According to Smith, in the area of economics, human beings are enthused by the need to make profit. The essential premise is one of self-interest. People will accidentally advance their society if existing circumstances allow them to pursue their personal needs and desires. The old mercantilist arguments for restrictive and protective trade were no longer tenable because 'economic events' are greatly hindered by over-protectionism.[147] The values of free trade, competition and choice have the capacity to stimulate economic development and reduce poverty. This is only possible where the 'invisible hand' (of the market) is set free from its 'mercantilist' chains.[148] This economic paradigm of freedom for the individual is what is known as the Laissez-Faire theory or Classical Liberalism.

The phrase 'Laissez-Faire' is a French word which literally means 'leave it alone' or 'leave us alone'. Keynes states that the Marquis d' Argenson was the first writer to use the phrase in clear association with the doctrine of individual freedom, in about 1751.[149] The Marquis believed that there were many economic advantages derivable from a system in which the government left trade alone.[150] Accordingly, the Marquis declared that, 'to govern better, one must govern less'.[151] On the other hand, Handman writes that the phrase was first recorded by Franklin as a spoken word, in his work;

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[146] See I Adams, *Political Ideology Today* (Manchester: Manchester University Press, 2001) 20; Freedom becomes the single most important condition for the progress and development of society. Every man is encouraged, as a result, to ensure that the conditions for freedom are attained. Interference from any angle, be it from the government or non-governmental groups, is not acceptable. The natural effort of every individual to better his own condition becomes the prop upon which the public good rests.

[147] A Skinner (Ed.), *'Introduction' to Adam Smith's The Wealth of Nations, first published 1776* (Harmondsworth: Penguin Books 1970) 44

[148] B Polling-Vocke, 'What is Economic Liberalism?' Briefing Paper Series <www.hockeyarenas.com/berntpv/briefingpaper/papers/13.htm> accessed 2 April 2013

[149] This 'written attribution' could only be ascribed to the Marquis after his work was published in his own name in 1858; See D Saussy, 'Round Table: Keynes, The Laissez-Faire and Sedimentation, Part 1 by Reynaldo Miranda' (December, 2012) *Symposium: Great Books Institute Publications* <http://symposiumsa.com/keynes-the-laissez-faire-and-sedimentation-part-1-by-reynaldo-miranda/> accessed 3 April 2013

[150] Again, this is part of the underlying reasons why classical liberals insisted that trade and the markets do not need state support

[151] John M. Keynes (n 142)

Principles of Trade published in 1774, where he recounted the 'colloquy' between Colbert and Legendre towards the end of the sixteenth century.[152]

It is in the works of Bentham that the rules of Laissez-Faire were properly stated and argued in English literature. Bentham exhibited his predisposition to the doctrine of individual freedom in his writing on utilitarian philosophy entitled, *A Manual of Political Economy*.[153] In this seminal work, he writes that:

> With the view of causing an increase to take place in the mass of national wealth, or with a view to increase of the means either of subsistence or enjoyment, without some special reason, the general rule is that nothing ought to be done or attempted by government. The motto, or watchword of government, on these occasions, ought to be—*be quiet.*[154]

Government involvement in the daily activities of men, he continues, amounts to an unwarranted interference which restricts and inhibits the maximum optimization of human capacity.

> The request which agriculture, manufacturers and commerce present to governments is as modest and reasonable as that which Diogenes made to Alexander: stand out of my sunshine.[155]

With the appealing nature of this argument to capitalist actors, it was not surprising that free trade campaigners readily adopted the slogan of Laissez-Faire. By the middle of the nineteenth century, the doctrine had permeated and practically dominated the academic system. The church was even co-

[152] M Handman, 'Economic History-The Decline of Laissez-Faire' (March, 1931) *The American Economic Review* Vol. 21(1) *Supplement Papers and Proceedings of the Forty Third Annual meeting of the American Economic Association* <www.jstor.org> accessed 01 November 2011; According to Handman, Colbert had asked Legendre (who perhaps was encountering difficulties in his business) how the government might be of help to him. Legendre simply replied that the government should "let me be". It is logical to conclude however, that the meaning Legendre attributed to the phrase at the time must be without some of the implications ascribed to it today.

[153] Jeremy Bentham, 'A Manual of Political Economy' (1843) *The Works of Jeremy Bentham Vol. 3 The Online Library of Liberty* <http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1922&chapter=114388&layout=html&Itemid=27> accessed 2 April 2013

[154] ibid

[155] ibid

opted into disseminating the 'faith' of Laissez-Faire ideology. In the *Easy Lessons for the Use of Young People,*[156] Archbishop Whately wrote that 'more harm than good is likely to be done by almost any interference of government with men's money transactions, whether letting or leasing, or buying or selling of any kind'.[157] Real freedom and liberty is realized only when an individual is given the freedom 'to dispose of his own property, his own time and strength, and skill, in whatever way he himself may think fit, provided he does no wrong to his neighbours'.[158] As Keynes observes, 'the political philosophy which the seventeenth and eighteenth centuries had forged in order to throw down kings and prelates, had been made milk for babes, and had literally entered the nursery'.[159]

Classical liberalism believes that an unregulated market is an expression of 'moral truth' which is beneficial to all. It teaches that regulation creates a bunch of lazy citizens who believe that the government will always protect and provide for them. They become less and less efficient and eventually sink into a condition of perpetual dependency. Samuel Smiles, a great apostle of classical liberalism, is quoted by Evans as saying that 'whatever is done for men or class, to a certain extent takes away the stimulus and necessity of doing for themselves; and where men are subjected to over-guidance and over-government, the inevitable tendency is to render them comparatively helpless'.[160]

In a classical liberal economy, the 'ideal' distribution of productive resources is made possible when individuals work independently, using the method of trial and error. By utilizing the 'capitalist constant' of competition, those individuals who move in the right direction will triumph over those who move in the wrong direction. There is no mercy or compassion for those who invest in the wrong ventures. This process of 'economic rationality' will eventually lead to the emergence of the 'most successful profit makers' at the top, through a 'ruthless struggle for survival which selects

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[156] R Whately, *Easy Lessons on Money Matters: For the Use of Young People* (London: J.W. Parker, 1845); this pamphlet was shared freely in England to school children as part of their 'normal' academic curriculum.

[157] ibid

[158] ibid

[159]John M Keynes (n 142)

[160] E Evans, 'Laissez-Faire and The Victorians' (2006) *BBC History* <www.bbc.co.uk/history/trail/victorian_britain> accessed 01 November 2011

the most efficient by the bankruptcy of the less efficient'.[161] The cost of the struggle is immaterial. What matters is the final result which is always constant.[162]

To operate in a state of unhindered natural selection leads not only to progress and effectiveness, but also to the creation of inevitable opportunities 'for unlimited private money making' as an inducement for utmost endeavours. The individual, who either by his own expertise or luck is able to make his investment at the right place and at the right time, makes profit. This system allows the 'skilful' or lucky investor to make as much profits as possible, by acting as an incentive and a motivation for people who, with their investments, strive to be in the right place and at the right time. In this way, one of the most powerful human motives – the love of money – will be employed 'to the task of distributing economic resources in the way best calculated to increase wealth'.[163]

Differences between Classical Liberalism and Neoliberalism

Classical liberalism was concerned with the freedom of the market and the individual. It encouraged competition as the best means through which efficiency could be attained. Neoliberalism also believes in a radically free market and in the importance of competition.[164] Nevertheless, there are still differences between classical liberalism and the 'new' or 'neo' liberal philosophy.

The classical liberalists believed in the freedom of markets; i.e. the non-interference of political institutions in the affairs of markets. To them, however, markets are naturally occurring

[161] John M Keynes (n 142)

[162]ibid; According to Keynes, "corresponding to this method of attaining the ideal distribution of the instruments of production between different purposes, there is a similar assumption as to how to attain the ideal distribution of what is available for consumption. In the first place, each individual will discover what amongst the possible objects of consumption he wants most by the method of trial and error at the margin and in this way not only will each consumer come to distribute his consumption most advantageously, but each object of consumption will find its way into the mouth of the consumer whose relish for it is greatest compared with that of others, because that consumer will outbid the rest".

[163]ibid; from this proposition, there is a correlation between the philosophy of classical economists and Darwin's theory of natural selection and survival of the fittest.

[164] A Barry, T Osborne and R Nikolas, (Eds.) *Foucault and Political Reason-Liberalism, Neoliberalism and the Rationalities of Government* (London: University College London Press 1996)

phenomena which needs no interference from the state. For the neoliberals on the other hand, the state can and should intervene in the market process, but only for its protection and preservation. Even in sectors where markets do not exist, states should create them for the sake of efficient allocation of resources. According to Mirowski;

> The starting point of neoliberalism is the admission, contrary to classical liberal doctrine, that their vision of the good society will triumph only if it becomes reconciled to the fact that the conditions for its existence must be constructed and will not come about "naturally" in the absence of concerted political effort and organisation.[165]

In the same vein, Foucault – with foreknowledge, it appears – submits that;

> Neoliberalism should not be confused with the slogan "laissez-faire", but on the contrary, should be regarded as a call to vigilance, to activism and to perpetual interventions.[166]

In neoliberalism, therefore, there is a constitutional role ascribed to the state to provide the 'judicio-legal' rules that will regulate the framework within which business transactions are carried out.[167]

> Neoliberals replaced the 'naturalism' of classical liberalism with a kind of 'constructivism... it differs from earlier forms of liberalism in that they do not regard the market as an existing quasi-natural reality situated in a kind of economic nature reserve space marked off, secured and supervised by the State. Rather, the market exists, and can only exist, under certain political, legal and institutional conditions that must be actively constructed by the government.[168]

Thus viewed, it becomes clear that neoliberals do not believe in the classical liberals' view of markets or rational economic behaviour as pure, naturally occurring phenomena. To them, the market is a

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[165] P Mirowski, 'Post Face' in P Mirowski and D Plehwe (eds.) *The Road From Mont Pelerin: The Making of the Neoliberal Thought Collective* (Cambridge Massachusetts: Harvard University Press 2009) 434

[166] Michel Foucault, *The Birth of Biopolitics – Lectures 1978-9* (Paris: Gallimard 2004)137

[167] M Peters, 'Neoliberalism: Hayek and the Austrian School' (1999) *University of Auckland's Encyclopaedia of Philosophy of Education* <www.ffst.hr/ENCYCLOPAEDIA/doku.php> accessed on 01 November 2011

[168] A Barry, T Osborne and R Nikolas (n 164)

contrived artefact that needs the support and protection of the state. Unlike the classical liberals who insisted that the government should 'leave the market alone', the neoliberals argue that even though the state should leave the market alone, nevertheless, it should intervene when it is necessary to support and maintain the market. In this context, markets and rational economic tendencies are constructed where and when it is necessary. Both are organised and managed by legal and political institutions and require political intervention and involvement, if and when the need arises. The economy, unlike what the classical liberals believed, must be directed, supervised, supported and protected by the law and policy of states.[169]

Lemke argues that for neoliberals;

> ...the market does not amount to a natural economic reality, with intrinsic laws that the art of government must bear in mind and respect; instead, the market can be constructed and kept alive only by dint of political interventions...competition, too is not a natural fact...this fundamental economic mechanism can function only if support is forthcoming to bolster a series of conditions, and adherence to the latter must consistently be guaranteed by legal measures.[170]

Again, the old liberals, by focusing on the economy argued for the freedom of markets and nothing more. On the other hand, neoliberals extended the freedom of markets further. Neoliberalism is not only concerned with economic policies, the facilitation of free trade and the maximization of corporate profits. It carries within its principles, a 'social analytical' basis which, when installed as a variety of 'governmentality', stretches from the soul of the citizen-subject to other state policies, especially education policies. As Wendy Brown suggests, 'neoliberal rationality, while foregrounding the market, is not only or even primarily focused on the economy; rather it involves extending and disseminating market values to all institutions and social actions, even as the market itself remains a distinctive player'.[171]

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[169] Wendy Brown, 'Neoliberalism and the End of Liberal Democracy' (2007) *Theory and Event* 7 <www.muse.jhu.edu/journals/theory_and_event/v007/7.1brown.html> accessed on 10 November, 2011

[170] T Lemke, 'The Birth of Bio-Politics: Michel Foucault's Lecture at the College de France on Neoliberal Governmentality' (2001) *Economy and Society* Vol. 30(2) 193

[171] Wendy Brown (n 169)

For Neoliberals, the existence and provision of legal arrangements for the support and protection of markets by the state, does not mean that the former is controlled by the latter. Rather, it is the state that is controlled by the market. The market is 'the organising and regulative principle' of both state and society. The state freely and openly, reacts to the requirements of the market possibly through fiscal and monetary policies, immigration, or the organization of public education. Neoliberalism 'indexes the state itself with success' which is dependent on the state's ability to maintain and promote markets. The legitimacy accorded to a state must be predicated on this success.[172] As Lemke put it,[173] economic liberty for neoliberals, 'produces the legitimacy for a form of sovereignty limited to guaranteeing economic activity... a state that was no longer defined in terms of an historical mission but legitimated itself with reference to economic growth'.[174]

These significant differences between classical liberalism and neoliberalism have led some to argue that neoliberalism's anti-state rhetoric is a political project to restore the power and wealth of capital and property owning interests.[175]

Crisis of Classical Liberalism

Classical liberalism, according to Gailbrath, led to an inordinate ambition to get rich quick, which in turn led to the stock market crash of 1929.[176] At the same time also, there was the crisis of over production, which resulted in the 'big problem' of disequilibrium in many national economies. For

[172] ibid

[173] In a lecture in which he was interpreting Foucault's writing on Ordo-liberalism

[174] T Lemke (n 170) above

[175] This line of argument is the subject-matter of Chapter Five below. See also David Harvey, *A Brief History of Neoliberalism* (London: Oxford University Press) 79

[176] John K Gailbrath, *The Great Crash 1929: The Classical Account of Financial Disaster* (London: Penguin Books, 2009) 32; To a large extent, the number of manufacturing industries had increased from what it used to be in the late 1800s. In most 'urban and country club districts' in New York and London, beautiful English houses were sprouting up. The stock markets boomed and more and more profits were made, devoid of the meddlesome intervention of governments.

Hannah, mass protests against 'over-production' or 'under consumption'[177] became common as the 'nuisance' of over-capacity affected one industry after another. In this context, competition was no longer widely accepted as essentially benign, but was increasingly referred to as "cut throat", "wasteful", "unfair", "destructive", or "ruinous'".[178]

As a result, the justification for an unregulated competitive market system on the basis that 'the great complexity of effort necessary to maintain the world's material life' cannot be brought under the control of 'any form of positive action which humanity can devise' was consistently attacked and undermined.[179]

Urwick, writing in 1931, declared that;

> Our control over natural resources is enlarged almost beyond the wildest dreams, even of each preceding decade. The world's capacity for production has been developed to a far greater degree than any corresponding increase in population, especially in the industrialised nations. Yet the peoples of those nations, by millions, are eye to eye with uncertainty, with want, with moral degradation and with despair. We meet under the shadow of the gravest economic crisis which has threatened the material well being of civilisation for a century.[180]

The suggestion here is that the crisis led many to believe that the idea of the self- regulated market, which tended towards equilibrium, was flawed. Collectivism and a form of state-regulation appeared more acceptable.

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[177]Depending on the angle from which it is viewed

[178] Leslie Hannah, *The Rise of the Corporate Economy* (2nd edition, London: Methuen & Co 1983) 31

[179]ibid; it, thus, became clear that the market, on its own, was incapable of organising commercial activities. By allowing the market to operate unchecked, the world was rewarded with an 'unproductive competitive system' with too many products and very little demand. Coupled with the speculative bubble which burst in 1929, national economies were brought to their feet and signalled the end of the liberal, laissez-faire economic theory.

[180] L Urwick, 'The International Position', in R.J Mackay (ed.) *Business and Science: Being Collected Papers Read to the Department of Industrial Co-operation at the Centenary Meeting of the British Association for the Advancement of Science, London, September, 1931* (London: Sylvan Press 1932) 31

The Rise of the Rationalization Movement

The Great Crash of 1929 and the Great Depression which followed meant that economic recession became an integral part of the years between the First World War and the Second World War. For the workers, it meant 'misery' and 'sufferings', while for the employers, it meant 'over-production'.[181] Both the employer and the employee were forced to re-examine the political, social and economic foundations upon which their institutions were built. Instead of the hitherto infallible automatic equilibration of the markets, it was suggested that 'men should substitute a consciously and deliberately fashioned rational system' of corporate and economic regulation. Many began to advocate for an increase in the scale of amalgamations in the private sector of the economy and believed that centralized planning – either by the state or large corporations – was superior. To this end, they argued that resources should be allocated by the state and not left to the vagaries of the markets.[182] This led to the 'rationalization' era and acted as a precursor to the post-war Keynesian economic orthodoxy.

The rationalization movement advocated for a more 'rational' control of national economies, through the application of scientific methods. This could be done either by the state or where possible, the industries themselves. However, since it had already become clear that markets lacked the requisite capacity to regulate its own, an outside agency was advocated as the best planner, organiser and regulator of business activities. It was widely acknowledged that the state was the external agency needed to achieve this objective, in the knowledge that only its regulatory oversight could make industries compliant with the ideas and values of modern society.[183]

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[181] Leslie Hannah (n 178)

[182] ibid

[183]ibid, 32-33; It should be remembered that this was also happening at a time when socialism (or communism) was on the rise and in serious conflict with capitalism. The capitalist business class were not only aware but also weary of the threats socialism posed to capitalist accumulation. They were in agreement that if capitalism was to remain relevant as an economic ideology, it was necessary to find an alternative to state-sponsored socialism. A system was needed which, while incorporating certain ideas that champion collectivism as opposed to outright individualism, will not embrace all the tenets of socialism. Capitalist actors knew that it was their class that was imperilled by the depression and it was their responsibility to revalidate capitalism by

The argument, in essence, was that there was the need for collective action by all actors involved in the economic sector. Both states and manufacturers came together to help each other and the economy at the same time, and apparently, competition became relegated to the background. According to Caillard, all tools used for competition, including 'patents, secret processes, special methods, and goodwill', were all sacrificed for the common good.[184]

Keynesianism and the Establishment of Neoliberalism

Keynesianism is a form of economic orthodoxy largely attributed to the writings of the British economist, John Maynard Keynes. Keynes had argued that in order to encourage growth and development, there was the need for a compromise between capital and labour such that a balance will be created.[185] Keynesianism as an economic theory believes that the level of economic activity is determined by the level of aggregate demand.[186] As a result, periodically, capitalist economies

eliminating some the unwanted elements of the market system which were causing market failures. The state was needed to lead the way in this re-organisation, planning and co-ordination of national economies. Considering that advancements in science and technology had made it possible for humans to control the environment better, there was the need to utilise these developments for the development of human beings. In the thinking of the rationalists' movement, competition was antithetical to progress. The solution to the over-productivity occasioned by cut-throat and wasteful competition was mergers and amalgamations. These ideas will be used to strengthen industries and provide more employment which will lead to the general progress of society

[184] Vincent Caillard, 'Industry and Production' contained in A Wright (ed.) *The New Phase in Industry* (London: Financial Review of Reviews Vol. 22, 1929) 43

[185] John Maynard Keynes, *The General Theory of Employment, Interest and Money* (1936) cited in Paddy Ireland, 'Financialization of Corporate Governance' (n 40) above, 14. It was an arrangement which depicted the web that was created around market processes, entrepreneurial and corporate activities by the state. This form of 'social re-ordering' protected the environment through restraints on economic activities on one hand and the promotion of economic and industrial strategies on the other hand. States were therefore encouraged and did actually intervene in business and industrial policies, through the promulgation and establishment of bench marks for labour wages. They actively participated in the provision of social infrastructures by supporting and subsidizing education, engaging in social welfare and providing health care facilities.

[186] Aggregate demand in this case is the total level of demand for goods and services in a particular economy.

undergo a limitation in the aggregate demand process which manifests in unemployment. This flaw can only be remedied by the state through the use of both fiscal and monetary policies.[187]

The theory holds that the principal remedy for the failures of both capitalism and communism is to create a right balance between states, markets and democratic institutions. This will act as a catalyst in guaranteeing peace, inclusion, well-being and stability internationally.[188] In order to achieve this balance, a 'new world order' was needed to stabilize international relations. The fixed exchange rate, based on the US dollars was introduced to aid the convertibility of gold at a fixed price. This introduced Keynesianism or the era of the 'New Deal', and was championed by President Roosevelt of the US and his victorious allied colleagues. This form of politico-economic organization also came to be known as embedded liberalism.[189]

It is suggested that the alleged threat to the 'free markets' by the introduction of Keynesianism, with its emphasis on central planning, led neoliberals to revise the idea of classical liberalism and eventually led to the establishment of neoliberalism. In this context, by the beginning of the 1970s, the 'Keynesian impulse' had gone on the reverse. Many factors led to this reversal, one of which was the academic division that occurred in the intellectual arm of the movement. Again, in the US especially, there was a deep-rooted opposition to the policy by conservatives and industrialists. These capitalists, with the requisite financial power, had discovered that globalization was the most effective means through which their profit aggregation tendencies could be maintained. Keynesianism permitted a considerable amount of protectionism, which amounts to a constraint on capitalists' accumulation ambitions. They therefore expended so much energy and resources to reverse the application of the economic theory and replace it with one which champions free trade.[190]

On the economic front, the financial prosperity recorded at the early stages of the Keynesian orthodoxy led to a significant increase in the number of economically opulent citizens. This 'social contract between business and labour' created an engendered belief that the 'core economic problems

[187] TI Palley, 'From Keynesianism to Neoliberalism: Shifting Paradigms in Economics', in D Johnston and AS Filho (ed.) *Neoliberalism, A Critical Reader* (New York: Pluto Press 2004) 2
[188] David Harvey (n 175) 10
[189] ibid
[190] E Helleiner, *States and the Re-Emergence of Global Finance: From Bretton Woods to the 1990s* (New York: Cornell University Press 1995) 226

of income distribution and mass unemployment' was finally over. So many things came to be taken for granted and, as Paley argues, this proved to be a costly assumption. The problem of unemployment acutely returned towards the end of the 1960s and by the 1970s had taken on a frightening dimension.[191]

In summation, the economic system which mandated governments to organize and regulate economic activities meant that a small number of people were disadvantaged. These few but influential investors and conglomerates – angered by the profit-neutralizing consequences of embedded liberalism – spent huge resources campaigning against its continued application. They set in motion, mechanisms to lobby and influence governments into separating economic activities from political decisions and allowing the market to run itself. With the division in the intellectual arm of Keynesianism having weakened the economic theory, capitalists with huge resources at their disposal funded and sponsored academics and intellectuals to proffer arguments discrediting the Keynesian regime. This led to the re-invigoration of economic liberalism and explains the expression 'neo-liberalism'.[192]

The snag however, was that this latest variety was not only constrained to nations, but became rather relevant to global finances. It was equally not restricted to only economic activities but was now extended to sectors which were outside the ambit of classical liberalists.[193]

The Intellectual Foundations/Different Schools of Neoliberalism

It has already been stated that the eventual acceptance of neoliberal policies by politicians and policy makers was made possible by a group of economists, intellectuals and philosophers. These academics were able to create, develop and argue the neoliberal ideals and why they are better than Keynesianism. Just as Adam Smith, David Ricardo, James Stuart Mill and other philosophers helped

[191] TI Palley (n 187)
[192]' Neo' here means 'new'
[193] Anup Shah (n 134)

in the formulation and consolidation of libertarian philosophies in the 1770s, later day thinkers equally acted as catalysts in the formulation and proliferation of neoliberal ideas in the contemporary world.

Though it is generally accepted that Neoliberalism, as an economic movement, was created in reaction to the perceived unfavourable consequences of Keynesian policies, there are still different schools of neoliberalism with minor variations in their principles. Thus, it is possible to identify three dominant strands of the neoliberal movement; the Austrian school, the Chicago school and the German Ordo-Liberal school.

Before looking at the various schools however, it is pertinent to first look at the formation of a network of organized neoliberal advocates, which came to be known as the Mont Pelerin Society. This is considered necessary because the network, which includes members from the different schools, constitutes the most pronounced[194]attempt to promote 'organized individualism' during the currency of embedded liberalism.[195]

The Mont Pelerin Society (MPS)

The MPS traces its roots to the meeting of a group of intellectuals under the aegis of the Walter Lippmann Colloquy in 1937. The group met at the instance of the French Philosopher, Louis Rougier to discuss Walter Lippmann's book, *The Good Society*.[196] It is claimed that it was in this Colloquy that the name neoliberalism was coined.[197] In all, 26 intellectuals participated in this inaugural meeting, with the responsibility of formulating a framework for the development and modernization

[194]Even though it was not the earliest

[195]D Plehwe and B Walpen, 'Between Network and Complex Organisation: The Making of Neoliberal Knowledge and Hegemony' in D Plehwe, B Walpen and G Neunhoffer (Eds.) *Neoliberal Hegemony; A Global Critique* (London: Routledge 2006) 4

[196] ibid; See also W Lipmann, *The Good Society* (Guildford-Great Britain: Billing & Sons 1938)

[197] RV Horn and P Mirowski, 'The Road to a World Made Safe for Corporations: The Rise of the Chicago School of Economics' (2005) *University of Notre Dame Paper* Vol. 5(1) 37

of liberalism.[198] It was formed in order to proclaim the emergence of a 'new orientation towards the previous liberal tradition' and propose a different attitude to state power. It replaced the 'naturalism' of classical liberal economists with a type of 'constructivism'. The classical liberalists believed that the market is an existing 'quasi natural reality' situated in an economically reserved space. Members of the Colloquy disagreed and held that markets can only function under particular 'legal, political and institutional' circumstances constructed by the state.[199]

For this group of intellectuals, it was necessary to overcome the experiences of the old liberal traditions and dismantle the mixed 'state/economy' viewpoint which had overshadowed the classical liberalists' thinking before the Second World War. These men, who formed the nucleus of the resurgent neoliberal movement, included Raymond Aaron, Wilhelm Ropke, Louis Baudin, Michael Polanyi, and August von Hayek. They would later, with others, form the Mont Pelerin Society (MPS).[200]

On 10 April 1947, an Austrian Professor, Fredrich August Von Hayek invited a group of scholars, made up of intellectuals from the three strands or schools of neoliberalism, to a meeting at Mont Pelerin, in Switzerland to discuss the state of the world economy.

> After World War II, in 1947, when many of the values of Western civilization were imperilled, 36 scholars, mostly economists, with some historians and philosophers, were invited by Professor Friedrich von Hayek to meet at Mont Pelerin, near Montreux, Switzerland, to discuss the state and the possible fate of liberalism (in its classical sense) in thinking and practice.[201]

The organization was initially named the Acton-Tocqueville Society but was later renamed Mont Pelerin Society (MPS). It grew and expanded its base and began to influence other fully funded organizations like the Institute of Economic Affairs in London, and the Heritage Foundation in Washington. The movement, with the help of people like Hayek and Friedman, spilled into

[198] D Plehwe and B. Walpen (n 195)
[199] RV Horn and P Mirowski (n 197) 37
[200] ibid
[201]See <www.montpelerin.org/montpelerin/mpsGoals.html> accessed 3 June 2013

Universities – most especially the University of Chicago – from where a group known as the 'Chicago Boys' perfected the art of neoliberal theory. From some of these Universities, neoliberalism was sold to politicians and it began to wield considerable influence over government policies and pronouncements. It was from the University of Chicago, for instance, that the ideology was exported to Chile, where it was first put into practise, as a fully fledged governmental policy by Pinochet, after the overthrow of the democratically elected government of Salvador Allende in 1973.[202]

The Austrian School of Neoliberalism

This is the neoliberal school attributed to Von Hayek. However, it is necessary to point out that Hayek equally had a hand in the formation of the Chicago School and at a time, was a lecturer in the University of Freiburg where the German Ordo-Liberalism was formed. The Austrian school's liberal philosophy sprang up primarily from the theoretical exposés of Carl Menger, Leon Walras, Eugen Boehm-Bawerk and Ludvig Von Mises, in the first decade of the early twentieth century. The Austrian school differed from the classical economists in that they believed in the subjective theory of value as opposed to the classical liberal's belief in the objective theory of value. Leon Walras, for instance, saw economics as 'the calculus of pleasure and pain of the rational individual' while Carl Menger queried the idea of 'perfect information that was taken to underlie *homo-economicus* by both classical and neo-classical economists'.[203] Menger insisted that there was no perfect information as postulated by the old liberals. Von Mises agreed in principle with the imperfect information theory of Menger and, it was Von Mises' very strong anti-social leanings that influenced the later works and writings of Hayek.[204]

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[202] David Harvey (n 175) 8

[203] M Peters, 'Neoliberalism: Hayek and the Austrian School' (1999) *University of Auckland's Encyclopaedia of Philosophy of Education* <www.ffst.hr/ENCYCLOPAEDIA/doku.php> accessed 01 November 2011

[204] ibid

Ordo-Liberal School

Ordo-Liberalism originates from Germany. It is also known as the Freiburg School and was founded in the 1930s at the University of Freiburg in Germany by an economist, Walter Eucken and two lawyers, Franz Bohm and Hans Grobmann-Doerth. These fathers of Ordo-liberalism were in agreement that 'the question of the constitutional foundations of a free economy and society' was one that needed investigating. In a joint publication by the three in 1937 (*Ordnung der Wirtschaft*), they insisted that they were in 'opposition to the, then still influential, heritage of Gustav Von Schmoller's Historical School' and the corrupt relativism, which this historical school had foisted upon German Jurisprudence and Political Economy. They declared that the 'treatment of all practical politico-legal and politico-economic questions must be keyed to the idea of the economic constitution'.[205]

For the Ordo-liberals, the market order, which does not discriminate in matters of competition, should be united with a 'system of minimal income guarantees for those people who provisionally or for the long run, are not able to make a living by selling or dealing in services' through the free markets. Such a 'social insurance' must not discriminate, must be endowed with a 'privilege-free nature' and must be distributed in ways that do not damage the underlying moral assumption of the market order, i.e. its 'privilege free nature.'[206]

The Ordo-liberals begin from the very premise that the market order is a constitutional order. It is characterized by an institutional framework which is subject to constitutional choice. 'It assumes that the working properties of the market processes depend on the nature of the legal-institutional frameworks within which they take place, and that the issue of which rules are and which are not desirable elements of such frameworks ought to be judged as a constitutional issue, i.e. in terms of the relative desirability of relevant constitutional alternatives'.[207]

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[205] VJ Vanberg, 'The Freiburg School: Walter Eucken and Ordo-Liberalism' (Nov 2004) *Freiburg Discussion Papers on Constitutional Economics* 1 www.walter-eucken-institut.de/fileadmin/bilder/Publikationen/Diskussionspapiere/04_11bw.pdf accessed 6 April, 2013

[206] ibid 4

[207] ibid 5; There is seen here, a remarkable connection between the principles of the Ordo-Liberals and the Post-Washington Consensus ideology of later day neoliberals. Other members of the school include Leonhard Miksch, Friedrich Lutz, Karl F Maier, Hans W. Meyer and Paul Hensel.

The Chicago School

The Chicago school of neoliberalism was founded at the University of Chicago around 1946.[208] This was in consequence of a lecture delivered by Hayek at the Economic Club in Detroit Michigan on 23 April, 1945. In the lecture, Hayek proclaimed that Keynesianism consists of 'inflationary measures which in the short run may keep employment high but in the long run make the situation much more difficult than it was before'.[209] Such a theory, according to him, was to be avoided.

After the lecture, Hayek was commissioned by an industrialist, Harold Luhnow[210] to conduct a neoliberal project and mandated to provide a befitting work on the dangers of government interference in business. Hayek co-opted his 'great friend', Henry Simons to help in actualising this project. Simons, on his own, was able to draft-in both his former and current colleagues at the Economics and Law Faculties respectively, to work together in the execution of the project, with the backing of the Faculties' boards. The work was entitled; *The American Road to Serfdom.* [211]

The Chicago school believed that the free market is the most systemic, rational and efficient organizer of economic activity. They were the innovators of the idea that 'much of politics could be understood as if it were a market process and therefore amenable to be formalized through neoclassical theory'.[212] Politicians were only trying to 'maximise their own utility', in the same way as the electorate. Since this is so, the state is only one sub-standard medium through which outcomes, more efficiently accomplished by the markets, could be realized. This leads to a cynical evaluation of the 'virtues and benefits' of democracy. They used the doctrine to make unappealing evaluations of

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[208] RV Horn and P Mirowski (n 197) 3

[209] ibid 5; For Hayek, the Keynesian model of economic development, which was the foundation of the New Deal, was exactly such a measure and should be treated with contempt. The answer to economic development was not in the Keynesian Model but in neoliberal policies

[210] The President of the Volker Fund in Chicago

[211] RV Horn and P Mirowski (n 197) above; by the time Simons committed suicide on 19 June 1946, the arrangements for the project had gone very far and people like Aaron Director and Milton Friedman stepped in and continued with the project. Together with other liberal economists in the University like Frank Knight, Jacob Viner, Oskar Lange, Theodore Schultz, George Stigler, Karl Brandt and others, the neoliberal school was formed in the University and came to be known as the Chicago School

[212] ibid, 39

the intellectual abilities of people and argued that social amenities such as education are not 'the price to be paid in order to build a competent democratic citizenry', but are plain commodities which ought to go to the highest bidder.[213]

One of the greatest exponents of the school was Milton Friedman. He was an American Economist, Statistician and a Professor at the University. A recipient of the Nobel Memorial Prize in Economic Sciences in 1976, Milton Friedman wrote on such issues as consumption analysis, monetary history and theory. He is equally credited with having demonstrated the complexity of stabilization policy. Friedman was an Economic Advisor to Ronald Reagan and was instrumental in creating most of the neoliberal policies undertaken by the Reagan administration in the US.[214]

He was originally a supporter of Keynesianism but later recanted his position. In 1953, his interpretation of the Keynesian consumption function was a challenge to the existing Keynesian Model. In 1960, he wrote a book which promoted monetarism and in this way, put him in staunch opposition to the Keynesian model. He consistently argued that the only way the US could end stagflation was through the introduction of neoliberal fiscal policies and the promotion of monetarism. Friedman has been dubbed the most influential economist of the last century.[215]

The 'Rationalist Assumptions' that 'Normalized' Neoliberalism as an Economic Paradigm

In looking at the triumph of neoliberalism over Keynesianism, Hay presents a set of 'rationalist assumptions' which contributed in embedding and normalizing the neoliberal ideology

[213] ibid, 39-40; For the Chicago School, corporations are simply inactive reactors to external forces. They wield no power on their own. The only actor which constantly misuses its power, as far as the market process is concerned, is the trade union. They are, as a consequence, illegitimate interest holders that must not be permitted to operate. However, other market powers such as monopoly and oligopoly are both harmless and temporary. Even when or where they are harmful, they must be the creation of the state.

[214] See Special Report, 'Milton Friedman; a Heavy Weight Champ at Five Foot Two: The Legacy of Milton Freedman, a Giant Among Economists' (November 23, 2006) *The Economist*, <www.economist.com/node/8313925> accessed on 6 April, 2013

[215] ibid

internationally. According to him, relying on the work of Thomas Kuhn,[216] systematic succession can be understood in terms of the appearance and institutionalization of a sequence of 'more or less enduring paradigms'.[217] The progressions of these paradigms are interspersed by episodic 'revolutions', through which the existing postulation is challenged and over-thrown. There is a period of 'normal science' and a period of 'exceptional science'. During the period of 'normal science', a particular paradigm dominates and is not challenged by any other paradigm. This dominating paradigm supplies the basic structure which defines and delimits a range of issues. Gradually and over time, however, the generally accepted 'dominant norm' is challenged as a result of an accumulation of anomalies within this presently dominating norm. This is the period of 'exceptional science', when a group of practitioners break away from the old paradigm (norm) to find an alternative. This emerging paradigm (norm) implicates the old one as the cause of existing problems and attempts to postulate solutions to the problems. When this happens, the 'exceptional science' eventually becomes acceptable as the norm, 'thereby opening a renewed phase of normal science under the dominance of the new paradigm'.[218]

At the time the 'exceptional science' becomes the 'normal science', dominant rationalizations are used to show its 'normative' character. The normative character of the 'normal science' is used to justify its overthrow of the hitherto existing 'normal science' and the ascendancy of the 'exceptional science' to the status of the dominant paradigm. The new paradigm is used to explain the problems of the old paradigm and becomes a solution to the problems created by the old paradigm. In the case of neoliberalism, the paradigm is rationalized as the answer to the stagflation of the 1970s, occasioned by the failures of Keynesianism. At that level, it has a normative character which acts as a better option, compared to that which it overthrew.[219]

From the rationalist's assumption of neoliberalism as a 'normative phenomenon', there is a progression to the level of neoliberalism as a 'normalizing phenomenon'. Here, the 'normal science'

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[216] Relying on the work of Thomas Kuhn, *The Structure of Scientific Revolutions* (3rd edition, Illinois: University of Chicago Press 1996)

[217] Colin Hay, 'The Normalizing Role of Rationalist Assumptions in the Institutional Embedding of Neoliberalism' (2004) *Economy and Society* Vol. 33 (4) 500-527 at 504

[218] Colin Hay (n 217)

[219] ibid 514

is now advocated as the only option to which no alternative exists. At this stage, the paradigm is cloaked with a 'normative', as well as a 'normalizing' character. This is the stage of the 'normal science' where the paradigm is justified, not necessarily on its own terms, but 'as the only possible solution to the problem in a world of rational expectations' and 'in this way, rationalist assumptions normalize and institutionalize neoliberal policy such that no alternative is conceivable'.[220]

The application of the rationalist assumptions explain how a group of intellectuals, funded 'prodigiously' by capitalist and rentier investors, broke away from the then 'normal science' of Keynesianism and established their own 'exceptional science' of neoliberalism, as an answer to the problems encountered by Keynesianism. Over time, these groups of intellectuals and business men,[221] through organized but sometimes very expensive lobbying, got political support from state and government officials. They successfully attacked and overthrew the Keynesian hegemony, thus, enthroning the 'normative science' of neoliberalism. Presently, for the neoliberal advocates, there is no other alternative to neoliberalism, thereby transforming and cloaking it with a 'normative' as well as a 'normalizing' character.

According to Harvey;

> In the US in particular, a powerful group of wealthy individuals and corporate leaders who were viscerally opposed to all forms of state intervention and regulation ... sought to organise opposition to what they saw as an emerging consensus for pursuing a mixed economy. Fearful of how the alliance with the Soviet Union and the command economy constructed within the US during the Second World War might play out politically in a post war setting, they were ready to embrace anything from McCarthyism to neoliberal think-tanks to protect and enhance their power.[222]

In October 1979, Paul Volcker, the then Chairman of the Federal Reserve constructed a draconian shift in US monetary policy which was instrumental to the final demise of Keynesianism and eventual 'death' of the welfare state.[223]

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[220] ibid 518

[221] These two make up the official 'think-tank' and 'financial backbone' of the movement respectively.

[222] David Harvey (n 175) 22

[223] ibid 23

In the UK, from 1979 when Margaret Thatcher became Prime Minister, the ascendancy of 'neoliberalism as a new economic orthodoxy regulating public policy at the state level', was realized.[224] Her government abhorred the meddlesomeness of governments in the functions of 'instinctively produced market stability' – for the purposes of re-distribution – and strongly argued that this leads to disorder, volatility and repression. When politicians and public officials are granted the 'power to manage and re-direct public resources', they end up endorsing and elevating 'the rent-seeking activities' of special interests, instead of the 'entrepreneurial spirit' of society.[225] In order to prevent this from happening, Thatcher's government embarked on a governmental reform, aimed at diminishing the state and freeing society from its grip. It had to replace the 'welfare culture' linked with 'democratic socialism' with a novel 'enterprise culture' established on neoliberal values of the 'free market and individual choice'.[226]

This policy choice led, in essence, to a consistent attack on trade unions and the dismantling of most welfare packages associated with the state. It adopted liberal policies which emphasised the encouragement of competition, lowering of taxes and the support of entrepreneurial development. For Thatcher, 'there was no such thing as society, only individuals, men and women'.[227] All aspects of social solidarity were dismantled while individualism and private property was given prominence. As Yergin submits, the conceptual onslaught of the welfare state that emanated from Thatcher's oratory was 'uncompromising'.[228]

It was from the two cities of Washington and London that neoliberal economic practices were marketed internationally and imposed on weaker nations. These two governments co-opted the help of the Bretton Woods institutions created after the 2nd World War – the IMF and the World Bank – to

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[224] ibid, 22

[225] A Palumbo, 'When Tony Met Maggie: The Terms of the Neo-Liberal Consensus in Britain' (2004) *an Academia.edu publication* <www.academia.edu/683213/From_Thatcherism_to_Blairism._Britains_Long_March_to_the_Market> accessed 6 April, 2013

[226] I Taylor, "Introduction" in I Taylor and G Popham (eds.) *An Introduction to Public Sector Management* (London: Unwin-Hayman 1989) 20

[227] David Harvey (n 175) 23; She is noted as having coined the acronym **TINA** meaning that **T**here **i**s **N**o **A**lternative (to Neoliberalism)

[228] D Yergin and J Stanislaw, *The Commanding Heights: The Battle Between Government and Market Place that is Remaking the Modern World* (New York: Simon & Schuster Pub 1999) 5

disseminate the doctrine to all countries of the world. In this way, the neoliberal ideology took on a normative, as well as a normalizing role.

Susan George captures the reason behind the success of the neoliberal movement in these words;

> They have built this highly efficient ideological cadre because they understand what the Italian Marxist thinker Antonio Gramsci was talking about when he developed the concept of cultural hegemony. If you can occupy peoples' heads, their hearts and their hands, will follow. I do not have time to give you details here, but believe me; the ideological and promotional work of the right has been absolutely brilliant... So, from a small, unpopular sect with virtually no influence, neo-liberalism has become the major world religion with its dogmatic doctrine, its priesthood, its law-giving institutions and perhaps most important of all, its hell for heathen and sinners who dare to contest the revealed truth.[229]

III

NEOLIBERAL SHAREHOLDER VALUE AND CONTEMPORARY CSR

This third and final part of section one attempts to locate contemporary CSR in the neoliberal ideology (and by implication that of shareholder value), identify the tensions that exist between the two ideas and how the ideologies of neoliberalism and shareholder value, seemingly act as barriers to effective CSR.

[229] Susan George, *A Short History of Neoliberalism: Twenty Years of Elite Economics and Emerging Opportunities for Structural Change* (Paper presented in a Conference on Economic Sovereignty in a Globalising World; Bangkok 24-26 March 1999) *Global exchange Website* <www.globalexchange.org/resources/econ101/neoliberalismhist> accessed 21 February 2013

Locating CSR in the Neoliberal/ Shareholder Value Ideologies

It has already been suggested that shareholder value is part and parcel of the wider neoliberal economic theory of development.[230] Neoliberalism, in itself, is the 21st century form of capitalism. The culture of profit maximization and the tension that exists between shareholder value and transformative CSR become clearer when the nature of the capitalist system is rationally de-constructed. One essential characteristic of capitalism is competition and this concept is so fundamental to a capitalist system that it operates without recourse to the individual position of capitalist actors.[231] This is because the 'social conditions' in every capitalist market decide how price competition operates and this is outside the command of any particular actor.[232]

The suggestion that capitalist[233] profits rely on a complimentary 'cost/price' relationship, means that the best approach to accumulate more profit is to reduce personal costs. This leads to the persistent compulsion to cut labour costs and to continually develop labour efficiency. The imperative to cut costs, in turn, necessitates the need to discover 'the organizational and technical means' of obtaining a great deal of excess from both labour and the environment in a given time frame, 'at the lowest possible cost'.[234]

Again, in order to continuously accumulate profits, it is necessary for the capitalist to re-invest the excess profits already realized. Put in another way, investment demands steady and relentless wealth aggregation, thereby making it essential for profit to be exploited. According to Woods, exploitation of profit is best achieved through the process known as 'the re-investment of surpluses'.[235] This obligation is forced on entrepreneurs, not withstanding their personal desires or wishes. Even the most self-effacing, unassuming and 'socially responsible capitalist' has to bow to

[230] The neoliberal ideology was discussed above
[231] For instance, by establishing monopolies
[232] Ellen Meiksins Woods, 'Capitalism and Social Rights' (2009) *Solidarity* <www.solidarity-us.org/site/node/2150> accessed on 15 February 2013
[233] Or corporate profits, in this case
[234] Ellen Meiksins Woods, *The Origin of Capitalism: A longer View* (London: Verso Publishers 2002) 6
[235] Ellen Meiksins Woods, 'Capitalism and Social Rights' (n 232)

this coercive capitalist imperative and is forced to accumulate by maximizing profit, if he intends to survive in business.[236]

Continuous flow in the distribution and movement of capital is very essential and cannot be broken-up without sustaining losses. Any pause in the process imminently leads to the 'loss or devaluation' of the capital invested. In a situation where an investor fails to expand and a competitor does, it is almost a given that the former will likely be driven out of business. He has to defend and increase his market share in order to forestall this from happening. Thus, the effects of 'the coercive laws of competition' are seen in action.[237]

The necessity to re-invest, in order to remain in business, drives the investor to expand and, in turn, creates a perpetual need to explore new areas where 'surplus capital' can be re-invested. This leads to the 'capital surplus absorption' question – what new areas can we invest in, so as to continue with the process of profit accumulation? Those factors that inhibit the re-investment of capital amount to obstacles that must be destroyed or circumvented, in order to prevent the crisis of over-accumulation. Otherwise, the crisis will result in the devaluation or destruction of capital. Since this is not in the interest of the capitalist investor, he must strive to maximize profits for re-investment in new fields.[238]

As Ellen Woods argue, the requirement to embrace exploitative tactics is a fundamental and indispensable characteristic of the logic of capitalism. It is not merely the outcome of recklessness or gluttony or materialism. It appears logical to suppose that 'a system based on market principles will inevitably place a premium on wealth and encourage a culture of greed'.[239]

With this underlying philosophy, acts which ordinarily are supposed to be moral obligations – like CSR – are viewed as immoral acts. As Friedman boldly asserted, 'a corporation is the property of the stockholders. Its interests are the interests of its stock holders. Now, beyond that, should it spend

[236]ibid

[237] David Harvey, *The Enigma of Capital and the Crisis of Capitalism* (London: Profile Books,2010) 41-45

[238] ibid

[239] Ellen Woods (n 232)

the stockholders' money for purposes which it regards as socially responsible but which it cannot connect to the bottom line? The answer I would say is no'.[240]

Friedman insists that though circumstances may exist where corporations are allowed to consider other interests, this is only permissible when such circumstances contribute to the accumulation of more profits. Thus, corporations may be permitted to engage in moral activities when the activity is 'insincere'. The executive who treats social and environmental issues as a means of maximizing shareholder wealth (and not as an end on its own) commits no wrong.[241] He likens such 'deception' to a seller of automobile, putting 'a good-looking girl' before an automobile he wants to sell, so as to attract customers. To him, 'that is not to promote pulchritude. That is in order to sale cars'.[242]

This is a strategic view of CSR which 'reduces lofty ideals to hypocritical window dressing'. This hypocrisy is, however, acceptable or in Friedman's words 'virtuous', since it serves the bottom line. Moral virtue is not acceptable and becomes immoral, if it adds not to the bottom line.[243]

Looking at the culture of contemporary corporations, it appears reasonable to think that the notion of CSR is not taken too seriously, except when it enhances shareholder value. This is because shareholder primacy advocates that CSR is best applied as a public relations apparatus or marketing tool to enhance business profits. Corporate managers should not be motivated by social responsibility practices, except they are exploited as a 'cloak' for legitimate business resolutions.[244]

Bakan suggests that this is why BP drills 'on the coastal plain if that is the most beneficial (i.e., profitable) long term course for the company, when all factors are considered'.[245] As he further explains, 'concerns about destroying a Caribou Herd, the Arctic environment, or an entire aboriginal

[240] Interview with Milton Friedman in Joel Balkan (n 15) 34

[241] ibid 34

[242] ibid 35

[243] ibid

[244] HA Grossman, 'Redefining the Role of the Corporation: The Impact of Corporate Social Responsibility on Shareholder Primacy Model' (2005) *Deakin Law Review* Vol. 10 (2) 579

[245] Joel Balkan (n 15) 45

people have no place – at least not as ends in themselves – in the corporation's decision making lexicon. The cost to the company not drilling could be huge'.[246]

It is also argued that this underlying philosophy is what motivates a corporation like Pfizer to open a company-sponsored school in a host-community. It is not because it cares for the well- being of the community, but because building the school is connected to the success of the corporation. As their CEO, Hank McKinnell stated in 2002, '...unless we have a large pool of candidates who are trained in our business and the sciences and mathematics, we won't succeed in our business'.[247] This culture, it is argued, explains why Shell and ExxonMobil will build roads in the Niger Delta of Nigeria. It is not because they care for the host communities', but because the roads will make employee transportation to and from work sites easier. The motives for socially responsible conducts thus viewed, are insincere and hypocritical.[248]

This culture equally explains the continued spilling of oil in the Niger Delta by oil corporations in the area. For these corporations, social and environmental goals, when and if they engage in them, must be to promote the interest of their share-owners and not as ends on their own. As Danny Schechter points out, there is logic to business which influences corporations. Implementing this logic means that some values will be given more emphasis over and above others and the value given most emphasis is the underlying one, that which shores up the profit of shareowners.[249]

Anita Roddick, a onetime CEO of the Body Shop UK, reflecting on the culture of contemporary corporations, opines that it prevents people (the managers and their employers) from 'having a sense of empathy with the human' situation. For her, 'the language of business is not the

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[246] ibid

[247] H McKinnell, interview contained in ibid 47

[248] See CD Batson, E Collins and AA Powell, 'Doing Business after the Fall: The Virtue of Moral Hypocrisy' (2006) *Journal of Business Ethics*, Vol. 66 (4), 321-335 at 322; See also N Brunsson, 'Organized Hypocrisy' in B Czarniawska, and G Sevon (eds.) *The Northern Lights: Organization Theory in Scandinavia* (Stockholm: Liber AB 2003) 201– 222 at 203

[249] Danny Schechter cited in Joel Balkan (n 15) 44

language of humanity. It is a language of indifference; it is a language of separation, of secrecy, of hierarchy'.[250]

For Cour and Kromann, in the world and culture of contemporary corporations, being socially responsible 'holds out promises of help, reassures people' but disappoints them in its effectiveness. Greed and moral indifference have become the 'moral code' and a corporation can do good only to help itself do well. As pressures mount on corporate managers to maximize profits, corporations become desperate and are willing to engage in all sorts of activities to achieve their goals.[251]

While engaging in reckless and fraudulent acts capable of destroying generations, they simultaneously adopt social responsibility codes and proclaim their beliefs in the principles of good governance. Corporate, moral or organizational hypocrisy becomes a common occurrence.[252] According to Wagner and others, corporate hypocrisy occurs when a corporation claims to be what it knows it is not, and attempts to make people believe this fake version.[253] It is suggested that corporate hypocrisy is what defines the relationship between contemporary CSR and neoliberal capitalism.[254]

Voluntary and Ameliorative CSR: The De-Radicalisation of Contemporary CSR?

The fundamental nature of neoliberalism and shareholder value – freedom from regulation – means that the regulation of contemporary CSR and respect for the rights of stakeholders are internal to the corporation and not external to it. Except where such rights and social obligations are specifically

[250] Anita Roddick, cited in ibid, 56

[251] A Cour and J Kromann, 'Euphemisms and Hypocrisy in Corporate Philanthropy' (2011) *Business Ethics: A European Review* Vol. 20 (3) 268-269

[252] ibid

[253] T Wagner, RJ Lutz and BA Weitz, 'Corporate Hypocrisy: Overcoming the Threat of Inconsistent Corporate Social Responsibility Perceptions' (2009) *Journal of Marketing* Vol. 73(1) 79

[254] The idea of the 'de-radicalisation' of corporate social responsibility is discussed below. The spirit embodying this process is quite relevant in this regard.

protected by state legislation or by mutual agreements in the form of contracts, the corporation is not under obligation to respect them.[255]

Contemporary CSR, therefore, is anti-state and focuses on the voluntary action of corporations. In this way, the notion of contemporary CSR becomes aligned with Friedman's view that there is nothing like CSR, outside that of making profits for shareholders. To him;

> The doctrine of "social responsibility" taken seriously would extend the scope of the political mechanism to every human activity. It does not differ in philosophy from the most explicitly collectivist doctrine. It differs only by professing to believe that collectivist ends can be attained without collectivist means. That is why, in my book *Capitalism and Freedom*, I have called it a "fundamentally subversive doctrine" in a free society, and have said that in such a society, there is one and only one social responsibility of business–to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.[256]

Friedman's contestation, which is at the root of shareholder value, is influenced by the dictates of neoliberalism. As was suggested above, neoliberalism insists that there should be no limits to the functioning of the market process because, 'if the natural and beneficent rationality of the market is to function without distortion, market actors (such as corporations) need as far as possible to operate (contract) without constraint'.[257] External imposition of CSR is a constraint on the freedom of actors (the corporation) in the free market economy.[258]

> In keeping with the neoliberal market-based model of economic and social development, with its emphasis on free trade, freedom of movement for capital and limited state intervention in and regulation of economic affairs,

[255] This point is discussed further in chapter Four, in the section on OECD Principles of Corporate Governance.
[256] Milton Friedman, 'The Social Responsibility of Business is to Increase its Profits' (September 13 1970) *The New York Times Magazine* <www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html> accessed 22 April 2013
[257] Paddy Ireland and RG Pillay 'Corporate Social Responsibility in a Neoliberal Age' in P Ytting, and J Marques, (eds.) *Corporate Social Responsibility and Regulatory Governance* (Hampshire: Palgrave Macmillan 2009) 85
[258] This underlying presumption set the stage for the formation of the neoliberal corporate governance framework discussed in the next chapter, and which champions shareholder value primacy; See chapter Four for a discussion of the concept of neoliberal corporate governance

> contemporary CSR promotes not the legal regulation of corporations by the state but self-regulation by corporations themselves. Indeed, its emphasis on voluntarism and self-regulation is one of its defining characteristics.[259]

As a result, any intervention by the state (whether legal or political) is outside its scope, because contemporary CSR is only concerned with the activities of corporations.[260] The definite and most distinguishing 'denominator' of all 'corporate-oriented, corporate-inspired' ideas of the responsible corporation is 'the voluntary, non-enforceability and self-regulatory' connotation of the expression.[261]

By advocating support for 'voluntary self regulation', the proponents of contemporary CSR base their assertion on 'soft law or quasi or non-legal instruments' which do not have the force of law at all or whose binding nature is weaker than that usually ascribed to 'hard law'. This is acceptable to corporations, who in 'prioritizing shareholder interest above and beyond every other interest, see CSR only as a source of legitimacy to their actions.[262]

As Ireland and Pillay suggest;

> Contemporary CSR operates very much within the prevailing neoliberal consensus, leaving unchallenged the shareholder-oriented model of the corporation. As such, it is in many ways most accurately regarded as a mere adjunct to the emergence of the shareholder value model of the corporation. Contemporary CSR is not, and does not purport to be transformative in nature. It is, and purports to be only ameliorative. It makes little effort to displace the view that the goal of business is the pursuit of shareholder interest and maximization of share holder value.[263]

This has led many critics to assume that contemporary CSR is a mere appendage to essentially neoliberal ideas about corporations, the state and development. Indeed, this assumption has led many to argue that there is a fundamental tension between neoliberal ideas on enhancing shareholder value,

[259] Paddy Ireland and RG Pillay (n 257)

[260] C Crouch, 'Modelling the Firm in its Market and Organisational Environment: Methodologies for studying Corporate Social Responsibility' (October 2006) *Organization Studies* Vol. 27 (10) 1533

[261] Ronen Shamir 'De-Radicalization of Corporate Social Responsibility' (2004) *Critical Sociology* Vol. 30 677

[262] Paddy Ireland and RG Pillay (n 257)78

[263] ibid 89

and the idea that CSR codes, voluntarily applied, are effective in achieving efficiency and welfare for society. According to them, it is simply a smoke screen for PR purposes.[264]

This view is further strengthened by the suggestion that contemporary CSR, instead of curbing corporate excesses, has been 'colonised' and 'converted' to a secondary use by corporations, as an 'efficiency enhancing devise' for the accumulation of more profits.[265] From this point of view, contemporary CSR embodies what Boltansk and Chiapello labelled the 'new spirit of capitalism'.[266]According to them, capitalism has developed within the last 100 years, not necessarily because of reactions to forces from within it – like efficiency, competition and industrial improvements – but rather, by assimilating significant aspects of the criticisms it has been subjected to, and transforming them into a 'motivating spirit.'[267]

Over time, the argument continues, criticisms of the capitalist hegemony, intended to depose 'the capitalist economic system' is reconstructed as the rationalization for a 'new form of capitalism'.[268]

> Capitalism has always relied on critiques of the status quo to alert it to any untrammelled development of its current forms and to discover the antidotes required to neutralize opposition to the system and increase the level of profitability within it.[269]

Faced with a legitimacy crisis,[270] modern corporations have devised ways of responding to societal pressures and neutralizing such pressures. Fundamentally, it is argued that effective CSR is a notion which apparently encourages the performance of acts for the 'greater good' of society, as opposed to that of 'the individual', thus making it antithetical to the idea of maximizing share profits. Since it

[264] Paddy Ireland and RG Pillay (n 257) 85

[265] Wolfgang Streeck, *Reforming Capitalism: Institutional Change in the German Political Economy* (London: Oxford University Press 2009) 250

[266] L Boltansk and E Chiapello, *The New Spirit of Capitalism* (New York: Verso Publishers 2007) 4

[267] The motivating spirit of 'voluntarism and self-regulation'

[268] L Boltansk and E Chiapello (n 266)

[269] ibid

[270] Arising from mounting pressures and attacks from communities and civil societies

potentially reduces dividends in its true form, effective CSR, it is suggested, is incompatible with the shareholder value ideology – in the short term at least.[271]

Yet, modern corporations claim to engage in CSR. The argument is that they do this because the concept is based on voluntary codes, as against hard laws. Neoliberalism (as was argued above) abhors any form of social regulation of activities of the free market, including the activities of MNCs. In line with belligerent corporate efforts towards preventing any form of legal control, corporations transformed themselves into 'active players' in the CSR field. This process of corporate transformation or infiltration is what Shamir labels the 'de-radicalization' of CSR.[272] According to him, corporations have aggressively joined the 'social responsibility bandwagon,' slowly but surely influencing the very concept of social responsibility in ways agreeable to corporate interests.[273]

While agreeing with this school of thought, Bollier submits that the primary business policy of modern corporations is not to evade accountability or to refute the social commitments of corporations.[274] For him, in contrast to 'traditional bourgeois philanthropy' which was firmly divorced from the conglomerate, contemporary CSR converses in 'the language of instrumental-rationality' which connects doing 'good' to profits.[275] As a result of neoliberal imperatives, corporations engage in CSR practices as part of an 'impact management scheme' calculated to upgrade 'their image and enhance their market competitiveness'.[276]

In this context, therefore, the significance of contemporary CSR – including that practiced in the Niger Delta – is to make sure that the maximization of shareholder value is not pursued to such an extent that it will disregard totally, the impact of a corporation's operation on the larger society. Viewed from this perspective, contemporary CSR sees no irreconcilable difference between the interest of the shareholders and that of the stakeholders. Corporate responsibility should be practiced

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[271] See for instance B Jones and P Nisbet, 'Shareholder Value Versus Stakeholder Values: CSR and Financialization in Global Food Firms' (2011) *Socio-Econ Review* Vol. 9 (2) 287-314

[272] Ronen Shamir (n 261) 669

[273] Ronen Shamir (n 261) 676

[274] D Bollier, *Aiming Higher: 25 stories of How companies Prosper by Combining Sound Management and Social Vision* (New York: Amacom Publishers 1996) 12

[275] D Bollier (n 273)

[276] I Silver, 'Strategically Legitimizing Philanthropists Identity Claims: Community Organizations as Key Players in the Making of CSR' (2001) *Sociological Perspective* Vol. 44 233-252

by corporations as this will aid in actualizing the 'bottom line' principle of maximizing shareholder profits. In line with this notion, there is a scope for partnership between corporate shareholders and stakeholders.[277] This partnership, however, is only directed towards the maximization of the shareholders' profits. When this is done, society in general benefits as well.

Unfortunately, experiences of people in the Niger Delta specifically and, perhaps generally at the international level, show a different outcome from that ascribed to contemporary CSR. This is because, as was analysed above, the fundamental nature of neoliberalism and shareholder value places strict restrictions on the effectiveness of contemporary CSR. This has led to the suggestion that contemporary CSR lacks the 'radical and transformative spirit' with which CSR was identified in the 1950s and 1960s.

Section Two

Neoliberalism and Shareholder Value as Ideological Barriers to Effective CSR in Nigeria

Introduction

In section one, the paradigm shift which began in the late 1970s, from Keynesianism to neoliberalism and which led to the eventual domination of shareholder value primacy in corporate governance was explored. This section will examine the impact of this major shift in economic thinking on the policies pursued by the Nigerian state, and in relation to the activities of multi-national oil corporations operating in the Niger Delta region.

As was discussed in section one above, as a result of the Great Depression witnessed in the post-First World War period, Keynesian economics came to occupy an elevated position, not only in

[277] Paddy Ireland and RG Pillay (n 257) 83

academic thinking, but also in the policy making circles of most countries. This tendency predisposed third-world academics, policy-makers and advisers in these (often newly independent) countries, to the adoption and implementation of Keynesian, "welfarist" policies in their respective states. These academics and advisors were encouraged by the introduction of "structuralist economics" as contained in the New Deal and by the emergence of activist, welfare states in many parts of Europe.[278]

Keynesian ideas were reflected in the work of development theorists, most of who came to believe that markets and indeed the world economy were imperfect, but that with state intervention in appropriate circumstances, these imperfections could be overcome. They, therefore, proposed and sought to implement models of development in which the state was assigned a prominent role in economic processes. Many third world countries, including Nigeria, adopted these developmental models which they believed will lead them quickly to the industrial age.

Before independence was granted to Nigeria in 1960, the colonial administration broadly speaking, embraced this developmental theory and the idea that it was not only within the authority of the state to provide for its citizens, but that it was its duty to try to do so. Such infrastructures as hospitals, roads, shelter, and electricity were all provided for by the state, and the provision of employment was seen as one of the major priorities of government. When the country became independent in 1960, the indigenous government continued with the developmental state model and the implementation of "welfarist" policies. This, according to Amuwo, was the 'golden era' in the country's history of development. He holds this belief because the country met the conditions which qualifies a developmental state, including; an investment environment fairly complimentary for prolonged development; the measured 'empowerment' of the population to enable them contribute in the developmental process; a sustained agreement between 'the government, emerging private sector, and labour' that development was a condition sine qua non; the existence of mutual 'trust between the

[278] J Rapley, *Understanding Development and Practice in the Developing World*, (3rd Ed. New York: Lynne Rienner Publishers 2007) 3

state and non-state actors' and organizations; a considerable degree of 'political stability' and a consistent investment in human development.[279]

During this period, the model of the developmental state seemed to deliver important benefits. With the post-war world economy booming, demand for third-world products rose. This provided third-world governments with the capital they needed for industrial and infrastructural development. As Chang writes;

> The truth is that developing countries did not do badly at all during the 'bad old days' of protectionism and state intervention in the 1960s... In fact, their economic growth performance during the period was far superior to that achieved since the 1980s under greater opening and deregulation.[280]

This was certainly true of Nigeria.

By the late 1970s however, Keynesian economic ideas and the idea of the developmental state both began to fall out of favour. There were intellectual squabbles and disagreements' amongst the exponents of the economic orthodoxy. In the late 1970s, the neoliberal revolution began. The origins of this revolution are controversial. As will be suggested in chapter Five, some argue that it was a class project[281] while as was discussed in section one above, others said that it was a revolution in ideas. Its impact, however, is undeniable. In this sense, neoliberal theorists, whose ideas had only a few years earlier struggled for serious attention, suddenly emerged as purveyors of a new economic orthodoxy. With the cracks in the intellectual walls of Keynesianism and the cultural and economic forces militating against its continued existence,[282] the Keynesian economic paradigm collapsed. It was rapidly replaced by the hitherto "extreme views" of the neoliberal theorist.[283]

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[279] A Amuwo, *Constructing the Democratic Developmental State in Africa: A Case Study of Nigeria, 1960-2007* (Johannesburg: Institute for Global Dialogue, 2008) 24; See also LF Kintz, 'Overview of Current Media Practices and Trends in West Africa' (2007) *Global Media Journal* Vol. 6 (10) 13

[280] Ha-Joon Chang, *23 Things They Don't Tell You About Capitalism* (London: Penguin Books 2010) 72

[281] See for instance, David Harvey, *A Brief History of Neoliberalism* (Oxford: OUP 2005)

[282] See chapter three for details of this

[283] J Rapley (n 278) 3; these views include the freedom of markets, the privatization of government owned corporations, and the commoditization of all aspects of a country's socio political economy. Neoliberal theorists included H. Manne, M. Jensen, E. Fama, M. Friedman etc. See chapter 3 for a detailed discussion of the neoliberal theory and its proponents.

The ascendancy of neoliberal theories affected the economic policies of developing economies, not least because they were embraced by key international agencies such as the IMF, the World Bank and the OECD. The worsening economic conditions during the late stages of Keynesianism in the late 1960s meant that governments of developing economies, anxious for solutions to the worsening economic situation in their countries, were compelled to look not only for new ideas but for help and assistance from these agencies. The result was a sustained attack on the state and other institutions, such as unions, that were thought to be hindering the operation of the 'free market'. Donor agencies, including the IMF and the World Bank began pressuring third-world governments to make changes in their policies. A large number of these third-world governments accepted reluctantly, but the debt crisis had weakened their bargaining power with their creditors and their choices were limited. Others rolled back the state more eagerly because local constituencies had already started pushing for reform. Less state, more market: this was the essential thrust of the strategy known as structural adjustment.[284]

In this respect, the Nigerian case was typical.

I

History of Neoliberalism in Nigeria

According to the Nigerian National Bureau of Statistics (NNBS) – based on projections from the 2006 census that put the nation's population at 140 million – Nigeria's population in 2013 is estimated at 166.2 million.[285] Having been a colony of the old British Empire, Nigeria finally gained its independence from the British Government on October 1 1960. The post-independence Nigerian economy is usually described as a disarticulated export-enclave economy. This means that the modern and traditional sectors of the economy were separate from each other. In disarticulated export-enclave

[284] ibid

[285] See, Nigerian National Bureau of Statistics, 'Nigeria Population 2013' (2 December, 2013) *World Population Review* <http://worldpopulationreview.com/countries/nigeria-population/> accessed 10 February, 2014

economies, national economic attention is concentrated solely on making money through the export of goods. These goods are usually in the form of raw materials.[286]

Thus, Kalu writes that at this time 'existing strategies of economic development reflect[ed] the colonial model of central planning and emphasis on export over consumption products'.[287] In a disarticulated economy, the traditional sector of the economy is made up of the peasants, identified as semi-proletariats, who make their living either through 'subsistence living' or by earning wages. In Nigeria, at the time of independence, quite a large number of the indigenous population existed outside the modern formal sector of the economy. This was because subsistence agriculture was practised in many parts of the country. In the Niger Delta area, where there are creeks and rivers, the people earned their livelihood mainly through fishing.[288]

In effect, Nigeria relied a lot on the export of goods for its revenue. Before the late 1960s, the country traded mainly agricultural products as its export commodity. During this time, crops such as cotton, cocoa, groundnuts and palm oil were the main export commodities. Kalu states that the country's emphasis on cash crops – which can be traced to the pre-independence colonial government – was so widespread and common that it cannot be over-emphasised.[289] This however changed with the location of oil in Oloibiri in 1956.[290]

The years after 1960, particularly beginning with the 1970s, became known in Nigeria as the years of the oil boom. By this time, the country had become a major exporter of oil globally and oil began to dominate its export trade. This domination was largely responsible for the drastic decline recorded in the agricultural sector of the economy. Subsistence farming by the former semi-proletariats was subsequently destroyed as a result of over-reliance on oil. This accounts for the very high levels of migration from rural to urban areas. The population of Lagos State – the former capital

[286] K Kalu, 'Political Economy in Nigeria: The Military, Ethnic Politics and Development' (1996) *International Journal of Politics, Culture and Society*, Vol. 10 (2) 229-247

[287] ibid

[288] SC Pegg and N Zabbey, 'Oil and Water: The Bodo Spills and the Destruction of Traditional Livelihood Structures in the Niger Delta' (2013) *Community Development Journal* Vol. 48 (3) 391; see also JC Ebegbulem, D Ekpe and TO Adejumo, 'Oil Exploration and Poverty in the Niger Delta Region of Nigeria: A Critical Analysis' (2013) *International Journal of Business and Social Science* Vol. 4(3) 279

[289] ibid, 231

[290] The history of oil mining in the country was recounted in chapter Two

of the country – for example, sky-rocketed from 300,000 in 1950 to over 14 million in 2006.[291] Many other cities in the country – including Port Harcourt, Ibadan, Kano and Enugu – all witnessed population explosions similar to that of Lagos.

In broad terms, this was the state of the Nigerian economy when it began to embrace neoliberalism and neoliberal policies in the 1980s.

By the 1980s, oil accounted for over 80 per cent of the total export earnings of the country.[292] According to Salami and Ayoola, 'since the production of oil in 1958, when it accounted for only one percent of national revenue, until the present, oil has contributed several billions of dollars to Nigeria's foreign exchange earnings'.[293] Mukwaya, while agreeing with this statement, posits that the US *Time Magazine* estimates the amount the country earned between 1974 and 1999 to about $300 billion. Accordingly, '...today, oil and gas resources from the Niger Delta account for over 85 per cent of the nations GDP, over 95 per cent of foreign exchange earnings, over 90 percent of national budget and 80 per cent of the nation's wealth'.[294] Generally, Nigeria produces about 25 per cent of all African crude oil and three per cent of the world total. In 2006, Nigeria's crude oil production was averaging 2.45 million barrels per day and in January, 2007; Revenue Watch Institute 2010 estimated that Nigeria's oil reserve was 36.2 million barrels.[295] Nigeria is ranked as the sixth biggest crude oil producer in the world.[296]

Although the oil boom witnessed between 1958 and 1978 brought benefits to the country, it also brought problems, not least as Kass points out, during the 1970s when the boom gave Nigeria a false sense of achievement. During this period, the revenue earned from oil came to be seen as the

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[291] Amanda Kass, *Neoliberal Nigeria, The United States, and Oil: Linking Production and* Consumption (A Senior Honours Thesis, The Ohio State University 2008) 12

[292] Michael Watts, 'Resource Curse? Governmentality, Oil and Power in the Niger Delta' (2004) *Geopolitics*, vol. 9 (1) 50-80 at 51

[293] O Salami and A Ayoola, 'The "War" of Appropriate Pricing of Petroleum Products: The Discourse of Nigeria's Reform Agenda' (2010) *Linguistic On Line* 42 <www.linguistik-online.de/42_10/salamiAyoola.html> accessed 19 May 2011

[294] A Mukwaya, 'Truth without Reconciliation: The Niger Delta and the Continuing Challenge of National Reconciliation' in Fawole, Alade and Ukeje (eds.) *The Crisis of the State and Regionalism in West Africa. Identity, Citizenship and Conflict* (Butherworths: Dakar 2005) 112-135

[295] O Salami and A Ayoola (n 293)

[296] Ike Okonta and Douglas Oronto, *Where Vultures Feast: Shell, Human Rights and Oil* (New York: Verso Books 2003) 118

indicator of Nigeria's development, both nationally and internationally.[297] Unfortunately, this situation did not last for long. The fact is that from the moment oil became the main export and government's main revenue source, the country was left at the mercy of the vagaries of price fluctuations in the trade of petroleum products. Crucially, by the beginning of the 1980s, there was an oil glut in the international market and this led to the virtual collapse of the Nigerian economy. As Adesina posits, the country's balance of payment difficulties had more to do with short term fluctuations in the main export earner (petroleum) than the secular decline associated with primary commodity production.[298]

The government, even during the boom era, had resorted to heavy borrowing to finance most of the white elephant projects it had engaged in. With the onset of the glut, it became difficult and near impossible to pay back these loans. In spite of this fact, the government had to borrow more to run the state. By 1985, the Nigerian government had borrowed US$ 19.1 Billion in its efforts to implement a 'flawed' national development plan.[299] By 1986, the country's economy was on the verge of collapse and it became difficult to borrow more from international financial institutions.[300] A change was needed in the economic front and this led to the signing of the structural adjustments programme (SAP) agreement with the IMF in July, 1986.

In this context, it should be noted that earlier in 1982, the civilian government of Shehu Shagari[301] had taken on board the neoliberal Economic Stabilisation Act (ESA) which principally, was concerned with stabilising the economy and arresting inflation. However, despite the pressures that the adoption of these policies placed on state welfare provision, the government at all times remained 'nominally committed' to the provision of social amenities and welfare programmes for the people. Even when the military took over in December 1983, the military regime of General Buhari resisted the idea of devaluing the Nigerian currency and the cancellation of government-provided subsidies in

[297] Amanda Kass (n 291)

[298] J Adesina, *From Development Crisis to Development Tragedy: Africa's Encounter with Neoliberalism* (Paper presented at the International Development Economics Associates International conference on The Economics of the New Imperialism on 22-24 January 2004)12

[299] K Kalu (n 286) 234

[300] J Dibua, *Modernization and the Problem of Development in Africa* (Vermont: Ashgate Publishing 2006) 252

[301] The Executive President of the Second Republic

both the oil sector and in the price of oil. The regime also refused to engage in the heavy privatization of state-owned corporations, against the advice of international financial institutions. Indeed, this refusal generated a crisis between the institutions and the military regime. However, the resistance could not last for long and the regime eventually succumbed to pressures and agreed to placate the institutions by accepting many aspects of the proposed IMF scheme. They, for instance, accepted a reduction in public expenditure, the retrenchment of workers and wage containment, which was implemented using the 'unilateral determination of industrial wages by local governments'.[302] This led to the mass retrenchment and retirement of workers in 1984.

The SAPs[303] adopted by the Babangida military junta in July 1986 accepted all the recommendations of the IMF 'in the name of national economic emergency' and in order to avert an alleged economic disaster for the country. In compliance with these recommendations, the government quickly devalued the Nigerian currency – the Naira. There was a large scale privatization of state-owned enterprises by the regime and the government drastically reduced the subsidy that had hitherto existed in the price of petroleum products.[304]

II

Post-Neoliberal Attitude of the Nigerian State to Oil MNCs and CSR

According to Ferguson, 'today's forms of capital investment in African mineral extraction have been noteworthy for their ability to by-pass the nation-state framework altogether'.[305] In doing this, the

[302] D Otobo (ed.) *Labour Relations In Nigeria* (Lagos: Malthouse Press 1992) 65

[303]The concept of neoliberal structural adjustment programmes were discussed in details in Chapter 3 and 5. The key feature of SAP is 'an almost mystical faith in the private sector', the operation of free national and international markets which acts s a catalyst for accelerated economic growth and development. See S Chary, 'Structural Adjustments in Africa' (1989) *Trocaire: Development Review* www.trocaire.org/resources/tdr-article/structural-adjustment-africa accessed 10 February 2014

[304] A Olukoshi, 'Impact of IMF-World Bank Programmes in Nigeria' in B Onimode (ed.) *The IMF, The World Bank and the African Debt: The Economic Impact* (London: Zed Books 1989) 184

[305] J Ferguson, 'Seeing Like an Oil Company: Space, Security, and Global Capital in Neoliberal Africa' (2005) *American Anthropologist* Vol.107 (3) 379

state's institutional capacity to govern, already diminished by 'the neoliberal economic policies of the 1980s and 1990s' is further weakened. By 'outsourcing' its duties and responsibilities to the private sector, the state is made completely incapable of controlling the operations of multinationals, not to talk of embarking on 'positive development projects for its citizens'.[306]

Before the onset of neoliberalism in the country, the Nigerian government participated actively in the operations of the oil industry. For instance, government owned 33 per cent equity shares in Nigerian Agip Oil Corporation and 35 per cent interest in Shell Petroleum. In fact, by the middle of the 1970s, the Nigerian state owned 60 per cent equity interest in Gulf Oil (Nigeria), Mobil Producing (Nigeria), ELF (Nigeria), Texaco (Nigeria) and Pan Africa (Nigeria) Ltd.[307] This interventionist and developmental state approach (evidenced principally in the partial nationalization of most MNCs in the country), increased state participation in the industry and led to a higher degree of control of the oil corporations. This contrasts with the situation after the implementation of neoliberal policies and the subsequent sale of state-owned equity interests in these corporations, beginning from the 1980s.[308]

As was discussed in section one, the basic idea of neoliberalism is that free market economies will operate smoothly and lead to the steady production and efficient allocation of aggregate wealth and welfare for the society at large. Accordingly, the role of the state is limited to protecting private property rights, upholding contractual obligations, defending the national territory and overseeing the supply of money. Essentially, the theory sees the reality of public corporations' and government involvement in the economy as a principal obstacle to economic development.[309] As Brodie submits, therefore, in a neoliberal economy the market is required to repeal itself by 'constructing and

[306] J Rexler, 'Beyond the Oil Curse: Shell, State Power, and Environmental Regulation in the Niger Delta' (2010) *Stanford Journal of International Relations* Vol.12 (1) 28
[307] Femi Aborisade, 'Petro-Capitalism, Neoliberalism, Labour and Community Mobilization in Nigeria' (2010) *Capital and Society* Vol. 43 (1) 32-62 at 39
[308] M.O.A. Omeri and S. I. Nchi, *Petroleum in Nigeria: Legal, Economic and Political Issues* (Jos: Greenworld Publishing 2008) 23
[309] See section one above

disciplining self-governing and self-sufficient individuals', who along with other institutions are further rewarded for enacting the 'market values' and social action visions of neoliberal policies.[310]

In Nigeria, with the eventual domination of the neoliberal theories of social and economic development, the relationship between the state and other economic actors has been re-configured. One implication of this re-configuration is that it is no longer the Nigerian state that controls these economic actors; rather it is the market that monitors and regulates all interactions in the economy, including that of the state. In this sense, the Nigerian state itself has become subservient to the controlling forces of the markets. This is in line with the neoliberal theories of economic and social development, which mandates that states should be subject to the disciplinary power of the market and that the market should serve as the 'organizational principle' for all activities within the state and society.[311] Accordingly, succeeding Nigerian governments have continued to promote the neoliberal principles of 'personal responsibility' and 'self-care', not only for individuals, but also for corporations and other economic actors within its jurisdiction. This means that the Nigerian state has gone beyond the traditional forms of governance and has come to symbolize the construction of the contrived modes of governance, centred on the market and its private agencies.[312]

In keeping with the neoliberal market-based model of economic and social development, with its emphasis on free trade, freedom of movement for capital and limited state intervention in and regulation of economic affairs (including the activities of MNCs), Nigerian governments now promote not the legal regulation of corporations, but self-regulation by these corporations themselves. Any legal or political intervention by the state, to get MNCs to address the interests of other stakeholders outside that of shareholders, is not encouraged since it falls outside the neoliberal agenda. In pressing the case for voluntary self-regulation by corporations, the Nigerian state merely relies on 'soft law' or non-legal instruments (like corporate codes of conduct) which either lack binding force or whose binding force is noticeably weaker than 'hard law'. This differs directly with the government's attitude towards the ambitions of corporations, where the state is ready to produce

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[310] J. Brodie, 'Reforming Social Justice in Neoliberal Times' (2007) *Studies in Social Justice Vol. 1* 93-107 at 100
[311] M. Dean, *Governmentality: Power and Rule in Modern Society* (London: Sage Publications 1999) 149
[312]ibid, 200

and implement 'harder' legal and quasi-legal instruments for the protection of corporate and institutional investors (evidenced for instance in the various bilateral/multilateral trade and investment treaties entered into by the country[313] and the provisions of the Nigerian Companies and Allied Matters Act 1990[314]).

The increased operation of these legal instruments, institutionalised corporate governance standards and domestic constitutional changes of the traditional sort, has led to the emergence of a complex national legal framework which promotes and protects corporate investors (especially the foreign ones). According to Dean, these instruments, standards and constitutional changes have become tools used by neoliberal governments (like Nigeria) to target certain parts of the population and actualize some entrenched special interests – in this case that of corporate shareholders.[315]

In this context, the neoliberal transformation that occurred in the country, beginning from the 1980s, has resulted in significant shifts in the socio-legal relations existing between the Nigerian state and oil MNCs. By making them a major centre in the allocation of societal resources, neoliberalism has coerced the Nigeria government into bestowing on the MNCs, the ability to undertake fundamental transformations which increase their corporate profits and drive the socio-economic structures of the country. Put in another way; oil MNCs in Nigeria use the openings created by neoliberalism to construct opportunities for economic gains, and in the process further strengthen their powers and enrich the profits of shareholders.[316]

Going further, the argument is that the Nigerian state's capacity to regulate the MNCs is weakened by its accession to and subsequent membership of international organizations such as the World Trade Organization (WTO), and by the ratification of bilateral and multilateral trade and investment treaties with developed countries.[317] This is because in the competitive process associated

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[313] See chapter five for a more detailed discussion of this

[314] See section two of chapter four

[315] M. Dean (n 311) 168

[316] Anna Zawada, *Neoliberal Governmentality, Corporate Responsibility and the Governing of Citizens in Nigeria: The Case of ExxonMobil, Shell and Chevron* (Dissertation submitted to the Faculty of Graduate Studies, University of Windsor 2010) <http://scholar.uwindsor.ca/cgi/viewcontent.cgi?article=1060&context=etd> accessed 15 January 2015

[317] Some of these treaties include the one with France which entered into force 19 August, 1991; United Kingdom (11 December 1990); Netherlands, (1 February, 1994); Germany, (20 September 2007); Switzerland,

with the attraction of foreign direct investments, made possible by economic globalization,[318] the Nigerian state (as an extractive country) joins other countries to draw investment funds to stimulate its domestic economy. Through the operations of these bilateral/multilateral trade and investment agreements, the Nigerian state has become increasingly locked into a rule of investment law which renders foreign investors (including MNCs) immune from legislative and administrative actions that would ordinarily affect their investment interests. In this context, the ideologies of neoliberalism and shareholder value become the supreme ideological orthodoxy.[319]

This aligns with Ireland's contestations that while the neoliberal shareholder value ideology is protected by the rule of law, the wider social interests with which CSR (for instance) is concerned continues to rely on voluntary codes. In this situation, 'when "soft" law meets "hard" law, the latter is likely to prevail'.[320] In consequence, therefore, the domination of the neoliberal ideology in the country has skewed the distribution of wealth towards the very wealthy, while issues like CSR are relegated to the background.

Protecting the Supremacy of Shareholder Value through 'Hard Laws' in Nigeria

As was stated above, the Nigerian state's attitude towards the ambitions of corporate shareholders has led to the production and implementation of 'harder' legal and quasi-legal instruments for the protection of corporate and institutional investors. One of such legal instrument is the Nigerian Companies and Allied Matters Act (CAMA 1990). An interpretation of some of the sections of CAMA suggests that the shareholder value ideology has become the dominant economic ideology in the Nigerian legal jurisprudence.

For instance, section 41 (1) of CAMA provides that:

(1 April, 2003); Spain, (19 January 2006); See UNCTAD BITs Database <*www.unctad.org/Templates/Page.asp?intItemID=2364&lang=1*Cached - Similar> accessed 5 February 2012

[318] The concept of economic globalization is further discussed in chapter five

[319] Paddy Ireland and RG Pillay (n 257)

[320] Paddy Ireland, 'Shareholder Primacy and the Distribution of Wealth' (2005) *The Modern Law Review* Vol. 68 (1) 48-81 at 78

> Subject to the provisions of this Act, the memorandum and articles, when registered, shall have the effect of a contract under seal between the company and its members and officers and between the members and officers themselves whereby they agree to observe and perform the provisions of the memorandum and articles, as altered from time to time in so far as they relate to the company, members, or officers as such.

From the provisions of this section, the constitution of the corporation (the memorandum and articles of association) is a contract involving the corporation, its shareholders and management on the one hand, and between the shareholders and its officers on the other hand. Accordingly, a corporation has no legal obligation – contractually at least – to other stakeholders. As Amaeshi and others have argued, this position means that the interests of other stakeholders who may be affected by the operations of corporations are not protected. For instance, a corporation can easily terminate the employment of its employees at will and for no reason, after giving due notice which is one month by statute and usually three months by contract.[321]

Again, section 279 (3) of the Act states that;

> A director shall act at all times in what he believes to be the best interests of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such manner as a faithful, diligent, careful and ordinarily skilful director would act in the circumstances

Furthermore, the provisions of section 79 of CAMA stipulate that only shareholders are members of the corporation and their interests alone matter. When these two sections of CAMA are read together, the implication is that shareholders, in principle, are the owners of the corporation and it is their primary responsibility to maximize the value of their investments. These shareholders delegate their

[321] Kenneth Amaeshi, BC Adi, C Ogbechie and Olufemi O Amao, 'Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?' (2006) *International Centre for Corporate Social Responsibility (ICCSR)* Research Paper Series 39 4 <http://195.130.87.21:8080/dspace/bitstream/123456789/1091/1/39-Corporate%20Social%20Responsibility%20(CSR)%20in%20Nigeria%20western%20mimicry%20or%20indigenous%20practice.pdf > accessed 13 May 2013

authority to corporate directors who they have appointed to act on their behalf, and who are mandated to pursue the actualization of shareholder profits with utmost vigour.

Through the contemporary decisions and attitude of the Nigerian courts, it appears reasonable to conclude that the protection of shareholder value with hard laws in Nigeria is now absolute. With the entire business of the country seemingly revolving around the imperatives of market forces, rolling back of the welfare states, shrinking the public sector through the retrenchment of workers, intensified cost recovery on social services and heightened privatization of many social enterprises, the country's judiciary has also become an important agent in favour of the protection of shareholder value, and has continuously championed the hegemony of this neoliberal ideology.[322]

In this context, a number of cases have affirmed the supremacy of shareholder value in the country. In *Yalaju-Amaye v AREC Ltd*,[323] the plaintiff/appellant (who was a shareholder, as well as a Director and Managing Director of the defendant corporation) was removed by other directors of the corporation on the ground that he had resigned from his appointment as the Managing Director. They also held that since he orally resigned as the MD, he simultaneously lost his position as a shareholder of the corporation. The plaintiff MD then brought the instant case, asking the court to determine whether he was validly removed as the Managing Director of the corporation and whether as a result of his purported removal as the MD, he had surrendered his share interests in the corporation. He also asked the Court to determine whether he can institute this action in respect of the wrongs done to him in his capacity as a shareholder.

The Nigerian Supreme Court used the opportunity of the case to recap the general position of contemporary Nigerian law in the area of shareholding, and the relationship between the shareholders of the corporation and other interests. The Court held (amongst other things) that the Memorandum and Articles of Association of a corporation binds the corporation and its directors and constitutes a contract between them alone. In this context, there is the relationship of master and servant between the Managing Director and the shareholders in a general meeting (that is the corporation) and since the plaintiff becomes an employee by virtue of his becoming a Managing Director, there is a contract

[322] T. Olorode, 'The Political Economy of Corruption in Nigeria' (2011) *The National Scholars* Vol. 8 6-11
[323] SC 198/1986 (Judgement delivered 29 June 1990)

of service between him and the corporation. Accordingly, the shareholders have the power to alter the corporation's articles of association to remove him, even if this results in a breach of contract with the director.

However, the contract of service does not extend to him in his capacity as a shareholder. As an owner of shares, he is a member of the corporation and his interests trump other interests, apart from that of other shareholders. His interests as a shareholder are different from his interests as a Managing Director, and it is irrelevant that he became a shareowner as a result of shares he acquired in his capacity as a Managing Director. In this sense, he can bring actions that are either personal to him or on wrongs which affect the corporation itself. Moreover, since shareholders are the only ones permitted by law to bring actions in respect of acts done to the corporation, the plaintiff can, through a derivative action sue for wrongs done to the corporation.[324]

In *Kotoye v Saraki,*[325] the court was called upon to adjudicate in a commercial dispute relating to the legal and equitable ownership of shares of a corporation. The Supreme Court, in one of its determinations, held that shareholders are the owners of the corporation, and corporate managers and executives have the responsibility to realize their interests. The court further held that the right to sell, the right to pledge and to vote, the right to mortgage and the right to alienate in any other way, in as much as they are constituent parts of ownership, belong to corporate shareholders. In carrying out their duties as agents of the shareholders, therefore, corporate managers and executives should as a matter of necessity, prioritize the interests of the legal owners of corporate shares.

In *Ansambe v Bon*,[326] a corporate employee filed a claim against the respondent corporation, alleging unlawful dismissal. The Nigerian court of Appeal, while dismissing the case of the employee amongst other things, re-stated the position that the shareholder is the owner of the corporation and in the performance of corporate activities; his interest is supreme and must be giving priority.

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[324] ibid

[325] *(1994) 7 NWLR (Pt 357) 414*

[326] (2005) 8 NWLR (pt 928) 650

Neoliberal Shareholder Value as a Barrier to Effective CSR in Nigeria

MNCs in developing countries, including Nigeria, are constantly accused of operating in an environment completely separated from the communities where they function. They create uneven and divided social arrangements 'that evade both the social problems that surround them and the state that attempts to regulate them'.[327] What then is the role of CSR in this system where the neoliberal shareholder value ideology is dominant? Many have suggested that the post-neoliberal attitude of both the Nigerian government and MNCs towards CSR is influenced by a corrupt and selfish co-operation or collaboration.[328] Ken Saro-Wiwa[329] called this collaboration the 'slick alliance'.[330]

In principle, the effective use of oil rent is another means through which the Nigerian government can facilitate corporate social development in the Niger Delta specifically, and in Nigeria in general. Christensen and Murphy have argued that in appropriate circumstances, effective CSR can contribute to sustainable development. In this context, sustainable development encompasses poverty reduction and equitable resource distribution, respect for ecosystem limits and capacity building for the long-term. If applied effectively, they argue, CSR is capable of lifting communities beyond poverty. They agree, however, that in the absence of state regulation, contemporary CSR – in its voluntary form – is incapable of transforming political and economic structures which promote the existence of inequalities and injustices.[331]

For Idemudia, where CSR is effective, it operates as a core part of public governance and sets the parameters of how expenses and rewards are expended. In this context, public governance defines

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[327] J Rexler, 'Beyond the Oil Curse: Shell, State Power, and Environmental Regulation in the Niger Delta' (2010) *Stanford Journal of International Relations* Vol.12 (1) 28

[328] JE Okeagu, JC Okeagu, A Adegoke and C Onuoha, 'The Environment and Social Impact of Petroleum and Natural Gas Exploration In Nigeria' (2006) *Journal of Third World Studies*, Vol.13 (1) 199-218

[329] The renowned poet and writer from the Niger Delta who was hanged by the Military junta of Sanni Abacha in 1995 as a result of the conflicts in the region; See chapter one

[330] Nnimmo Bassey, 'Oil Fever' in Ed Kashi and Michael Watts (eds.) *Curse of the Black Gold: Fifty Years of Oil in the Niger Delta* (New York: Power House Books Inc 2010) 90

[331] J Christensen and R Murphy 'The Social Irresponsibility of Corporate Tax Avoidance: Taking CSR to the Bottom line' (2004) *Development Vol.* 47 39

the various aspects of CSR and the respective roles of each stakeholder in the economic process. As a result, effective CSR will depend on the MNCs performing socially responsible tasks, as well as other stakeholders, especially the state, regulating their activities at the same time.[332]

His suggestion, therefore, is that it is necessary to make use of other participants in the economic environment – stakeholders – as a means of understanding better, the relationship between CSR and development. The reason for this, he argues, is that the developmental outcome of CSR initiatives (i.e. corporate social development) is not simply a function of business action or inaction. Rather, it is best understood as a function of stakeholder relationships, because the action or inaction of other stakeholders directly or indirectly affects the impact of CSR on development.[333]

Unfortunately, as was argued in chapter Two, contemporary CSR appears not to have contributed effectively to the sustainable development of both the Niger Delta specifically and Nigeria in general. It was stated in section one of this chapter that the ideology of shareholder value – which directs the activities of oil MNCs in Nigeria – insists that the responsibility of business is to maximize returns for shareholders, and that the sole responsibility of managers is to seek to maximize shareholders' profits and to advance their interests. The suggestion was that the idea of shareholder primacy freed managers and corporate executives from responsibility to any other interest, other than the actualization of desired financial results. Issues of effective CSR, which impinge on corporate profits, negate the very foundations of shareholder value. Essentially, any activity which has the capacity to reduce shareholder profits has to be downgraded. As a result, CSR in Nigeria appears to be a mere appendage to essentially neoliberal undertakings and does not amount to an effective social investment initiative.[334]

In this situation, the MNCs not only pick and choose the CSR duties to respect and the ones to ignore, they also decide on what projects to complete and the ones to abandon. For Watts, therefore,

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[332] Uwafiokun Idemudia 'Oil extraction and Poverty Reduction in the Niger Delta: A Critical Examination of Partnership Initiatives' (2009) *Journal of Business Ethics* Vol. 90 (1) *91-116 at 112; see also* J Christensen and R Murphy (n 336)

[333] ibid

[334] Michael Watts, 'Sweet and Sour' (Editorial comments) in *Curse of the Black Gold, Fifty Years of Oil in the Niger Delta* (n 330) above, 46

what the corporations project to be developmental initiatives are nothing more than public relations stunts. According to him;

> Corporate social responsibility on the ground typically appears as a raft of unfinished community projects, all of which have contributed to festering resentments among the youth. Environmental impact assessments are rarely made public, and the record on spills and compensation is deplorable. The companies have always thrived on a policy of divide and rule. They are only too happy to invoke national sovereignty when pressures are placed on them to improve their human rights or social responsibility records; and yet only too happy to operate- in Nigeria for the better part of two or three decades- in an environment in which they could get away with just about anything.[335]

To the extent that the neoliberal shareholder value ideology has become the defining determinant of how Nigeria relates with these MNCs, it is strongly contended that the Nigerian government has been unable to translate its regulatory authority into effective support for corporate social development. [336]

This state of affairs is worsened by corruption. Corruption on the part of the Nigerian state means that it is indifferent to the activities of oil MNCs in the Niger Delta. The state neither controls nor cautions oil corporations against corporate excesses and has no input on how the corporations initiate and implement their social responsibility promises. It is argued that the predomination of 'neo-patrimonalism-induced' corruption and rentier-mentality myopia has prevented the pursuit of this option.[337]The institutionalization of corruption at all levels of government and in most agencies in Nigeria successfully undermines the state's capacity to promote or support effective CSR, as revenue that could be directed towards poverty reduction is usually misappropriated.[338] For Bassey therefore,

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[335] Michael Watts, 'Sweet and Sour' (Editorial comments) in *Curse of the Black Gold, Fifty Years of Oil in the Niger Delta* (n 330) 46

[336] See chapter two of this thesis for a discussion of governmental failures in this regard (in the section on the privatization of the Nigerian state).

[337] The institution of corruption in the oil industry and how this affects the relationship between the Nigerian state and oil MNCs is discussed in details in chapter Five.

[338]Uwafiokun Idemudia 'Corporate Social Responsibility and the Rentier Nigerian State: Rethinking the Role of Government and the Possibility of Corporate Social Development in the Niger Delta' (2010) *Canadian Journal of Development Studies* Vol. 30 (1–2) 131–153

despite the significant advantages of 'disaster capitalism' that 'accrue' to oil corporations, host-communities continue to suffer from economic deprivation and ecological degradation.[339]

Concluding Remarks

This chapter, in section one, traced the evolution of the corporate form and the apparent domination of the neoliberal shareholder value maximization on the international financial architecture. It discussed the rise of finance capitalism and the criticisms of same. It suggested that the separation of ownership from management and the birth of professional non-owner managers led to questions about the justification of shareholder value. It was at this time also that the idea of the socially responsible corporation began to emerge.[340] The contention was that since corporations had become quite large and immensely powerful, they ought to be run in the interest of the wider society.[341]This was the 'transformative era' of CSR and led to the rise of the 'socially responsible' or 'soulful' corporation and entailed 'a radical re-conceptualization of the nature of the corporation and an explicit rejection of the principle of shareholder primacy'.[342]Things, however, changed with the ascendancy of neoliberalism on the international financial stage after the 1970s. The ascendancy of this theory led to the re-emergence of SV, which is apparently antithetical to the dictates of effective CSR. This tension between the ideologies of SV and neoliberalism acts as a barrier to effective CSR and renders any attempt by corporations to be socially responsible ineffective.

Furthermore, the chapter in section two explored the reception of neoliberal ideas in the Nigerian socio-political economy. It offered a brief history of neoliberalism in Nigeria and analysed the post-neoliberal attitude of the Nigerian state to MNCs. The chapter contended that effective CSR appears unlikely in a system dominated by the neoliberal ideology. By adopting and implementing

[339] N Bassey (n 330) 91

[340] See Adolf Berle and Gardener C Means, *The Modern Corporation and Private Property* (New York: Transaction Books 1932); See also E Merrick Dodd, 'For Whom are Corporate Managers Trustees?' (1932) *Harvard Law Review* 45 1147

[341] Adolf Berle and Gardener C Means, ibid 46

[342]Paddy Ireland and RG Pillay (n 257) 83

neoliberal ideological reforms, including promoting the primacy of shareholder value, the suggestion is that Nigeria has introduced an ideological tension between the ideologies of neoliberalism (and by implication that of shareholder value) and effective CSR.

In this context, with the continued application of the neoliberal free market ideology in the policy directives of the Nigerian state – especially as they relate to MNCs – any hope that the social responsibility practices of oil MNCs in the Niger Delta (and Nigeria in general) will be effective is seriously undermined.

Chapter Four

Practical Barriers to Effective CSR: Corporate Governance Mechanisms and the Role of International Organizations

Introduction

Having identified the main ideological barriers to effective CSR in chapter Three – neoliberalism and shareholder value – this chapter will argue that there would clearly be hope for effective CSR, if ideological barriers were the only – or main – obstacles to its realization. It holds that there are good reasons for thinking that the barriers/obstacles standing in the way of CSR are not purely or even predominantly ideological; that they are much more tangible and formidable. In this context, the chapter will identify and explore a second set of barriers, categorized as practical barriers to effective CSR.

As was discussed in chapters One and Two, the modern corporation is frequently typecast as the enemy of collective communal interests in the Niger Delta region. Critics portray it as the manipulator of workers, demolisher of neighbourhoods and the voracious and ravenous devourer of natural resources. For these critics, modern corporations are motivated only by the requirement to accumulate profit. Shielded by 'limited liability' and encouraged by enormous investment resources, these critics argue, 'the corporation has legal personality, but presumably no interest in humanity'.[1]

These allegations are made against modern corporations because of their perceived 'obsession' with shareholder value – especially in its modern form. Shareholder value[2] insists that

[1] S Munch, 'Improving the Benefit Corporation: How Traditional Governance Mechanisms can Enhance the Innovative New Business Form' (2012) *North-Western Journal of Law and Social Policy* Vol. 7 (1) 170

[2] Discussed in details in chapter Three

only those corporations that champion profit maximization will become economically efficient and capable of surviving the fierce competitions occasioned by global capitalism.[3]

Nevertheless, the global interconnectivity of modern corporations, coupled with the 'survival war' occasioned by the capitalist constant of competition, make it imperative that issues concerning the governance of corporations are given careful considerations. Modern corporations stipulate policies that govern their activities, according to laid-down corporate legislations in their countries of origin. The contemporary reasoning is that since corporations have crossed borders and operate multi-nationally, there is the attendant need to create standard corporate governance (CG) norms to guide their actions internationally.[4]

The global commitment towards developing principles of corporate governance led to changes in national corporate laws, for instance in the US with the Sarbanes-Oxley legislation. Progressive legislative improvements have equally taken place in many other jurisdictions, as exemplified by national corporate governance codes initiated in many countries.[5]

Supporting the need to realize extensive restructuring and bring about the creation of standard corporate governance norms, international organizations have consistently campaigned for the adoption of a more 'rule-based' corporate governance model. Through the efforts of international organizations such as the Organisation for Economic Co-operation and Development (OECD), concerted efforts have been made to spread and consolidate good corporate governance principles on and for all nations. The OECD has worked assiduously towards disseminating 'good corporate governance' principles among OECD members, as well as non-member developing countries, including Nigeria. They have done this by organizing numerous international conferences and by adopting the OECD Principles of Corporate Governance in 1999 (revised in 2004). For some

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[3] W Hussain, 'Corporations, Profit Maximization and the Personal Sphere' (2012) *Economics and Philosophy* 28 311; See also MC Jensen, 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function' (2002) *Business Ethics Quarterly* 12 235–256.

[4] S Nisa and KA Warsi, 'The Divergent Corporate Governance Standards and the Need for Universally Acceptable Governance Practices' (2008) *Asian Social Science* Vol.4 (9) 128

[5] Thomas Clarke and Marie Dela Rama, 'Introduction: The Governance of Globalization' (2006) *Sage Publications* <www.ccg.uts.edu.au/pdfs/governance-and-globalization-intro.pdf> accessed 20 May 2013

commentators, the principles represent the universal guidelines accepted as constituting good corporate governance standards.[6]

Incidentally, it has also been argued that these principles only entrench the Anglo-American model of corporate governance, which emphasizes shareholder value prioritization. The model supports a dynamic market orientation, with fluid capital which can quickly chase market opportunities wherever they occur, in the neoliberal free market tradition. Other international organizations like the World Bank, IMF and the Financial Stability Board (FSB) have all contributed in imposing this brand of corporate governance – with its mechanisms – on the international community. An increasing amount of corporate governance rating agencies observe changes at both corporate and national levels, to ascertain degrees of conformity with the principles.[7]

Critics argue that in pursuit of the realization of the market dynamics, a range of corporate governance mechanisms have emerged to entrench and enforce the principles of shareholder value. The mechanisms include; performance-related pay; the use of Non-Executive Directors; and the operation of markets for corporate control. The contention is that these mechanisms operate in such a way that the pursuit of shareholder value is not a choice but an imperative for corporate managers. This has led to the suggestion that the international organizations which support the mechanisms are championing the imposition of the Anglo-American model of corporate governance on the international financial architecture, most especially on developing economies.[8]

This chapter, therefore, explores the practical barriers to effective CSR – i.e. the corporate governance mechanisms which embed shareholder value. It begins by exploring the links between shareholder value and contemporary corporate governance. It argues that the implication of the belief that corporations should profit maximize is exemplified in the claim that corporate governance is a simple agency problem: how do you get corporate managers to act in the interests of inactive and often dispersed shareholders? It will, therefore, examine and evaluate the various mechanisms which

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[6] S Kawai, 'Trend of Reforming Corporate Governance in East Asia; A Comparative View' (August 2006) *Economic Research Centre* Discussion Paper No.158 <www.soec.nagoya-u.ac.jp/erc/DP/paper158.pdf> accessed 20 May 2013

[7] ibid

[8] See for instance, Susanne Soederberg, *The Politics of the New International Financial Architecture: Re-imposing Neoliberal Domination in the Global South* (London: Zed Books 2004)139-149

have been developed to solve this agency problem. While some of the mechanisms operate from within corporations – things such as performance related pay and the use of Non-Executive Directors to monitor managers –; others operate externally, such as the markets for corporate control. These mechanisms incentivize corporate managers to maximize shareholder value and raise the share price of corporations as high as possible. They are also put under pressures to avoid the wrath of 'the markets' and threat of takeovers. The chapter contends that the resulting model of CG – which is essentially the Anglo-American, stock market based model[9] – has been, and is being, promoted around the world by the OECD, the FSB, the World Bank and the IMF.

The chapter is divided into two sections: Section One deals with the corporate governance mechanisms embedding shareholder value and explores the activities of the OECD, FSB, IMF and the World Bank and how they support the entrenching of these mechanisms. It begins by offering two broad definitions of CG and suggests that the presently dominant definition is the one that views CG simply as a solution to the agency problem.[10] It then discusses the various mechanisms entrenching SV and how their dominance has purportedly signalled 'the end of history for corporate law'.[11]

The section then goes on to evaluate the OECD Principles of Corporate Governance and the suggestion that it promotes the Anglo-American SV model. It looks at the establishment of the FSB and the significance of the Board's actions in CG matters. The 12 key standards of sound financial systems as enunciated by the FSB are enumerated, with the OECD Principles of Corporate Governance as the 5th standard. It will also examine the activities of the World Bank and the IMF and how they have been allegedly used in the imposition of shareholder value.

Section Two will consider the application of the neoliberal corporate governance mechanisms in Nigeria. It aims to show that the practical barriers to effective CSR, discussed in section one, are also present in the Nigerian situation, rendering it unlikely that CSR in its contemporary form will do much to resolve the problems found in the Niger Delta.

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[9]Susanne Soederberg, *The Politics of the New International Financial Architecture: Re-imposing Neoliberal Domination in the Global South* (London: Zed Books 2004)139-149

[10] See chapter Three for a discussion of the agency problem

[11] See H Hansmann and R Kraakman, 'Towards a Single Model of Corporate Law?' in J McCahery and others, (eds.) *Corporate Governance Regimes: Convergence and Diversity* (Oxford: Oxford University Press 2002)

Section One

I

MEANING OF CORPORATE GOVERNANCE

Corporations are organized within specific governance structures laid down by legislation, by custom, by the corporation's charter, by the shareholders, and by the prospects of people who benefit from their actions. These structures vary from country to country, because a particular corporation's governance framework is usually predicated on the history, culture, rules and institutions of its home country. The success of a corporation is therefore based on the 'coherence' and level of confidence which can be ascribed to 'its constituent' components and governance structure. This 'framework' has to be amenable to changes and may be subject to improvements over time.[12]

Definitions of corporate governance are numerous. However, in the context of this thesis, definitions based on a general (stakeholder) and specific (shareholder) perspective will be adopted. From the general perspective, corporate governance is an expression which relates to the set of laws, procedures, or rules by which corporations are managed, controlled and regulated. It is used to refer to internal features described by the directors, shareholders or charter of a business, and how these features relate to other external interests, such as consumer groups, clients, and government regulations.[13]

Viewed from this perspective, corporate governance is the mechanism through which the corporation is managed, as well as the link that connects it to other stake-holders. In this context, it is

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[12] A Cadbury, "Foreword", in S Claessens, 'Corporate Governance and Development' (2003) *Global Corporate Governance Forum*; Focus 1 of the International Bank for Reconstruction and Development/The World Bank <www1.ifc.org/wps/wcm/connect/7fc17c0048a7e6dda8b7ef6060ad5911/Focus_1_Corp_Governance_and_Development.pdf?MOD=AJPERES> accessed 10 April, 2013

[13] ibid

a wide phrase that encompasses the methods through which rights and responsibilities are divided up between shareholders, corporate managers and other interest groups in a corporation.[14]

From the specific perspective, corporate governance is defined as the 'mechanisms' through which share owners protect their holdings in corporations. The definition, which appears to be the dominant definition of CG in the contemporary world, sees the concept as the means through which the 'agency problem' is resolved in favour of the shareholder. The 'agency problem' in this context, points to the difficulties investors encounter in seeking for guarantees that the capital they have contributed, will not be misappropriated or squandered in unappealing and distasteful activities by corporate managers.[15]

For the proponents of this view, one distinguishing quality of the modern corporation is the severance of ownership from control. In this situation, the dispersed stock-owners usually entrust the daily management of corporations to professional managers. Accordingly, corporate governance is the attempt to create an alignment between the interests of the shareowners and that of the corporate managers, in order to solve the agency problem.[16] It is about choosing the most competent managers and making them 'accountable to the shareholders'.[17]

Shleifer and Vishny, perhaps, sum up the most-excellent characterization of corporate governance in the 'specific sense', when they defined it as a set of methods directed towards the fundamental safeguard of the stock-holding interests of corporate owners. According to them, it is the various methods through which 'suppliers of finance to corporations assure themselves of getting a return on their investments'.[18] It tries to answer questions such as;

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[14] ibid; this general definition includes the legal framework for the protection of every corporate stakeholder. This is because the efficacy of 'legal protections' offered by 'substantive legal provisions' (to stakeholders), is contingent on the convenience and usefulness of 'procedural' regulations. As a result, issues such as civil procedure laws and judicial institutional structures are equally significant fundamentals in the governance framework of corporations

[15] A Shleifer and R Vishny, 'A Survey of Corporate Governance' (1997) *The Journal of Finance*, Vol. 52(2) 741

[16] Ibid; there is no doubt that such severance, between owners and managers, has its advantages. For instance, it makes it possible for the 'management' of corporations to be handled by professionals, who are experts in the field of corporate management. At the same time however, and often times, divergence of opinion between the owners and the managers occur, leading to struggles and strife.

[17] J Tirole, 'Corporate Governance' (2001) *Econometrica* Vol. 69(1) 1 – 35

[18] A Shleifer and R Vishny (n 15)

> How do the suppliers of finance get managers to return some of the profits to them? How do they make sure that managers do not steal the capital they supply or invest it in bad projects? How do suppliers of finance control managers?[19]

It is argued that professional managers' misdemeanours, whether in the shape of misappropriation of shareholders' funds or the wrong application of corporate resources, decreases the quantity of capital that investors are eager to provide 'ex-post', to sponsor the corporation.[20]

> Much of the subject of corporate governance deals with constraints that managers put on themselves, or that investors put on managers, to reduce the ex post misallocation and thus to induce investors to provide more funds ex ante.[21]

Misappropriation of investor funds by managers can take various shapes and guises; it can be in the form of stealing of corporate profits or in the nature of selling a corporation's products, properties or other supplementary collaterals at a much lower market price to other corporations. This type of 'transfer pricing, asset stripping, and investor dilution', in many instances, are quite legitimate. Yet they amount to theft. Expropriation may still be in the form of re-routing 'corporate opportunities', installing incompetent 'family members' in administrative ranks or 'overpaying' administrators.[22]

In order to forestall the occurrence of these forms of misappropriation, therefore, corporate governance from this specific sense, is to a considerable extent, seen as the machinery through which 'outside investors' safeguard themselves against the 'scheming and manipulative' tendencies of the managerial 'insiders'.[23]

Finding solutions to the agency problem, it is argued, directly led to the formulation of mechanisms which embed the shareholder value model of corporate governance.

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[19] ibid

[20] Oliver Williamson, *The Economic Institutions of Capitalism* (New York: Free Press Publishers 1985) 22

[21] A Shleifer and R Vishny (n 15) 743

[22] RL Porta and others, 'Investor Protection and Corporate Governance' (2000) *Journal of Financial Economics Vol.* 58 4

[23] ibid

Brief Historical Evolution of Corporate Governance

The passing of free registration laws[24] led to an 'ex-post' need to organize and manage corporations for the benefit of both shareholders and the wider society. The suggestion is that the transfer of the privilege to register corporations, from the state to shareholders, led to the former giving up 'control rights over future changes in the articles' of registration of the corporation. Though special policies survived for some business activities like banking and insurance, the state principally had to surrender 'ex-ante' control of corporations and now concentrated on regulating them 'ex post'. State legislatures began to create practicable legal frameworks that could be used as an 'ex-post' alternative to the 'ex-ante' control role they enjoyed initially. As a result, the shift towards free incorporation was complemented by the ratification of a sophisticated but effective corporate law system.[25]

> The new corporate laws stipulated entry requirements that applied to all corporations and had to be met before a company could commence operation as a legally founded joint stock company. They included the minimum number of founders of a corporation, disclosure requirements regarding the contents of the companies' statutes, the scope of its activities, as well as capital requirements, in particular provisions on the amount of capital that had to be paid up at the time of registration.[26]

The suggestion that states abandoned their rights to 'ratify' new incorporations did not mean that they no longer participated in corporate relationships. What states did was to create opportunities through which corporate actions could be monitored and supervised by others. This was achieved through the employment of remarkably intricate corporate laws that assigned strategic 'control rights' to numerous corporate interests, especially that of shareholders.[27]

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[24] Discussed in chapter Three

[25] K Pistor, Y Keinan, J Kleinheisterkamp and MD West, 'The Evolution of Corporate Law: A Cross-Country Comparison' (2002) *University of Pennsylvania Journal of International Economic Law* 810-811

[26] ibid

[27] ibid 811

The early corporate laws gave little consideration to the 'governance structure' of corporations. Most state laws only contained provisions stating that corporations will be administered by directors, or by shareholder trustees.[28] Over time, however, corporate 'management was professionalized and entrusted to external hands, leading ultimately to the severance of ownership and control'.[29]As corporations expanded, innovative 'bureaucratic hierarchies' became essential. Thus, the activities of large corporations progressively came to rely on centralized organization. They were compelled to establish official managerial arrangements for efficient allocation of corporate resources and optimal maximization of corporate profits.[30] This ultimately led to the creation of corporate governance models required to cater for the complex relationships between the corporation and its shareholders and between the shareholders and the professional managers who now administer the corporations. The materialization of 'professionally managed' corporations took place much earlier in the US (e.g. the state of Delaware) than in England.[31]

In both countries, however, the division of shareholders' and managers' responsibilities was principally entrusted to the corporate charter (articles of incorporation). This means that in theory the founding shareholders decided issues of responsibility, while in practice responsibility was left to the current shareholders of the firm. Directors could not act beyond their mandate and any director who went beyond his authorised mandate could be held personally responsible.[32]

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[28] It appears that this was the business practise at the time of these earlier laws; See K Pistor (n 25) above 814

[29] Adolf Berle and Gardener Means, *The Modern Corporation and Private Property* (2nd Revised Edition, New York: Harcourt Brace & World 1968) 112-40

[30] MJ Roe, *Strong Managers, Weak Owners: The Political Roots of American Corporate Finance* (Princeton, NJ: Princeton University Press 1994) 3-4

[31] Leslie Hannah, 'Visible and Invisible Hands in Great Britain' in AD Chandler and H Daems (eds.) *Managerial Hierarchies* (Cambridge, Mass: Harvard University Press 1980) 41-42

[32] K Pistor (n 25) 818; in contra-distinction to the Anglo-American jurisdictions, Pistor and others report that Both France and Germany created a mandatory governance structure with a clearly defined division of power between shareholders and directors. The corporate laws of these countries enumerate exclusive rights of the shareholder meeting, which cannot be delegated to or appropriated by the board. Powers not included in this list are assumed to be within the realm of the board's power. The flip side of the assumption is that shareholders are explicitly denied the right to participate in management decisions unless the board decides to seek shareholder approval on these issues.

II

CORPORATE GOVERNANCE MECHANISMS AND SHAREHOLDER VALUE

As was argued in chapter Three, shareholder value has arguably become the dominant corporate governance model, not only in the US and UK, but also internationally.[33] Supporting the dominance of SV regime in the US, Bainbridge wrote that 'shareholder wealth maximization long has been the fundamental norm which guides US corporate decision makers'.[34] For Armour and others, it is generally accepted that the UK's model of corporate governance, similar to that of the US, situates shareholder interest above those of other corporate stakeholders, including employees, creditors and local communities.[35] International organizations like the IMF, World Bank and OECD also champion the dominance of this corporate governance model.[36]

In order to realise the objective of shareholder value, a set of structural imperatives have been designed and implemented to further entrench the model internationally. These imperatives encompass both internal and external mechanisms.

Internal Mechanisms

Internal mechanisms deployed include executive remuneration packages, which link pay to performance and the intensified use of independent, non executive directors (NEDS) to ensure that managers comply with shareholder primacy.

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[33] H. Hansmann and R. Kraakman (n 11)

[34] SM Bainbridge, 'In Defence of the Shareholder Wealth Maximization Norm: A Reply to Professor Green' (1993) *Washington and Lee law Review* Vol. 50 (4) 1423

[35] J Armour, S Deakin and SJ Konzelmann, 'Shareholder Primacy and the Trajectory of UK Corporate Governance' (September, 2003) *British Journal of Industrial Relations* Vol. 41 531 SSRN <http://ssrn.com/abstract=437267> accessed 20 April, 2013

[36] Susanne Soederberg, *The Politics of the New International Financial Architecture: Re-imposing Neoliberal Domination in the Global South* (London: Zed Books 2004)139-149

Executive Remuneration: Performance Related Pay Packages

Performance-based remuneration is defined as the 'transfer of money or material goods conditional upon taking a measurable action or achieving a predetermined performance target'.[37] As an example, where it is the 'payer's' aim to increase the share price of a corporation, a performance related pay package would ensure that the corporate executive is paid only for an increase in the share price of the firm, rather than on inputs such as the number of goods produced or the number of new branches established. As Eldridge submits, 'with performance-based payment, the contract is designed in a way that the objectives of both principal and agent are fully aligned'.[38] Performance based remuneration is calculated to link some percentage of salaries to employees' accomplishments, though it may also be in the form of non-cash payments such as shares and share options, superannuation or other benefits.[39]

The notion of performance related pay is an important mechanism through which the activities of corporate managers are monitored, so as to prevent the agency problem discussed above, and ensure that they work effectively towards the realization of shareholder value. The implication of this, for corporate managers, is that they are incentivized to increase share prices, because there remunerations are tied to the 'financial market values' of the corporate shares of the firm they manage. This puts them in lots of pressures and accounts for the numerous acts of recklessness, resulting in scandals and destructions of the environment in recent times. These inducement packages are alleged to be imprudent in many instances, because they afford no instrument for avoiding blunders and oversights or opportunistic conducts, and as such may lead to 'bigoted' actions.[40]

When it is considered that the performance indicators used to assess corporate executives are associated with capital aggregation and 'short-term profit' creation, corporate executives are persuaded to adopt 'high risk' attitudes to achieve instant profits. When this happens, their

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[37] R Eichler, P Auxila and J Pollock, *Output-Based Health Care: Paying for Performance in Haiti - Public Policy for the Private Sector* (Washington DC: The World Bank Group 2001) 236

[38] C Eldridge, 'Performance-Based Payment: Some Reflections on the Discourse, Evidence and Unanswered Questions' (2009) *Health Policy and Planning* Vol. 24 (3) 160-166 at 161

[39] KP Bhatta, 'Executive Compensation: Review of Global Financial Crisis and the Ongoing Debate' (2012) *Lambert Academic Publishing* Germany <http://ssrn.com/abstract=2138733> accessed 20 April 2013

[40] ibid

accomplishments are optimistically evaluated, thereby expanding their pay packets. These extreme 'risk-taking' activities, with no appropriate deliberation on the 'long-term sustainability' of the corporation, led to unnecessary failures and initiated 'a systemic crisis in the financial sector' which became a global crisis in 2007-2008 – because of the inter-connectivity between national economies.[41]

As Young and Scot reports;

> The life of a top manager has, by all accounts, become vastly more pressured in the past two decades...most top managers are acutely aware of the pressures not only to perform, but also to demonstrate by actions and words that they are high performers... It is therefore prudent to accumulate wealth quickly and perhaps, to get out of the heat at a relatively early age, before they burn out or the world turns against them.[42]

The same authors highlight the kind of pressures placed on managers, as a result of the alignment of remuneration and performance. Before the 1970s, corporations operated under the rule of their traditions and long established precedents. The speed at which work was carried out 'was relatively gentle and the quality of relationships with clients' was on the basis of shared trust and respect. There was little or no pressure to accumulate short-term profits, as against the realization of long term goals of the business.[43] According to them, a Fund manager who they interviewed stated that in the 'good old days', meetings with pension trustees were held in the spirit of 'mutual commitment and loyalty'.[44] This state of affairs was brought to an end the moment performance against index replaced relationships. For the Fund managers today, failure to perform within the shortest possible time leads to instant firing.[45]

The issue of pressures on corporate managers, however, is not within the exclusive preserve of Fund managers. The situation is replicated in the life of every corporate manager, including those in the oil sector. For oil MNCs – including those in the Niger Delta – manager's remunerations have

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[41] ibid

[42] Don Young and Pat Scott, *Having Their Cake... How the City and Big Bosses are consuming UK Business* (London: Kogan Page Limited 2005) 169

[43] ibid

[44] ibid

[45] ibid 16

become increasingly tied to achieving targets set out in performance contracts. Bergin contends that, 'the brutality of the integration process and the performance-related remuneration packages meant [that] only ambitious, ends-focused people felt at home' in these oil corporations.[46]

Those managers, who may be sympathetic to employees, host-communities or the environment, virtually lost their jobs in these establishments. The consequences of the pressure on managers to enhance profits led to constant squeezes on corporate finances, the cancellation of maintenance exercises for oil equipment and the non-replacement of old and out-dated machinery.[47]

The tying of managers' remuneration and bonuses to the meeting of targets which increase shareholder profits, led to the jettisoning of process safety objectives, which in turn created moral hazards, not only for the managers, but also for the employees and surrounding communities. The departmental managers were advised to self-regulate themselves on health and safety issues. Yet, at the same time, they were given financial targets to achieve – which in most instances, meant particular sums of money to save for the corporation – over a given period of time. Since managers could only enjoy bonuses based on their ability to save costs, issues concerning the environment, health and safety became 'vague goals and no longer firm targets'.[48] Thus, corporate managers in the oil sector – as in other sectors – became devoted servants of share price maximization, notwithstanding its detrimental effect on other interests, including the environment.[49]

Appointment of Independent, Non Executive Directors (NEDs)

Another distinct mechanism of the neoliberal corporate governance model is the appointment of 'outside, independent' non-executive directors (NEDs) into boards of corporations. There is no statutory definition of a NED, but such a director will usually devote part of his time to the affairs of the corporation, as an independent adviser or supervisor. NEDs usually stand back from the day-to-

[46] Tom Bergin, *Spills and Spin: The inside Story of BP* (London: Random House 2011) 46

[47] ibid

[48] ibid 76

[49] GF Davis, 'The Twilight of the Berle and Means Corporation' (2011) *Seattle University Law Review* Vol. 34 1121

day running of the business, drawing alongside the executive team as required, to facilitate the strategic decision-making process.[50]

In the UK, beginning from 2003 – and in order to comply with corporate best practices – the published Combined Codes of corporate governance have recommended that 'NEDs should make up at least half the board' of corporations. The significance of this is that a considerable number of both the FTSE 100 and FTSE 250 mid-sized corporations now have boards dominated by NEDs, which separate the offices of chief executive from that of board chairman.[51]

It is suggested that NEDs represent shareholders in the board of corporations and are used as one of the mechanisms for solving the agency problem highlighted by neoliberal agency theorists like Jensen, Fama and Meckling.[52] These theorists argued that the financial theory of separating ownership from management in corporations 'had created generic agency problems because the shareholder-principal faced costs and other difficulties in monitoring the manager-agent'.[53] Through the mechanism of NEDs, they argued, shareholders' interests in the boardroom are protected. By representing shareholders' interests, NEDs conscientiously assist in decreasing the extent of the agency costs through better alignment of shareholder and manager interests. This is achieved through; the control and restriction of 'management pursuit of the quiet life'; curtailing the inefficient and profligate expenditures of managers in areas such as managerial bonuses and extravagant travels; or the managers' pursuit of discretionary and personal objectives like refusing to be accountable to shareholders'.[54]

A good example of how NEDs promote shareholder value is seen in the functions of the markets for corporate control (MCCs). As Froud and others have suggested, the activities of NEDs

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[50] Exactly what this entails will vary from corporation to corporation, depending on what is required at each stage of a corporation's development. It is however arguable that these non-executive directors have played very important roles in the proliferation and entrenchment of the shareholder value culture in boards of corporations; See R Anderson & Associates, 'Risk Management & Corporate Governance' (2010) 41 Report Prepared for the OECD <www.oecd.org/corporate/ca/corporategovernanceprinciples/42670210.pdf > accessed 22 April, 2013

[51] Julie Froud, A Leaver, G Tampubolon and K Williams, 'Everything for Sale: How Non-Executive Directors Make a Difference' (2008) *CRESC Working Paper Series* No. 46 5-6

[52] The agency theory was discussed in the last chapter

[53] Julie Froud and other (n 51)

[54] ibid

and how they represent shareholders' interests in boards, is best explained in the processes leading up to the foreign take-over of the UK building material sector, the actions of the NED-dominated boards of the UK corporations and specifically, in the events leading up to the eventual sale of the glass manufacturing firm, Pilkington. According to Froud and others, there were no resistance from the NED-controlled UK boards against foreign take-overs beginning from 1997. This is against the back-drop that most of these corporations were neither in financial distress nor lacking productive credibility. The NED-controlled boards, however, encouraged and eventually sold-out to foreign buyers without objections, 'after efficiently extracting a higher price for shareholders and thus serving their role of representing the interest of shareholders on the board'.[55]

Furthering the argument that NEDs entrench shareholder primacy, the case of Pilkington is cited as proof. The corporation had received an earlier bid for take-over by the British conglomerate BTR in 1986. At this time, the corporation's board was made up of a majority of family members and long-term employees. The take-over bid was seen as not only insensitive, but also 'entirely lacking in logic' and was, as a result, rejected. 20 years later, in 2005/2006, another bid by a smaller Japanese firm, NSG was accepted by the board of the corporation. The key difference between the 1986 situation and that of 2005/2006 was that the board was now dominated by a majority of NEDs, who felt that the price which NSG offered to pay was high and a good outcome for shareholders.[56]

The fact that the corporation was financially viable and productively credible and in a much stronger position in 2005 than it was 1986 was immaterial. The suggestion that it was equally illogical commercially, to sale at this time was not relevant. By selling at a premium, the transaction enhanced shareholder profits and that was all that mattered. The ancillary fact that employees, local communities and even politicians may be negatively affected by the sale was irrelevant. Shareholder profit maximization was all that counted and NEDs were in the board to ensure that this was actualized. Accordingly, the idea that 'everything is for sale' as long as it enhances shareholder profits

[55] ibid 17

[56] ibid 17-18

has become the norm. The board that refuses to sale, 'during friendly overtures or hostile takeovers', do so not because they will not sale, but because they are 'holding out for the highest price'.[57]

In line with this argument, NEDs have become a corporate governance mechanism which ensures that corporate managers serve only the interests of shareholders. As a result, in many corporate boards, they represent the interest of finance capital and enforce the changing conjectural primacy of financialization. They aid in the prioritization of shareholder value through their efforts in the buying and selling of corporations in the MCCs.[58]

In similar vein, it is argued that the increase in the number of non-executive directors is closely linked to the proliferation of shared directorship. This development is attributed to the fact that those in commanding 'positions', usually identify with each other and have mutual and shared interests as a result of their connection with identical establishments. They naturally look up to each other for 'shared problems'.[59] By implication, reactions to matters of corporate governance and shareholder value proliferated quickly amongst corporations through these shared directors. They operate as channels for the extension of 'practices, information and norms' which explain 'some of the surprising conformity among corporate managers' regarding 'their approaches to corporate governance' and shareholder value. Shared NEDs not only created a means of collective political actions,[60] but also led to a board-room culture which favoured its own and served as a network of connections which support the creation of shareholder value.[61]

> As a number of commentators have noted, the non-executive director (NED) has become the new mechanism of directorial 'interlock'. NEDs do not represent the interests of specific financiers or investment banks in the same way as the nominee directors of the early twentieth century, but instead enforce the general priorities of financialization.[62]

[57] ibid 16

[58] Julie Froud and others (n 51) 3-4

[59] CW Mills, *The Power Elite* (New York: Oxford University Press 1956) 13

[60] GF Davies, 'Agents without Principles? The Spread of the Poison Pill Through the Inter-Corporate Network' (1991) *Administrative Science Quarterly* Vol. 36 (4) 583-613

[61] GF Davies, *Managed by the Markets: How Finance Re-Shaped America* (New York: Oxford University Press 2009) 98

[62] Paddy Ireland, 'Financialization and Corporate Governance' (2009*) Northern Ireland Legal Quarterly* Vol. 60 (1) 21

For Froud and others, the interlocking or 'exchange' of executive personnel at board level shows a very significant aspect of 'corporate capitalism' and evidences one of the different mechanisms through which the ideology of shareholder value is realized. NEDs accordingly, 'have the practical responsibility of auctioning' the corporation and deciding when and at what particular circumstance a particular transaction favours shareholders. Once this is determined, it is their responsibility to ensure that shareholder profits are realized.[63]

The extent to which directorial interlocking enhances corporate performance is however doubtful. In a review of empirical studies conducted on the issue, Froud and others maintain that 'it is inherently unlikely that organisational changes such as the number of NEDs or the separation of chairman and chief executive would strongly influence a complex outcome like performance which has many drivers'.[64]

External Mechanisms

The external mechanisms for entrenching shareholder value exist mainly in the stock markets and the markets for corporate control (MCCs).

Markets for Corporate Control (MCCs)

In chapter Three, the concept of markets for corporate control and the writings of Henry Manne were discussed. For Manne and other agency theorists, the argument in favour of MCCs is that the share price of a corporation acts as a kind of judgement on its management. To this end, 'good managers' are usually rewarded with high prices in the stock market, while 'bad managers' are rewarded with

[63] J Froud and others (n 51) 22
[64] ibid 6

low share prices.[65] Essentially, the argument continues, a low share price renders a firm vulnerable to take-over by other firms who believe that they can manage the corporation more efficiently. The ultimate sanction for bad management, therefore, is not merely a low share price, but also a take-over bid. Inherent in this logic is the existence – in the form of the stock market – of a market for corporate control through which managers compete for the control of corporate assets.[66] Accordingly, the MCCs ensure that corporate assets are used in the most efficient and profitable ways possible, leading Manne to declare that the 'stock market is the only objective standard of managerial efficiency'.[67]

In recent corporate theory, the existence of the MCCs and the threats of take-over are principal instruments through which corporate managers can be 'restrained' and obliged to operate in the shareholders' interests. Legitimized take-overs act as mechanisms through which poorly performing managers are removed and those better-suited given control. Significantly however, the MCCs perform effectively only when shareholders (and shareholders alone) possess the right to appoint and dismiss directors. Claims about the existence of MCCs, have thus become a justification for the continued hegemony of the principle of shareholder primacy and existing shareholder rights.[68]

The apparent acceptance of the role of MCCs in the international financial system has practically elevated the concept to such a height that it now functions as a central apparatus for the contemporary justification of shareholder value and the debates about corporate governance in general. The importance of this mechanism to shareholder value is further substantiated by the increasing argument that the maintenance of the MCC is the key to good corporate governance.[69] The MCCs, this argument holds, offer a simple procedure for controlling corporate managers and making them answerable to shareholders. This is in the interest of not only the shareholders but of society in general, since it ensures the most efficient allocation of resources. The policy implication of this view is that policy-makers should try to create MCCs where they do not already exist and that barriers to

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[65] Henry Manne, 'Mergers and the Market for Corporate Control' (1965) *Journal of Political Economy* Vol. 73 300-301

[66] MC Jensen,' Takeovers: Folklore and Science' (1984) *Harvard Business Review* Vol. 68 (6) 110

[67]Henry Manne (n 65) 301

[68] Henry Manne, 'The Higher Criticisms of the Modern Corporation' (1962) *62 Columbia Law Review* 399 at 402

[69] Paddy Ireland, 'Defending the Rentier: Corporate Theory and the Reprivatisation of the Public Company' in J Parkinson, A Gamble and G Kelly (eds.) *The Political Economy of the Company* (Oxford: Hart Publishing 2001) 153

takeovers should be kept at a minimum. According to the advocates of the MCCs, the preservation of shareholder rights promotes efficiency. [70]

However, the claim that MCCs lead to efficiency has been doubted. According to Franks and Meyer, 'there is no broad-gauge support for the inefficient management displacement hypothesis that acquired companies are subnormal performers'.[71] As a result, they advocated for caution which 'mandates considerable scepticism towards the claim that mergers are on average efficiency enhancing'.[72] In reality, therefore, available evidence appears to favour the fact that mergers and acquisitions often bring little by way of efficiency.[73]

Notwithstanding the likely advantages or disadvantages of MCCs, it is strongly suggested that 'the institutionalisation of the hostile take-over and the growth of the market for corporate control' has contributed immensely 'to the capital market pressures on managers', redesigning the things they 'say and do by creating an environment in which everything is permanently for sale'.[74]

Stock Markets

The functions of the active markets in contemporary financial systems portray the principal difference between the finance capitalism of the 20th century and that of the 21st century.[75] In the markets of the 20th century, power was exercised directly by financiers and investment banks within corporations through board representation, thus operating at the level of the individual corporation. In the financial markets of the 21st century on the other hand, power is predominantly exercised from outside, 'through the arms length mechanism of the market'.[76]

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[70] Henry Manne (n 65)

[71] J Franks and C Mayer, 'Hostile Takeovers and the Correction of Managerial Failure' (1996) *Journal of Financial Economics* Vol. 40 163

[72] ibid

[73] Paddy Ireland 'Defending the Rentier' (n 69) 158

[74] ibid

[75] Discussed in chapter Three

[76] Paddy Ireland, 'Financialization and Corporate Governance' (n 62) 21-22

This equates to a form of regulation which does not only unite 'concentration with liquidity', but is also omnipresent and operational within the corporate sector in totality. For Ireland, it is this apparent all-pervading nature that has enabled Anglo-American finance to wield such effective disciplinary power. According to him, this veiled power which it possesses is clearly dissimilar with the explicit, but sometimes 'less effective' varieties of power exhibited by finance in such places as Germany. Ironically, the 'more direct forms of financial control that was prevalent in the 20th century, and which still exist in "blockholding" territories, are contemporarily regarded as obstructing the smooth operation of the free markets. This is because "blockholding" creates risks for minority shareholders' and impedes the functions of MCCs, 'shackling capital to particular firms and diminishing the disciplinary and efficiency-enhancing power' that it can exercise in markets. Furthermore, the immobile nature of this 'more "committed" capital' boosts the position and negotiating standing of 'non-shareholding groups', thereby assisting in creating a 'more relational and more stakeholder-oriented' conception of the corporation. This situation invariably results in a corporation that is motivated by an extensive and longer-term planning, exhibiting a 'more welfarist version of capitalism'.[77] This is not acceptable to those advocates steeped in the neoliberal free market ideology. In the words of Ireland;

> The key role played by markets in the exercise of contemporary financial power also accounts for the close links between resurgent finance and neoliberalism, with its supposition that free markets - private, contractual economic ordering and the unregulated forces of supply and demand - are the best way to maximise not only freedom but also growth, wealth and welfare. For neoliberalism champions precisely the kind of market mechanisms through which modern finance exercises its coercive power, hence claims that finance was the instigator of the transition to neoliberalism and that neoliberalism is best seen as the "ideological expression of the reasserted power of finance", its economic grand narrative.[78]

The 'free market' origins of resurgent financial power equally make clearer, the reason for the ascendancy of the shareholder value principle. It is suggested that the re-emergence of shareholder

[77] ibid
[78] ibid 22

value did not occur as a result of changes in the fundamentals of corporate law per se. The contemporary revival of shareholder value is embedded in the power of shareholders, 're-united and re-concentrated in institutions' to utilize 'the rights' bestowed on them by corporate law, 'to impose themselves on corporations and corporate executives, both directly and indirectly through the medium of financial markets – within a largely unchanged company law regime'.[79]

As a result, the most important modifications on laws governing international finance have occurred, not in corporate law, but in the law regulating international capital flows and security markets. The reason for this is not far-fetched. According to Davies, it is more straightforward and unproblematic for institutional shareholders to manipulate and effect alterations to the system controlling securities markets, than it is for them to modify corporate law. Corporate law is subject to the customary law making procedure, 'where institutional investors would be only one among a number of powerful influences on the ultimate shape of the legislation'.[80] The system of rules governing securities on the other hand, have 'been devolved to regulators which are closer to the market participants, notably the Stock Exchange and, now, the Financial Services Authority, for the listing rules and the City Panel on Take-overs and Mergers for the rules on take-overs'.[81]

In the final analysis, the creation and maintenance of active stock markets is thus, another mechanism for the actualization of shareholder value. The existence of these markets casts shadows on the activities of corporate executives and compels their obedience to the principles of shareholder value.

[79] ibid
[80] Paul Davies, 'Shareholder Value, Company Law, and Securities Markets' in KJ Hopt and E Wymeersch (eds.) *Capital Markets and Company Law* (Oxford: OUP 2003) 261 277
[81]ibid

III

INTERNATIONAL ORGANIZATIONS AND SHAREHOLDER VALUE MECHANISMS

In the last two decades, the struggle for investment has intensified – whether in developed countries or in the less developed ones. Consequently, the argument that it is necessary to realize an acceptable level of consistency in corporate governance practices has acquired additional momentum. Internationally, influential organizations have been at the forefront of bringing about improved corporate governance frameworks and in their supervision and observance of national CG practices. At international conferences, issues of corporate governance and supervisions are extensively debated, and many regional and international associations are presented with opportunities to dialogue and share information. Projects introduced and implemented at these forums heavily influence the direction of domestic laws and regulations. These organizations, through their positions and tactics, function as agents in influencing the course of 'convergence' towards shareholder value primacy. 'Agents of convergence', writes Adegbite and Amaeshi, are viewed as 'those entities... who are, directly or indirectly, actively involved in nudging national systems of corporate governance in one direction or the other, through their cross-border initiatives'.[82]

In the following sub-sections, this thesis will explore the part played by international organizations – including the OECD, the FSB, the IMF and the World Bank –, their influences in determining the assessment and understanding of corporate governance within the global economic framework and how their actions direct states towards the adoption of the Anglo-American SV model of CG. The mechanisms which are inherent in this model, as was argued above, act as practical barriers to the realization of effective CSR.

[82] E Adegbite and K Amaeshi, 'Multiple Influences on Corporate Governance in Sub-Saharan Africa: Actors, Strategies and Implications'(2010) *CSGR Working Paper 267/10 Centre for the Study of Globalisation and Regionalisation*, Department of Politics and International Studies University of Warwick 3 <www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/2010/26710.pdf> accessed 14 February, 2013

The OECD

The Convention for the formation of the Organisation for Economic Co-Operation and Development (OECD) was signed in Paris on the 14 December, 1960, but came into effect on the 30 September, 1961.[83] The original members were those of the Organisation for European Economic Corporation (OEEC) formed in 1947 to manage the US-financed Marshall Plan to rebuild war-torn Europe. As a result of the successes it recorded and in order to internationalize its scope, the US and Canada joined the organization. The new organization became the OECD and other countries like Japan and Finland subsequently became members. The OECD is currently made up of 34 member-countries.[84]

The OECD Principles of Corporate Governance

In 1999, the OECD published the Principles of Corporate Governance, made up of the best practices to be implemented by member and non-member countries, in order to be certified 'compliant' with the dictates of a sound financial system. The principles, revised in 2004, are one of the 12 key standards for international financial stability, recommended by the Financial Stability Board (FSB).[85] They form the basis of the corporate governance component of the Report on the Observance of Standards and Codes (ROSCS) of the World Bank Group.[86] The Principles were initially created in reaction to a request by the OECD Council Meeting at Ministerial level on 27-28 April 1998,

[83] See <www.oecd.org/pages/0,3417,en_36734052_36761863_1_1_1_1_1,00.html> 20 April, 2013; The organisation was formed principally for the actualisation of the following policy objectives; achieving the highest sustainable economic growth and employment and a rising standard of living in member countries, while maintaining financial stability, and thus contributing to the development of the world economy; contributing to sound economic expansion in member as well as non-member countries in the process of economic development and; contributing to the expansion of world trade on a multilateral, nom-discriminatory basis in accordance with international obligations

[84] ibid

[85] Discussed below

[86] Also discussed later in this chapter

following the South-East-Asian financial crisis,[87] to develop a set of corporate governance standards and guidelines.[88]

The OECD acknowledged four values against which governance exercise can be measured; fairness, transparency, accountability, and responsibility. According to the organization, the more extensively the principles are applied, the more resources will be shared justifiably and efficiently. The key to efficient allocation of resources is transparency and accountability. As long as corporations remained open about their objectives and the manner in which these objectives are achieved, they will earn the trust of those on whom they depend for their success. Resources will flow to corporations that inspire trust, through their approach to governance and through the integrity of those who manage corporate policies. Responsible governance is the basis on which trust is established and enterprise encouraged. The organization believes that improved corporate governance frameworks profit corporations through greater access to financing, lower cost of capital, better firm performance, and more favourable conduct of all participants. They equally hold that when a nation's general corporate governance and property rights system are weak, voluntary and market corporate governance mechanisms have limited effectiveness.[89]

> The degree to which corporations observe basic principles of good corporate governance is an increasingly important factor for investment decisions. Of particular relevance is the relation between corporate governance practices and the increasingly international character of investment. International flows of capital enable companies to access financing from a much larger pool of investors. If countries are to reap the full benefits of the global capital market, and if they are to attract long-term "patient" capital, corporate governance arrangements must be credible, well understood across borders and adhere to internationally accepted principles.[90]

[87] Discussed in chapter Five

[88] The Principles were created by the organisation, with the contributions of national governments, relevant international organisations and the private sector, The Principles are meant to aid OECD and non-OECD governments in their efforts to appraise and advance 'the legal, institutional and regulatory framework for corporate governance', and to offer supervision and proposals 'for stock exchanges, investors, corporations, and other parties' that have responsibilities in the procedure of developing good corporate governance; See OECD Principles of Corporate Governance, "Preamble" <www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf> accessed 20 April, 2013.

[89] ibid

[90] ibid

The OECD Principles, following main-stream economists, insists that private, market based investment processes, are invaluable factors in the successful operations of international economies. These processes are better enhanced when economies have sound corporate governance frameworks. By virtue of the ever-expanding nature of modern corporations, coupled with the increasing relevance of economic investors and institutional mediators, the recruitment of capital has assumed a life of its own, devoid of principal-owners' control. In the same vein, the distribution of capital has become more complicated as investment options broaden, made possible by the unobstructed liberalization of fiscal and actual markets. Structural modifications and allocations, including price deregulation and increased market rivalry, have improved corporations' exposures to risks associated with market forces. These occurrences have made the supervision of the various uses of corporations more complicated, necessitating the need for high-quality corporate governance.[91]

The OECD Principles, in its preamble, states that 'the presence of an effective corporate governance system, within an individual company and across an economy as a whole, helps to provide a degree of confidence that is necessary for the proper functioning of a market economy'.[92] Accordingly, the preamble continues, 'the cost of capital is lower and firms are encouraged to use resources more efficiently, thereby underpinning growth'.[93]

The Principles are broadly divided into six sections. Section I deals with ensuring the basis for an effective corporate governance framework. Section II is on the rights of shareholders and key ownership structures. Section III concerns the equitable treatment of shareholders. Section IV deals with the role of stakeholders in corporate governance while section V deals with issues of disclosures and transparency. The final section VI is on the responsibilities of the Board.

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[91] S Claessens (n 12) 25

[92] See OECD Principles of Corporate Governance, "Preamble" <www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf> accessed 20 April 2013

[93] ibid; The preamble goes on to state that the principles are concerned with publicly traded companies, whether financial or not and that they can be used to increase efficiency, even in non-traded companies. The preamble, while agreeing that there is no single model of good corporate governance, holds that work carried out in both member and non-member countries show that, the principles contain common elements which underlie good corporate practice.

Section III, dealing with the equitable treatment of shareholders is concerned with protecting the rights of minority shareholders in foreign countries, situated mostly in developing economies. The 'apparent' emphasis on the protection of minority shareholders by the Principles is one of the reasons for the suggestion that it promotes the Anglo-American model of corporate governance.[94]

The Principles make provisions for the role of stakeholders in section IV. The section states (amongst other things) that 'the corporate governance framework should recognise the rights of stakeholders established ***by law or through mutual agreements***[95] and encourage active co-operation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises'. Section IV (A) goes on to state that the rights of stakeholders that are established by law or through mutual agreements are to be respected. This means that the rights of stakeholders have to be established either by law, outside of corporate law (e.g. labour, business or commercial and insolvency laws) or by contractual relations, in order to be recognised and respected.[96]

It has been strongly suggested that this section introduced nothing new to the corporate governance debate. Rather, it merely re-enacts the position of the neoliberal shareholder value advocates, who hold that the right of stakeholders in corporate governance must be protected outside of corporate law. For instance, Hansmann and Kraakman (neoliberal advocates) had argued that;

> ...asserting the primacy of shareholder interests in corporate law does not imply that the interests of corporate stakeholders must or should go unprotected. It merely indicates that the most efficacious legal mechanisms for protecting the interests of non-shareholder constituencies—or at least all constituencies other than creditors—lie outside of corporate law. For workers, this includes the law of labour contracting, pension law, health and safety law, and anti-discrimination law. For consumers, it includes product safety regulation, warranty law, tort law governing product liability, anti-trust law, and mandatory disclosure of product contents and characteristics.

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[94] FP Gebremeskel, 'Emerging Separation of Ownership and Control in Ethiopian Share Companies: Legal and Policy Implications' (March 2010) *Mizan Law Review* Vol. 4(1) 19-22

[95] Emphasis supplied

[96] OECD Principles of Corporate Governance, <www.oecd.org/document/49/0,3343,en_2649_34813_31530865_1_1_1_1,00.html> accessed 14 February, 2013

> For the public at large, it includes environmental law and the law of nuisance and mass torts.[97]

From the OECD principles therefore, corporations are not under any obligation to engage in social responsibility practices, except when those practices are stipulated either by law (outside corporate law) or by contract. This is the major reason why the Principles are said to be constructed on the Anglo-American neoliberal ideology, with its emphasis on shareholder value maximization, and against effective CSR.[98]

As Ireland observes, 'when the OECD Principles of Corporate Governance first emerged in 1999 following the East-Asian financial crisis of 1997-98, it was clear that they were firmly rooted in an Anglo-American, stock market-based, shareholder-oriented model of the corporation, notwithstanding nods in the direction of diversity'.[99] Other writers, including Soederberg agree with this assertion.[100]

Furthermore, the OECD aids the World Bank in the implementation of the Key principles of Sound Financial Systems with regards to corporate governance.[101] The organization defines the meaning of corporate governance and what makes up good corporate governance practices. This definition is accepted by both the World Bank and the rating agencies like Standards & Poor's. In theory, therefore, adherence to the tenets of the Principles is voluntary even though in practise, it is more or less compulsory.[102]

In any case, the creation of these principles further entrenched the shareholder model of corporate governance across the globe. The Principles are in agreement with the argument that

[97] H Hansmann and R Kraakman (n 11) 58

[98] W Lazonick and M O'Sullivan, 'Maximizing Shareholder Value: A New Ideology for Corporate Governance' (2000) *Economy and Society* Vol. 29 (1) 14

[99] Paddy Ireland, 'Financialization of Corporate Governance' (n 62) 16

[100]See Susanne Soederberg, *The Politics of the New International Financial Architecture; Re-imposing Neoliberal Domination in the Global South* (London: Zed Books 2004)139-149

[101] Discussed in details below

[102] Susanne Soederberg (n 100) above

corporate governance should concern itself only with shareholders and the maximization of their profits.

Financial Stability Board (FSB)

The Financial Stability Board was established in April, 2009, as a successor to the earlier Financial Stability Forum (FSF). It was created by the Group of 20 (G20) Summit of Heads of Government to tackle the financial crisis of 2007-2008 and bring about stability in global finance. The FSF which it replaced, was itself established in 1999 by the Ministers of Finance of the Group of Seven developed Nations (G7) and their Central Bank Governors, after the South-East-Asian financial crisis of 1996-97. The first meeting of the earlier FSF was convened in Washington in April 1999.[103]

According to the FSB, the Board will integrate three areas of international finance including;

> ...national authorities responsible for financial stability in significant international financial centres, namely treasuries, central banks, and supervisory agencies; sector-specific international groupings of regulators and supervisors engaged in developing standards and codes of good practice; international financial institutions charged with surveillance of domestic and international financial systems and monitoring and fostering implementation of standard; committees of central bank experts concerned with market infrastructure and functioning.[104]

In 2008, in order to bolster the Forum's value as a medium through which organizations all over the world can tackle the problem of financial susceptibilities and build a strong and dynamic regulatory framework for international finance, the G20 Summit called for the expansion of the forum's

[103] See Financial Stability Board 'History' www.financialstabilityboard.org/about/history.htm accessed 24 April, 2013

[104]ibid

membership to accommodate other developing economies' interests. With this expansion, the Forum was re- launched as Financial Stability Board.[105]

The mandate of the FSB is to: assess vulnerabilities affecting the financial system and identify and oversee action needed to address them; promote co-ordination and information exchange among authorities responsible for financial stability; monitor and advice on market developments and their implications for regulatory policy; advise on and monitor best practice in meeting regulatory standards; undertake joint strategic reviews of the policy development work of the international standard setting bodies to ensure their work is timely, coordinated, focused on priorities, and addressing gaps; set guidelines for and support the establishment of supervisory colleges; manage contingency planning for cross-border crisis management, particularly with respect to systemically important firms; collaborate with the IMF to conduct Early Warning Exercises.[106]

FSB and Good Corporate Governance Standards

In pursuing the objective of maintaining international economic stability, the FSB has engaged in the production of various instruments for the surveillance and regulation of the international financial system. One of such instruments is the *12 Key Standards for Sound Financial Systems*. Standards are explained as those principles which are widely 'accepted as representing minimum requirements for good practices' in countries.[107]

Each of the key standards is under the supervision of particular institutions and they are: Code of Good Practices on Transparency in Monetary and Financial Policies (IMF); Code of Good Practices in Fiscal Transparency (IMF); Special Data Dissemination Standard/General Data Dissemination System (IMF); Principles and Guidelines for Effective Insolvency and Creditor Rights Systems (World Bank); ***Principles of Corporate Governance*** *(OECD)*; International Accounting

[105] ibid

[106] ibid.

[107] See Key Standards for Sound Financial Systems <www.financialstabilityboard.org/cos/key_standards.htm> accessed 24 April 2013

Standards (IASB); International Standards on Auditing (IFAC); Core Principles for Systemically Important Payment Systems (CPSS) and Recommendations for Securities Settlement Systems (CPSS-IOSCO); The Forty Recommendations of the Financial Action Task Force and Nine Special Recommendations on financing terrorism (FATF); Core Principles for Effective Banking Supervision (BCBS); Objectives and Principles of Securities Regulation (IOSCO); Insurance Core Principles (IAIS).[108]

The 12 standard areas enumerated above have been selected by the FSB as fundamental for every sensible financial system in the world. According to the Board, these key areas are 'deserving of priority implementation', depending on country situation and though there are differences 'in terms of their degree of international endorsement,' the keys are generally acknowledged as indicative of 'minimum requirements for good practice.'[109]

It was concluded by the Board that success in implementing the international benchmarks will reinforce national economic arrangements, promote positive control and management, better transparency and efficiency of institutions, markets, and infrastructures. Again, the standards will 'promote international financial stability by facilitating better-informed lending and investment decisions, improving market integrity, and reducing the risks of financial distress and contagion'. [110]

In this way, it is contended that the Board has succeeded in establishing a common threshold for all countries, irrespective of geographical or cultural differences. While it is conceded that the Board permits priority implementation to depend on country circumstances, the fact that the principles represent the 'minimum requirements' for good practice, means that every country must attain that stipulated level. In other words every country must adhere to the standards as produced.[111]

As a follow up to the publication of the standards, the World Bank, in conjunction with the International Monetary Fund, established the *Report on the Observance of Standards and Codes*

[108] ibid
[109] ibid
[110] From the European Bank for Reconstruction and Development website <www.ebrd.com/pages/sector/legal/securities/standards.shtml> accessed 17 February 2011
[111] Susanne Soederberg (n 95)

(ROSCs) to ensure that countries observe the standards as approved by the FSB. As reported in the World Bank's website;

> The international community has emphasized the important role of international standards in strengthening the international financial architecture. In a world of integrated capital markets, financial crises in individual countries can imperil international financial stability. This provides basic public goods rationale for minimum international standards which would benefit both international and individual national systems.... In this connection, the IMF has invited the World Bank to embark on a joint pilot exercise preparing '*Reports of the Observance of Standards and Codes'* (ROSCs). In this exercise, the two institutions are undertaking a large number of *summary assessments* of the observance of selected standards relevant to private and financial sector development and stability. These assessments are being collected as "modules" in country binders constituting the '*ROSCs*.[112]

As part of the ROSCs project, the World Bank has launched a plan to aid member states reinforce their corporate governance structures. The purposes of the plan are; to measure a country's 'corporate governance framework and company practices against the OECD Principles for Corporate Governance'; to support a country to build and execute its 'action plan for improving institutional capacity with a view to strengthening the country's corporate governance framework'; and to increase consciousness and knowledge of 'good corporate governance practices amongst a country's public and private sector stakeholders'. The Bank accomplishes this 'corporate governance country evaluation' using a five parts guide, grounded on the OECD Principles.[113]

These country assessments have been used to monitor the level of implementation of the FSB's standards by different countries. It is the responsibility of states to ensure that they 'make the grade' in the assessment tests. In this way, they strive to comply with the neoliberal ideas contained in

[112] See <www.worldbank.org/ifa/rosc_more.html> accessed 17 February, 2011

[113] The World Bank Groups, 'Reports on the Observance of Standards and Codes' <www.worldbank.org/ifa/rosc_cg.html> accessed 15 February, 2013

the assessments. Peer review reports are published regularly to assess the level of compliance with the standards by individual countries.[114]

According to the Board, the reports;

> ...form part of a regular programme of peer reviews of FSB member jurisdictions, which began with the publication of the peer review of Mexico in September 2010. The objective of FSB country peer reviews is to examine the steps taken or planned by national authorities to address IMF-World Bank Financial Sector Assessment Program (FSAP) recommendations concerning financial regulation and supervision as well as institutional and market infrastructure.[115]

From the foregoing, even though 'good corporate governance' symbolizes 'universal principles', the classification proposed and adopted by the ROSCs relies on the Anglo-American model. The minimum requirement necessary for corporate governance compliance is none other than that formulated by the OECD (with the support of the World Bank) and which promotes the Anglo-American shareholder value model. Conformity with the ROSCs is not voluntary, as non-conformity would transmit damaging indicators to the international community, resulting in potential resource flight and investment strike.[116] In this way, the FSB helps to promote the shareholder value model of corporate governance.

FSB and Corporate Governance: Deployment of the Panopticon

The Financial Stability Board is established to provide regular meeting opportunities for state establishments responsible for international financial stability, in order to 'enhance discussions about

[114] The Board has published Peer Review reports for Italy and Spain, 19 February, 2011; Switzerland and Canada, 25 January, 2012 and 30 January, 2012 respectively; and South Africa, 5 February, 2013; See <www.financialstabilityboard.org/search/?sp_q=Peer+reviews&adv=1> accessed 24 April, 2013
[115] See <www.financialstabilityboard.org/cos/key_standards.htm> accessed 6th March 2011
[116] Susanne Soederberg (n 100) 138

the financial supervision and surveillance of economies'.[117] In the context of the supervision and surveillance of economies (including corporate governance), an interpretive analysis of the concept of surveillance, its liberal roots, and how it operates in the international financial architecture, is found in Vestergaard's *The Asian Crisis and the Shaping of Proper Economies*.[118] According to Vestergaard, the concept is best understood by reference to Michel Foucault's analysis of Jeremy Bentham's invention of the Disciplinary Inspection House, otherwise called the ***Panopticon***.[119]

> From a regime of disciplinary power based on minute regulation and supervision of men and their affairs, the move from 'state reason' to liberalism was a move towards a regime of disciplinary power founded upon a new modality of surveillance, the strength and economy of which resided in its ability to install in those surveyed, self-surveillance.[120]

By way of illustration,[121] men are placed in a building in the periphery of a given space. A tower with a supervisor-in-residence is built in the centre of the space and the building in the periphery is divided into cells. The architecture of the peripheral structure and that of the central tower is designed in such a way that the inspector inside the tower is able to see what those in the cells are doing, without the inmates knowing whether he is there or not. Since these inmates do not know when or whether the inspector is watching, they are compelled to conform to set down rules, in order to avoid punishment. The strength of this 'disciplinary' regime is that its exercise is simultaneously visible and unverifiable. By being unaware of whether or when the supervisor is watching, inmates will always behave as 'as if surveillance were perpetual and total'.[122]

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[117] ibid, 137

[118] Jakob Vestergaard, 'The Asian Crisis and the Shaping of 'Proper' Economies' (2004) *Cambridge Journal of Economics* Vol. 28 809-827

[119] The Panopticon is a Greek compound term which means "sees all"; See Stephen Gill, 'Finance, Production and Panopticism: Inequality, Risk and Resistance in an Era of Disciplinary Neoliberalism' (1997) 1-23 <www.stephengill.com/finance_production_and_panopticism.pdf> accessed 24 April 2013

[120] J Vestergaard (n 118) 816

[121] Using Foucault's analysis

[122] J Vestergaard (n 118)

The panopticist form of punitive control, not only offers functional rationality tending towards efficiency and productivity, but also offers the logic of normalization.[123]

> In workplaces, schoolrooms, hospitals and welfare offices; in the family and in the community; and in prisons, mental institutions, courtrooms and tribunals, the human sciences have established standards of 'normality'...The human sciences attempt to define normality; and by establishing this normality as a rule of life for us all, they simultaneously manufacture- for investigation, surveillance and treatment-the vast area of our deviation from this standard.[124]

The normalizing society is accordingly established on a disciplinary power anchored on the double mode of binary division and coercive assignment. Binary division, in this case, brands things into normal/abnormal, mad/sane, dangerous/harmless, proper/improper, etc. Coercive assignment involves differential distribution of who he is, where he must be, how he is to be recognised and how surveillance is to be applied over a particular individual.[125]

When this theoretical framework is applied to what obtains in the global financial architecture, the FSB has established standards which are good and those which are not, thereby instituting the proper standards and the improper ones. They also engage in the exercise of coercive assignments by defining what an economy is, how it should operate and be accounted for and how constant surveillance should be exercised over economies in order to ensure that they are transformed and disciplined.[126]

The panopticism in the international financial architecture consists of three key fundamentals, normalizing, surveillance and punishment. Under the normalizing stage, there emerges a distinct norm for the creation of proper economies. This culminates in the promulgation of standards for the

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[123] According to Vestergaard, this was Foucault's main concern; J Vestergaard (n 118)

[124] M Philp, 'Michel Foucault', in Q Skinner (ed.) *The Return of the Grand Theory in the Human Sciences*, (Cambridge: Cambridge University Press 1985) 28

[125] Jakob Vestergaard (n 118) 818

[126] See Stephen Gill, 'Finance, Production and Panopticism: Inequality, Risk and Resistance in an Era of Disciplinary Neoliberalism' (1997) 1-23 <www.stephengill.com/finance_production_and_panopticism.pdf> accessed 24 April, 2013; See also Stephen Gill, 'The Global Panopticon?: The Neo-liberal State, Economic Life and Democratic Surveillance' (1995) *Alternatives* Vol. 20 (1) 1-49

operation of economies.[127] The 12 key standards of sound financial systems as promulgated by the FSB (with corporate governance as the fifth standard) is a good example of standards for the normalization of economies.[128]

At the surveillance phase, a far more comprehensive system of supervision is created and involves a three dimensional regulatory regime. First, national economies are under the surveillance of the international financial institutions, notably the IMF and the World Bank. Secondly, the private sector is under the surveillance of each member state and thirdly, the economy is under the surveillance of the market. This surveillance in the international financial architecture is undertaken by international financial institutions in conjunction with other bodies, including credit rating agencies such as Moody's and Standards and Poor.[129] In this context, the Report on the Observance of Standards and Codes (ROSCs) become means through which the surveillance of national economies is perfected.

As argued by Vestergaard, for the system of surveillance to operate effectively, every economic agent in the financial system must be rendered visible.

> This role of rendering economies visible is performed by a cluster of techniques, including high standards of financial accounting and disclosure, transparency reports and data dissemination standards. In terms of panopticism, these standards combine to produce the effect of backlighting necessary for the system of normalisation and surveillance to function.[130]

In the third fundamental of panopticism - punishment - a breach of the rules as handed down to the inmates in a panopticon incurs punishment. The same thing is applicable in the financial sector. Any breach of the 'proper standards' set out by the principal actors will attract punishment. This is usually in the form of financial crisis as experienced, for instance, by countries in South-East Asia in 1996-97. Financial crisis becomes the method through which markets performing surveillance functions over

[127] Jakob Vestergaard (n 118) 818

[128] This is discussed below

[129] Stephen Gill, 'Finance, Production' (n 126) 11

[130] Jakob Vestergaard (n 118) 820

economies, punish erring participants. By means of its punitive movements in and out of economies, 'free capital' helps enforce compliance with its terms.[131]

Taken together, the main objective of the FSF (now FSB) is to 'achieve systemic stability by ensuring that emerging market economies adopt the rules of the global capital markets through adherence to free market principles, including free capital mobility'.[132] Put in another way, the main objective of the FSB appears to be the 'neoliberalization' of world economies and the eventual domination of shareholder value.

The International Monetary Fund (IMF)

After World War II, which followed the Great Depression, the post-war planners contracted to end the economic prejudice and isolationism which had characterised both the Great Depression and the inter-war era and caused a significant decline in international trade. There was an eagerness on the part of allied participants to ensure the economic growth and development of nations globally. This intention was summed up by the US Secretary of the Treasury, who, in his closing remarks as the Chairman of the Bretton Woods Conference in July, 1944, stated that the fundamental condition under which commerce could flourish among nations, was to have a stable standard of international exchange rate.[133] In pursuance of this objective, a new moderate economic system was designed to provide the fundamentals for world prosperity.[134]

This led to the formation of the International Monetary Fund (IMF) and the World Bank. The IMF was formed to re-establish the quantity of global commerce which took a considerable dip as a result of volatile national economies beginning from the 1930s, after states decided to discard the gold paradigm. A fund of currencies would be donated by member countries and from the pot; members

[131] ibid

[132] Susanne Soederberg (n 100) 137

[133] 'Proceedings and Documents of United Nations Monetary and Fiscal Conference, Bretton Woods, N.H.,1-22, July, 1947, Vol. I, 1117-1118' (1947) <http://fraser.stlouisfed.org/docs/publications/books/1948_state_bwood_v1.pdf> accessed 24 April, 2013

[134] B Ingham, *International Economics; A European Focus* (London: Pearson Education Ltd 2004) 23

who are in need can withdraw the amount they require, to help rectify any balance of payment deficit in the economy. The agreed collective benchmark was the US currency (dollar) and this was exchangeable with Gold at a set price, with no limits.[135] There were 44 original members of the organizations.[136]

Essentially, the Fund's purpose is set out in Article I of the Articles of Agreement and mandates it to promote international monetary cooperation among nations and facilitate the expansion and balanced growth of international trade. The Fund is guided in all its policies by the provisions of this Article.[137]

In carrying out its functions under Article I, the Fund uses the pervading principles of surveillance and conditionality. It is argued that these principles of surveillance and conditionality are the two instruments through which the policy package of the Washington Consensus has been modified in favour of neoliberalism, after the East Asian financial crisis of 1996-97.[138]

As a result of the enormous debt problems facing many countries, the IMF engages in a number of debt deferment and salvage operations. As a prerequisite for giving additional loans and special help, it usually requires reductions in government spending, engaging in fiscal policy discipline, stimulation of exports and initiation of self-sustaining projects. These prerequisites are known as the conditionality principle, and any country wishing to obtain loans from the Fund has to comply with these conditionalities. For some critics, the conditionalities are no more than neoliberal structural adjustment programmes.[139]

On the other hand, the surveillance principle of the Fund empowers the institution to exercise full surveillance over the exchange rate policy of members and adopt measures for the guidance of these policies. The implication of this, it is suggested, is that the Fund shall supervise national economies to assess whether their policies are in harmony, not only with the country's own interest,

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[135] For a more detailed discussion of the purpose and functions of the Fund, see AF Lowenfeld, *International Economic Law* (2nd edition, London: Oxford university Press 2008) 550- 638

[136] AF Lowenfeld, *International Economic Law* (2nd edition, London: Oxford university Press 2008) 600

[137] ibid

[138] Susanne Soederberg, 'The Promotion of the Anglo American Corporate Governance in the South: Who Benefits from the New International Standard?' (Feb 2003) *Third World Quarterly* Vol.24 (1) 11

[139] D Salvatore, *International Economics,* (9th edn, New York: John Wiley and Sons inc 2007) 783

but also with the interest of the international community.[140] Accordingly, 'no narrow fence is to be drawn around the scope of scrutiny by the Fund, over the economic policies of member states'.[141] This process ensures that the organization carries out surveillance operations on countries in need of financial assistance, to ensure that neoliberal policies, including that of corporate governance, are continually implemented in their domestic legislations.

The World Bank

The International Bank for Reconstruction and Development, commonly known as the World Bank was formerly established to assist in the rebuilding of Europe after the end of the Second World War. It now helps developing countries, not yet in the main stream, to develop by granting loans to them where it is impossible for them to secure such loans through the private sector. Its basic purposes include the alleviation of poverty in developing economies, the defence of the environment, and the encouragement of growth both in the private sector and in human supply.[142]

Reconstruction of battered economies remains a significant aspect of the work of the World Bank. However, different challenges existing in the international financial framework requires the bank to concentrate on; poverty alleviation and the sustainable growth of the poorest countries, especially in Africa; solutions to the special challenges of post-conflict countries and fragile states; development solutions with customized services as well as financing for middle-income countries; regional and global issues that cross national borders- e.g. climate change, infectious diseases, and trade; greater development and opportunity in the Arab world; pulling together the best global knowledge to support development.[143]

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[140] See <www.imf.org> accessed 28 February 2013
[141] AF Lowenfeld, International Economic Law (n 136) 639
[142] ibid 600
[143] ibid

The IMF, the World Bank and the Imposition of Shareholder Value

The historical facts surrounding these international financial institutions have been narrated – albeit briefly – in order to highlight the perceived contradictions between their founding principles and contemporary practice. The connection between these institutions today and neoliberalism appears very strong. As stated above, the IMF and the World Bank are the principal institutions mandated to ensure compliance with the 12 key standards of Sound Financial Systems, using the mechanism of ROSCs produced by the FSB. In conjunction with other organizations like the OECD, and rating agencies like Standards & Poor's, the World Bank ensures that countries comply with the OECD Principles of Corporate Governance.[144] Many other standards are under the supervision of either the IMF or World Bank. In this way, the institutions act as watch dogs for the FSB.

Again, the role of these financial institutions in proliferating neoliberal ideas is evidenced in the operational changes they have undergone in recent times. With the ascendancy of neoliberalism, the institutions jettisoned their 'welfarist' leanings in favour of liberalization and deregulation. The introduction of SAPs are seen by many as the coercion (albeit subtly) of states in economic difficulties, into implementing neoliberal policies. According to Soederberg, regarding the IMF;

> Lately, however, there has been much concern not only about the increase in the actual number of conditionalities, especially over the past decade, but also about their overly intrusive, and thus largely ineffective quality. This later point is particularly salient in light of the Fund's new mandate to manage financial liberalization properly in both private and public sectors in the developing world.[145]

On the part of the World Bank, she submits that the Bank is able to fundamentally control the implementation of the 'good corporate governance' principles in poor countries, by integrating the principles into its poverty reduction schemes. Beneficiary states are usually denied 'poverty reduction

[144] Susanne Soederberg, 'The Promotion of the Anglo American Corporate Governance' (n 138) 11
[145] Susanne Soederberg (n 100) 138

assistance', unless they demonstrate compliance with these principles, based strongly on the free market-oriented philosophy of Anglo-American neoliberalism.[146]

In summary, any country in need of financial assistance has to comply with the dictates of these international institutions. There dictates, it is suggested, are no more than the application and entrenchment of the neoliberal economic framework, including that of corporate governance, in the international financial architecture.

Section Two

Corporate Governance as a Practical Barrier to Effective CSR in Nigeria

Introduction

Generally, the concept of corporations was alien to the pre-colonial Nigerian society and was only introduced towards the middle of the nineteenth century. The earliest corporations were mainly British firms, granted Royal Charters to trade in British protected territories. The most influential amongst them was the United African Company (UAC), recorded as the first modern MNC to trade in Nigeria. It was founded by George Goldie in 1879 and was granted royal concession to control trade in the areas surrounding the Niger River. In 1886, the corporation changed its name to the Royal Niger Company (RNC).[147]

Historically, the RNC was the most powerful business organization trading in the Niger River area in the late nineteenth century. Nevertheless, before the RNC, there were considerable clusters of

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[146] ibid 140

[147] Kenneth Amaeshi, BC Adi, C Ogbechie and Olufemi O Amao, 'Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?' (2006) *International Centre for Corporate Social Responsibility (ICCSR)* Research Paper Series 39 4 <http://195.130.87.21:8080/dspace/bitstream/123456789/1091/1/39-Corporate%20Social%20Responsibility%20(CSR)%20in%20Nigeria%20western%20mimicry%20or%20indigenous%20practice.pdf > accessed 13 May 2013

less influential 'rough-hewn British merchants' who engaged in the 'triangular trade', buying slaves from West Africa and shipping them to the Americas and West indies.[148] With the abolition of slave trade,[149] these merchants began to buy raw materials from the West African coast and transport them to Britain and other parts of the western world.[150] The raw materials included palm oil, ivories, copper, gold, cotton cloth, rubber, ground nuts, metal ornaments and leather goods.[151]

According to Robin Law, these British corporations – especially the RNC – were vicious and cold-bloodedly competitive. They commonly used force to intimidate host-communities in order to obtain favourable trade conditions and on many occasions, resorted to outright brigandage to compel local obedience.[152] In this context, it was alleged that pioneer British corporations were able to do this because of the freedom which colonial policies afforded them. The suggestion is that because of the 'historical link' between the merchants and colonial authorities, the former were allowed to operate under a 'complimentary' legal regime and could easily request for the aid of the latter 'militarily', against local communities suspected of impeding British trade. Thus, gun-boat diplomacy was commonly used by the British, to whip 'dissident' host-communities into line.[153]

The first recorded conflict between a Nigerian community and 'a multinational corporation' occurred in 1895, between the Nembe community, in present day Niger Delta and the RNC. Available record suggests that the crisis was as a result of the community's refusal to sign a trade treaty proposed by the British, permitting the RNC to monopolize all commercial activities along the Nembe River, which would have alienated the community from access to 'long-enjoyed' markets. The stand-off generated a considerable amount of bad blood, culminating in the community's attack of the

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[148] K Morgan, 'Symbiosis: Trade and the British Empire' (2006) *BBC History* <www.bbc.co.uk/history/british/empire_seapower/trade_empire_01.shtml> accessed 14 May 2012

[149] Through the enactment, by Parliament, of both the Slave Trade Act of 1807 and The Slavery Abolition Act 1833

[150] Kenneth Amaeshi and others (n 147)

[151] EEG Iweriebor, 'The Colonization of Africa' (2011) *Africana Age: Schombug Centre for Research in Black Culture* <http://exhibitions.nypl.org/africanaage/essay-colonization-of-africa.html> accessed 12 May 2013

[152] Robin Law, *From State Slavery to 'Legitimate Commerce: The Commercial Transition in Nineteenth-Century West Africa (*Cambridge: Cambridge University Press 1995) 13

[153] Especially, the first British Company in Nigeria, The Royal Niger Company, established in 1886; See SR Pearson, The Economic Imperialism of the Royal Niger Company' (1971) *AgEcon Search* 69-79 <http://ageconsearch.umn.edu/bitstream/135014/2/fris-1971-10-01-278.pdf> accessed 2 May 2013

MNC's headquarters at Akassa on 29 January 1895, destroying its equipment and taking many employees as hostages. In a reprisal attack on 20 February 1895, the British Royal Navy killed about 300 villagers and totally destroyed the community.[154]

The second MNC inspired 'commercial war' in Nigeria occurred in 1904, in the Jos valley of present day Plateau State. Before oil was discovered, tin was the prominent natural reserve extracted in Nigeria. The RNC established a subsidiary[155] to mine this mineral and logically, the indigenous communities were hostile to the corporation for interfering with their main source of livelihood.[156] The RNC, with the support of colonial administrators, 'forcefully' invaded the community and expropriated local rights to mining tin in the area.[157]

For Amaeshi and others, therefore, the significance of these conflicts is that the culture of exploitation by modern corporations in Nigeria could be traced to the earliest approaches of colonial corporations in their commercial dealings with local communities. As a result, the conflict between the Niger Delta people and oil MNCs in contemporary Nigeria has a loaded but ironic historical precursor.[158]

The number of recorded commercial disputes between local communities and foreign corporations reduced significantly towards the middle of the twentieth century, which incidentally was the time when oil was discovered in commercial quantities at Oloibiri, in present day Bayelsa State.[159] This discovery led to a high influx of MNCs into the region, meaning that by the beginning of the 1970s, a considerable number of them were operating in the country's oil sector. Naturally, their activities significantly increased the quantity of oil produced for the Nigerian government, thereby making the country more dependent on oil exports for its continued subsistence. Many have suggested that the growth in oil business introduced bribes and financial fraud into the country's

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[154] See MH Hansen, *A Comparative Study of Thirty City-State Cultures: An Investigation* (Denmark: Kgl. Danske Videnskabernes Selskab 2000) 534; See also AA Ikein, DSP Alamieyeseigha and SS Azaiki, *Oil, Democracy, and the Promise of True Federalism in Nigeria* (New York, University Press of America:2008) 4

[155] The Naraguta Tin Mining Company, under the control of a British engineer, H. W. Laws

[156] Olufemi O Amao, 'Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States' (2008*) Journal of African Law* Vol. 52 (1) 91

[157] See AF Calvert, *Nigeria and its Tin Fields* (London: Edward Stanford, 1910) 14-15 <www.archive.org/stream/nigeriaitstinfie00calvrich/nigeriaitstinfie00calvrich_djvu.txt> accessed 1 May 2013

[158] See Kenneth Amaeshi (n 147) 5

[159] See for instance, Chapters One and Two of this thesis

socio-economic environment and elevated corruption to an 'institutional phenomenon' in the Nigerian political economy.[160]

In order to further investigate these points, this section shall now focus on the corporate governance framework regulating corporations in Nigeria. It begins with an evaluation of the various laws regulating corporate governance, contending in the process that an examination of these laws show that there are good reasons for thinking that the country's corporate governance framework mirrors the neoliberal Anglo-American model, with its shareholder value obsession discussed in chapter Three and in section One above.

I

CORPORATE GOVERNANCE IN NIGERIA[161]

It has been argued that the success of any country's corporate governance framework is usually determined by many aspects of the state's wider environment.[162] These include the legislative environment, an effective and independent judiciary, as well as the broad environmental support for business.[163] In this context, therefore, the legal system is an important determinant of a country's corporate governance structure.[164] This argument holds true for many countries, not least Nigeria.

Corporations registered and operating in Nigeria differ in size and structure, from the subsidiaries of big MNCs, to the small indigenous firms made up of only one or two shareholders. The activities of these firms stimulate the Nigerian economy in many aspects and have necessitated the establishment of processes through which their actions can be regulated, in order to protect the interests of all stakeholders. Nigeria's corporate governance structure is embedded in statutes and

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[160] See 'Nigeria: 'Oil Industry Corruption' (8 March 2013) *Africa Research Bulletin: Economic, Financial and Technical Series* Vol. 50 (1) 1-2

[161] The concept of corporate governance, including its various definitions, were discussed in section one above

[162] E Adegbite, 'Corporate Governance Regulation in Nigeria' (2012) *Corporate Governance* Vol. 12 (2) 259

[163] K Udayasankar and S Das, 'Corporate Governance and Firm Performance: the Effects of Regulation and Competitiveness' (2007) *Corporate Governance: An International Review*, Vol. 15 (2) 262

[164] J Morrison, 'Legislating for Good Corporate Governance' (2004) *Journal of Corporate Citizenship* Vol. 15,121

through the promulgation of a variety of legislations; the federal government performs the critical task of moulding the country's corporate governance framework.[165]

In this respect, the following sections will briefly trace the historical development of corporate governance in Nigeria and examine the contents and implications of the country's corporate governance framework.

Colonial Legislations/ Post-Independence Companies Decree of 1968

With the abolition of slave trade in the late nineteenth century, British slave merchants began to trade in 'legitimate' goods. This trade, coupled with the subsequent establishment of Her Majesty's government over the entire Niger River area – with the stability it promised – led to the influx of more businesses and increased the volume of commerce within the region.[166] In this context, it became necessary for the colonial administrators to introduce some form of legislation, to regulate, guide and direct trading activities.[167]

Through colonial decrees made between 1876 and 1910, the English common law, the doctrines of equity and the statutes of general application in England on 1st January 1900 were introduced to regulate commercial activities. For Amaeshi and others, this meant that the common law notions of separate and independent legal personality of corporations[168] became applicable aspects of Nigerian corporate law.[169]

As commercial activities developed and expanded, applicable colonial decrees began to prove ineffective in regulating corporate activities. In order to enhance the free-flow of commerce in the

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[165] ENM Okike, 'Corporate Governance in Nigeria: The Status Quo' (2007) *Corporate Governance: An International Review* Vol. 15(2) 175

[166] JO Orojo, *Company Law and Practice in Nigeria* (3rd Ed., Lagos: Mbeyi & Associates Nigeria Ltd 1992)

[167] Fredrick D Lugard, *Annual Colonial Reports - Northern Nigeria No. 377* (presented to both Houses of Parliament by Command of His Majesty in London, January, 1903) 14-16 <http://libsysdigi.library.illinois.edu/ilharvest/Africana/Books2011-05/3064634/3064634_1901_northern_nigeria/3064634_1901_northern_nigeria_opt.pdf> accessed 1 May 2013

[168] Contained in *Salomon v Salomon* (1897) AC 22

[169] Amaeshi and others (n 147) above 5

region, colonial officials were compelled to review existing legislations, in order to bring them into conformity with prevailing economic conditions. The first full corporate legislation in Nigeria was the Companies Ordinance of 1912,[170] which applied only to the Lagos area of Southern Nigeria.[171] It was a local endorsement of the English Companies (Consolidation) Act of 1908 and was in force for five years, before it was amended in 1917.[172] Earlier in 1914, the Northern and Southern Protectorates had been amalgamated by Lord Lugard[173] to form Nigeria. The 1917 Act was subsequently repealed by the Companies Act of 1922.[174]

The 1922 Act was in force till after the country's independence in 1960 and was eventually repealed by the Companies Decree of 1968. By this time, Nigeria had become an independent country[175]and wanted to remove the vestiges of colonialism apparent in its corporate law. It has been suggested that this was necessitated by the dominant ideological convictions of the post-colonial era, which emphasised the concept of economic self-dependence for the newly de-colonised country.[176]

Moreover, the national government argued that a new legislation was necessary to control the activities of foreign MNCs in the country. In pursuing this objective, the federal government introduced Part X in the 1968 Act; arguably to curb the perceived excesses of foreign MNCs.[177] Specifically, sections 368-370 stipulated that all corporations[178] with established presence in Nigeria must register as Nigerian corporations. It is suggested that the introduction of Part X made foreign corporations (in theory at least) more accessible to government in issues of tax than when they were incorporated outside the country.[179]

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[170] See 'Guide to Business in Nigeria' <www.nigeria-law.org/BusinessInNigeria.htm> accessed 12 May 2013

[171] The country was then governed as two separate protectorates; the northern and southern protectorates of Nigeria.

[172] By the Companies Amendment and Extension Act of 1917 which extended the Act to the former Northern Protectorate, thereby covering the entire country

[173] The then British Governor-General

[174] S Adun, 'Introduction to Nigeria Company Law' (June 2007) *The Nigeria Exchange Business* <www.ngex.com/business/public/newsinfo.php?nid=1> accessed 4 May 2012

[175] Britain granted the country independence on the 1st October, 1960

[176] Boniface Ahunwan, 'Corporate Governance in Nigeria' (2002) *Journal of Business Ethics* Vol.37 270

[177] ibid

[178] Whether Foreign or otherwise

[179] O.A Akinpelu, *Corporate Governance Framework in Nigeria: An International Review* (Bloomington: iUniverse 2012) 206-208

However, Okike contends that despite the attempt to emphasize independence and economic self-determination by post-colonial military administrators, the 1968 Decree, ironically, still mirrored extensively the UK Companies Act 1948.[180]

Companies and Allied Matters Act (CAMA) 1990

After 22 years, the 1968 Decree was eventually repealed by the Companies and Allied Matters Act (CAMA) 1990.[181] It is the principal applicable corporate law in Nigeria presently, and is broadly divided into three parts; Part A deals with matters relating to incorporation, representative actions, membership, share capital and shares, debentures, meetings and procedure, directors and secretaries, protection of minorities against illegal and oppressive conduct, financial audits, dividends and profits, receivership and managers, winding up, arrangements and compromise and other miscellaneous matters. Part B deals with issues of incorporated trustees, while Part C deals with schedules.[182]

It has been suggested that CAMA 1990 is largely fashioned along the lines of the UK Companies Act 1948.[183] There is also a strong argument that it borrowed extensively from the provisions of the English Companies Act 1985.[184] The influence of the two English Acts is most significant in the areas of the general rights of shareholders and the protection of minority shareholders. As such, shareholders in Nigeria practically enjoy the same rights as shareholders in the Anglo-American model of corporate law.[185]

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[180] ENM Okike (n 165) 173

[181] Companies and Allied Matters Act, Cap. C20 Laws of the Federation of Nigeria (LFN) 2004

[182] Arrangements of Sections, CAMA, (Cap. C20 LFN) 2004

[183] Abel Guobadia, 'Protecting Minority and Public Interests in Nigerian Company Law: The Corporate Affairs Commission as a Corporations Ombudsman' in F McMillan (ed.) *International Company Law Annual Vol.1* (Oxford-Portland Oregon: Hart Publishing 2000) 81

[184] Olufemi O Amao and Kenneth M Amaeshi, 'Galvanising Shareholder Activism: a Prerequisite for Effective Corporate Governance and Accountability in Nigeria' (2007) *Social Science Research Network* <http://ssrn.com/abstract=982577 or http://dx.doi.org/10.2139/ssrn.982577> accessed 13 May 2013

[185] ibid

Generally, features linking the Nigerian CAMA 1990 to the Anglo-American model include; the fact that the death of or transfer of a shareholder does not affect the corporate existence of the corporation (it enjoys perpetual succession);[186] shareholders are the owners of the corporation;[187] it is managed by its duly elected board of directors or/and officers;[188] individual shareholders cannot bind the corporation by their acts, unless ratified by the corporation in a general meeting;[189] corporations enjoy limited liability (the debts of the corporation are its debts, members are not liable personally);[190] and it has the capacity to sue or to be sued in its own name.[191]

CAMA 1990 is principally regulated by the Corporate Affairs Commission (CAC), a body corporate with perpetual succession and common seal.[192] The key functions of the Commission is contained in s. 7 (1) of the Act[193] and include; the administration, advice, regulation and supervision of the formation, incorporation, registration, management and winding up of companies; to have registries and offices in all the states of the federation; and to arrange or conduct an investigation into the affairs of any company where the interest of the shareholders and the public so demand, amongst others.

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[186] Section 37, CAMA 1990

[187] Section 79, CAMA 1990

[188] Section 63, CAMA 1990

[189] Section 66 (1), CAMA 1990

[190] Section 21 (1), CAMA 1990

[191] E Adegbite and K Amaeshi, 'Multiple Influences on Corporate Governance in Sub-Saharan Africa: Actors, Strategies and Implications' (October 2010) *CSGR University of Warwick Working Paper* 267/10, 14-15 <www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/2010/26710.pdf> accessed 13 May 2013

[192] Perpetual succession is the continuance of an organization's life notwithstanding the demise, insolvency, madness, alteration of membership or departure by any member from the organization. On the other hand, a corporation's common seal is a form of stamp used to show that a document emanating from the corporation is the act and deed of the corporation. Together, both of them indicate the existence of an organization as a separate legal entity from those who own it.

[193] Companies and Allied Matters Act, Cap C.20, Laws of the Federation of Nigeria, 2004

The Securities and Exchange Commission (SEC) and Corporate Governance Mechanisms in Nigeria

Apart from CAMA 1990, the Investments and Securities Act (ISA) 2007 is another legislation (though a subsidiary one) regulating corporate governance in Nigeria. The Act repealed the earlier Investments and Securities Act of 1999, which previously regulated the country's capital market and securities. Section 1of the 2007 Act establishes the Securities and Exchange Commission (SEC), to regulate investment and securities business in Nigeria. The Act empowers the Commission to carry out various functions in relation to the governance of corporations in the country. These functions include; to register and regulate securities exchanges, capital, trade points, futures, options and derivatives exchanges, commodity exchanges and any other recognized investment exchanges; to register securities to be offered for subscription or sale to the public; to render assistance in all aspects including funding as may be deemed necessary to promoters and investors wishing to establish securities exchanges and capital trade points; to prepare adequate guidelines and organise training programmes and disseminate information necessary for the establishment of securities exchanges and capital trade points; to register and regulate corporate and individual capital market operators as defined in section 30 of the Act; to register and regulate the workings of venture capital funds and collective investments schemes including mutual funds amongst other functions.[194]

SEC's 2011 Code of Corporate Governance in Nigeria

In order to comply with the requirements of the 'universal' best practices in corporate governance mandated by international financial agencies such as the OECD, the IMF and the World Bank (discussed in section One above), the Nigerian Securities and Exchange Commission (SEC), working

[194] S. 13, The Investments and Securities Act (Cap 124) Laws of the Federation of Nigeria 2007

in partnership with the Corporate Affairs Commission (CAC), produced the 2003 corporate governance code.[195] The 2003 Code failed to sufficiently tackle emerging corporate governance challenges faced by corporations in the country and was eventually replaced by the 2011 Code of Corporate Governance in Nigeria.[196]

The 2011 Code is a more comprehensive code of corporate governance, compared to the 2003 Code. It applies to all corporations whose securities are listed on a recognized securities exchange in Nigeria, and all corporations seeking to raise funds from the capital market through the issuance of securities, or seeking listing by introduction.[197] The SEC Code is not intended to be a rigid set of rules; it is intended to be seen and understood as a guide to facilitate sound corporate practices and behaviour. It is a dynamic document defining minimum standards of corporate governance expected particularly of corporations with listed securities in Nigeria. On the part of the corporations, the SEC code is voluntary and self-compliant, in line with contemporary global practice. Notwithstanding the fact that the code is voluntary and does not have the force of law, the Securities and Exchange Commission enjoins corporations in the country to comply with its provisions.[198]

In pursuance of the earlier mentioned requirements for universal best practices advocated for by the international financial institutions, Nigerian registered corporations, through the operations of the 2011 Code, are currently enjoined and have started adopting and implementing both the internal mechanisms – performance related pay and the appointment of NEDs – and external mechanisms – operations of markets for corporate control (MCCs) and the stock markets – which promote and embed shareholder value, as discussed in section One. In this context, from the subsequent analysis contained in this section of the chapter, it appears reasonable to suggest that the practical barriers which operate against the realization of effective CSR are also present in Nigeria.

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[195] Chimere Obodo, 'Globalization and Corporate Governance Challenges in Nigeria: A Regulatory and Institutional Perspective' (2014) *African Journal of Social Sciences* Vol. 4 (2) 50-64 56

[196] ibid

[197] Article 1 (1) (2) 2011 SEC Code

[198] Chimere Obodo (n 195) 55-56

Executive Remuneration: Performance Related Pay Packages in Nigeria

The 2011 Code of Corporate Governance in Nigeria requires a significant proportion of the remuneration of senior management and executives to be tied to business performance.[199] According to the Code, the performance measures need to be clearly defined and should be subject to periodic reviews to ensure that employees do not manipulate the scheme to their personal advantage.[200] In this context, the SEC insists that there should be no gap in the administrative process that may create potential risk from a compliance perspective. According to the Commission, the over-riding interest of corporations in contemporary Nigeria should be one of accountability and change.[201]

As contained in the 2011 Code, corporations are mandated to 'develop a comprehensive policy on remuneration for directors and senior management', and the levels of remuneration should be sufficient to attract, motivate and retain skilled and qualified persons needed to run the corporations successfully.[202] Furthermore, in relation to the process of determining directors' remuneration, the Code states that a corporation's remuneration policy should define both the criteria and mechanism for determining levels of remuneration, and the frequency for review of such criteria and mechanism; the policy should define a process, if necessary with the assistance of external advisers, for determining executive and non-executive directors' compensation; it should also define how and to what extent executive directors' reward should be linked to corporate and individual performances. It further requires the board to approve the remuneration of each executive director (including the CEO) individually, taking into consideration direct relevance of skill, experience and performance to the corporation at that time.[203]

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[199] Article 14, 2011 SEC Code

[200] Article 14 (a), 2011 SEC Code

[201] Adewale Ajayi, 'Nigeria: Post-Economic Crisis: Optimising Rewards For Business Performance' (2012) *Mondaq Publishing* <www.mondaq.com/x/206188/employee+rights+labour+relations/PostEconomic+Crisis+Optimising+Rewards+For+Business+Performance> accessed 9 January 2015

[202] Section 1, 2011 SEC Code

[203] See article 14, 2011 SEC Code

According to Salisu, financially packaged incentives and other monetary rewards are frequently used by contemporary Nigerian registered corporations as motivations for better performance.[204] To him, the current performance of Nigerian corporations is invariably connected to the type of employees' financial incentive systems implemented in the corporate sector.[205] Arguing in similar vein, Babaita contends that beginning from the turn of the new millennium, corporations in Nigeria have actually come to take the tying of pay to performance quite seriously. According to him, it has become such an important subject-matter in the Nigerian corporate system that it is now presented as a major chapter in most corporations' Annual Reports and Accounts.[206]

The elevated position attached to the tying of pay to performance is further evidenced in the fact that a significant number of Nigerian registered corporations clearly indicate that they are only prepared to employ those who are willing to meet set targets into their organizations. For most of these corporations, their continued survival in the current globally-competitive market-based economy can only be guaranteed through the utilization of performance related pay packages.[207]

Again, it is argued that as a result of the losses suffered during the financial crisis of 2007-2008, shareholders in Nigeria are more sensitive to issues of pay packages and are demanding to have more input in the remuneration of senior management and executives. Most organizations are, therefore, restructuring their remuneration packages to align them to performance and to include variable pay, or revising existing schemes to ensure they remain effective. According to these shareholders, it is important that organisations get their pay for performance programs right.[208]

In pursuit of the mechanism of performance related pay packages, Maycock reports that most corporations in Nigeria (including those in the oil sector) now offer elements of variable pay or performance related pay packages to their employees. Variable pay or performance related pay, in this sense, means an element of pay which is dependent on organizational and individual performances.

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[204] A. Salisu, Employees Motivation and Profitability of Banks in Nigeria (2012) *Ahmadu Bello University Journal*, 2-3 <www.abu.edu.ng/publications/2012-04-05-155041_1156.docc> accessed 10 January 2015
[205] ibid
[206] I.S. Babaita, An Appraisal of Employee Motivation in the Nigeria Banking Industry (2011) *British Journal of Humanities and Social Sciences* Vol. 2(1) 96
[207] ibid
[208] ibid

Some of the performance related packages operational in the country include; prompt promotions; granting of staff loans for cars; houses, share purchase and options; land purchase loans; in-service trainings; giving of long-service awards; and 'unilateral reviews of managers' remuneration packages.[209]

Corporations apply variable pay as a result of different reasons. Some of the reasons adduced by Nigerian corporations for utilizing this corporate governance mechanism (much like what is obtainable in other parts of the world where the neoliberal shareholder value model of corporate governance is practiced) include; to obtain and retain top performing employees, thereby reducing the turn-over of top employees.; to offer a competitive salary to employees according to their contribution to the profitability of the organization; to motivate employees to increase efforts towards their jobs and; to help the organization to save cost by paying only those who have performed extremely well and getting rid of those who fail to contribute to the bottom line of profit maximization, thereby helping the organizations to increase their profitability and market value.[210]

In this sense, there is a significant relationship between incentive system and employee motivation in corporate Nigeria. Corporations hope that through the application of the performance related pay packages, they will enjoy improved employee productivity, which will lead to more profits for the shareholders.[211] Accordingly, corporations in Nigeria consistently argue that the application of performance related pay packages would encourage corporate managers to meet set targets and expend extra efforts and energy towards achieving breathtaking results in all operations.[212]

Incentive systems have, therefore, been put in place by most corporations at all levels and for all categories of employees, in order to 'motivate them and ultimately enhance, maintain and sustain employee performance and by implication, shareholder profits. Corporate executives are thus pressurised into enhancing and maximizing shareholders' profits in order to enjoy the dividends of

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[209] Eno A. Maycock, *An Investigation into Performance-Based Pay in Nigerian Financial Institutions* (PhD Thesis, University of Bedfordshire 2009) 167-168

[210] Eno A Maycock (n 209)

[211] O. Solomon, N. H. Hashim, Z.B.T. Mehdi and M. A. Ajagbe, 'Employee Motivation and Organizational Performance in Multinational Companies (2012) *International Journal of Research in Management & Technology (IJRMT)* Vol. 2 (3) 303-312

[212] ibid

performance related pay packages. Through the operations of this neoliberal corporate governance mechanism, corporate managers in Nigeria become subjected to shareholder value prioritization.[213]

For these corporations, social and environmental goals, when and if they engage in them, must be to promote the interest of their share-owners and nothing else. For oil MNCs in the Niger Delta, executive remunerations have become increasingly tied to achieving targets set out in performance contracts. Those executives concerned about the welfare of the Niger Delta environment usually suffer financial losses as a result of their inability to maximize shareholder profits. Those who intend to benefit from enlarged pay packages have to cut costs, which leads to the cancellation of maintenance exercises for oil equipment and the non-replacement of old and out-dated machinery.[214] This naturally and inevitably has led to increased oil spills and pollutions, gas flaring, forest and community fires, environmental degradations, unemployment and eventual deaths.[215]

By linking executing remuneration and bonuses to the performance of set targets, corporate executives in the Nigerian oil sector treat environmental issues as fuzzy objectives and not serious targets to be pursued. In this context, it is arguable that corporations in Nigeria (especially those in the oil sector) attach a considerable amount of importance to performance related pay as a strong weapon in the realization of shareholder value imperatives. The application of the neoliberal corporate governance mechanism of performance related pay packages, therefore, amounts to a practical barrier to effective CSR in Nigeria.

Appointment of Non-Executive Directors

Generally, the responsibility of directing and managing the affairs of a corporation is imposed on the board of directors, who act on behalf of the shareholders. Accordingly, Section 63 (3) of CAMA 1990

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[213] Kehinde A. Obasan, 'Effect of Compensation Strategy on Corporate Performance: Evidence from Nigerian Firms' (2012) *Research Journal of Financial Accounting* Vol. 3 (7) 37- 44

[214] Tom Bergin, *Spills and Spin: The inside Story of BP* (London: Random House 2011) 46

[215] C Ukeje, 'Oil Communities and Political Violence: the Case of Ethnic Ijaws in Nigeria's Delta Region' (2001) *Terrorism and Political Violence* Vol. 13 (4)

states that the board of directors is the sole organ of the corporation responsible for its management. Furthermore, section 244 (1) of the same Act provides that directors of corporations are 'persons duly appointed by the company to direct and manage the business of the company'. The Act is silent on what the day to day role of the director is, thereby making it the duty of the shareholders (usually in a general meeting) to determine what these roles are. The first directors are appointed by the subscribers to the memorandum and articles of association, while subsequent directors are appointed by the shareholders in a general meeting.[216]

The implications of the above provisions of CAMA are two-fold. The first is that the Act supplies the means through which persons that claim to act as corporate directors can be identified. Essentially, the provision signifies that a person becomes the director of a corporation from the moment he is appointed as such by the shareholders (in a general meeting). In the second instance, from the wordings of section 244 (1) of CAMA 1990, a person becomes a director of a corporation once he/she is appointed to direct and manage the affairs of the corporation, notwithstanding the name that may be given to such an employee of the corporation. In these situations, once a person is in control of the day-to-day management of any corporation, he is a director of that corporation for the purposes of CAMA. It is immaterial that such a person assumes a different name or attaches a different title to his office.[217]

Under CAMA 1990, there is no distinction between the duties of the executive directors and that of the NEDs. Interestingly, however, the Nigerian Court of Appeal in the case of *Longe v First Bank of Nigeria Plc*[218] tried to introduce a distinction between the two by differentiating between executive directors and NEDs. According to Salami JCA;

> The respondent's board in the instant case consists of two classes of directors, executive and non-executive. The non-executives are directors appointed directly under Sections 247, 248 and 249 of the Companies and Allied Matters Act, Cap. 59. The second tiers of directors are not employees

[216] Section 247 CAMA
[217] Section 650 CAMA
[218] (2006) 3 NWLR Part 967, 228

> of the company as they do not have contract of employment and do not draw salaries.[219]

Furthermore, the learned Justice of the Court of Appeal, using the distinction above classified the NEDs as 'employees' who owe their tenure of office to their contract of service, while the 'executive directors are mere senior managers appointed by the board under the Articles of Association for governance and interest of running the company'.[220]

This distinction was, however, rejected by the Supreme Court in the same case on appeal and the apex Court stated the correct position of Nigerian law in this regard. The Court held that under CAMA, there is in fact no distinction between executive directors and NEDs. The court clearly made the pronouncement that 'all directors whether executive or non-executive are the same as long as they are all engaged to direct and manage the business of the company'.[221]

The position of the Nigerian Supreme Court in the above stated case appears to have currently been overshadowed by the CA decision. This is because the Nigerian Securities and Exchange Commission, in its oversight and supervisory role and for the purposes of properly implementing the provisions of CAMA, produced the 2011 Code of Corporate Governance, which introduced a distinction between executive and non-executive directors. The courts have not declared that the Code is illegal or contrary to the provisions of CAMA and it continues to be applied in Nigeria, even though in its voluntary form.

In the context of the 2011 Code and the appointment of NEDs, article 4.1 of the Code provides that the board of directors of corporations in Nigeria 'should be of a sufficient size relative to the scale and complexity of the company's operations and be composed in such a way as to ensure diversity of experience without compromising independence, compatibility, integrity and availability of members to attend meetings'. Going further, article 4.3 of the Code mandates corporations in Nigeria to ensure that their boards of directors are made up of a mix of executive directors and non-

[219] Per Salami, JCA at 239

[220] ibid

[221] Per Oguntade, JSC, *Longe v First Bank of Nigeria Plc* (2010) SC 116/2007

executive directors, with the non-executive directors being in the majority. The sub-article enjoins corporations to ensure that at least one of the non-executive directors should be an independent non-executive director. The NED, being a director is also subject to the duties directors owe the corporation, both the duty of care and skill and fiduciary duties under common law and CAMA.

In addition, the 2011 Code insists that the principal objective of corporate boards (which has to be made up of a majority of non-executive directors) is to preserve and enhance shareholder value. They are, therefore, legally empowered to make the needed commitments and take the necessary steps towards performing their role of maximizing shareholders' profits.

According to the 2011 Code;

> The principal objective of the Board is to ensure that the company is properly managed. It is the responsibility of the Board to oversee the effective performance of the Management in order to protect and enhance shareholder value.[222]

The phrase 'enhance shareholder value' has been interpreted to mean that the directors of corporations in Nigeria are expected to maximize the interests of the shareholders before considering other interested parties who might have claims against the corporation.[223] According to Adelegan, a study of the internal governance mechanisms utilized by Nigerian corporations found that many of them (especially those in the oil industry) currently employ a considerable number of non-executive directors. This suggests that a high proportion of NEDs are now engaged by oil corporations to monitor corporate activities and promote shareholders' interest in boards of corporations.[224]

Thus, it can be inferred from the 2011 Code that although non-executive directors may consider the interests of other stakeholders who are affected by corporate activities, their overriding

[222] Article 2.2 of the Code

[223] See Andrew Keay, 'The Duty to Promote the Success of the Company: is it fit for Purpose?' (2010) *University of Leeds School of Law, Centre for Business Law and Practice Working Paper* <http://ssrn.com/abstract=1662411 or http://dx.doi.org/10.2139/ssrn.1662411> accessed 13 May 2013; see also CA Williams and JM Conley, 'An Emerging Third Way? The Erosion of the Anglo-American Shareholder Value Construct' (2004) *UNC Legal Studies Research Paper* No. 04-09 <http://ssrn.com/abstract=632347 or http://dx.doi.org/10.2139/ssrn.632347> accessed 13 May 2013

[224] O. J. Adelegan, 'Internal and external governance mechanisms: Evidence from the Nigerian banking industry' (2005) *Corporate Ownership and Control* Vol. 2(3), 62–7

function should be to act in the interests of shareholders. In this context, the mechanism of NEDs is used to promote shareholder value, which as was discussed in section one above, is antithetical to effective CSR. Viewed from this perspective, it appears reasonable to hold that the operations of NEDs in Nigeria amount to a practical barrier to effective CSR.

Markets for Corporate Control (MCCs) in Nigeria

As was discussed in section one above, the existence and operations of MCCs impose substantial discipline on corporate executives and compel them to manage corporations in favour of shareholders. It was argued in that section that MCCs are used to continuously monitor the activities of corporations and by implication their managers, in order to ascertain how efficient and effective they are in accumulating profits for shareholders. The disciplinary nature of these 'free market' imperatives places an objective value on the corporations and compels obedience to the dictates of shareholder value. This is because the daily performance of a corporation's shares in the stock market is a transparent reminder to managers and shareholders that the corporation is either viable or in-viable and as a result, whether it should be subjected to a take-over bid or acquisition. This assessment allows shareowners to scrutinize and gauge the performance of managers and the pressure this exerts on corporate managers incentivizes them to strive to minimize costs and increase profits, since failure to do so will make them vulnerable to takeovers. An active market for corporate control (MCC), therefore, helps to keep managers focused on efficiency and shareholder value maximization.

Prior to the intensified activities of the MCCs in Nigeria, the first recorded take-over of a corporation by another in Nigeria was the acquisition of African Banking Corporation in 1894 by the British Bank for West Africa (now First Bank of Nigeria Plc). In more recent times, however, the purchase of Leventis Stores by the AG Leventis Co. Ltd in 1983 marked the beginning of the operations of MCCs in the country. Thereafter, in 1984, Lever Brothers Nigeria Plc also acquired

Lipton Nigeria Ltd and in the same year, Union Bank of Nigeria purchased and took over the management of Citi Trust Merchant Bank in 1995.[225]

The Nigerian corporate sector has gone through a considerable degree of transformation as a result of the operations of the markets for corporate control (MCCs). It is imperative to note that compared to other markets in the developed world, the volume of trade in the Nigerian MCC is small and volatile. This is because a lot of institutional and individual investors were (and a significant number appears to still be) unaware of the existence and operations of the market, even after the introduction of CAMA 1990. Nevertheless, the activities of the market have grown considerably in recent years and it is beginning to have profound effect on the activities of corporations in the country.[226]

Beginning from the new millennium, there was a significant increase in the operations of MCCs in Nigeria, leading to more take-overs and acquisitions by corporations in the country. This intensified wave of corporate acquisition (especially in the banking sector) was mainly as a result of the Bank Consolidation exercise which was introduced by the Central Bank of Nigeria (CBN) Governor in 2004. The consolidation process forced withdrawal of banking licences from institutions that were unable to achieve the new paid-up capital of ₦25 billion (US$131.1 million). Out of the 25 banks that achieved the required threshold for consolidation, fourteen of them were the product of acquisitions involving sixty nine banks.[227]

Even after 2004, the wave of acquisitions did not subside, but rather continued. In this context, after the expiration of the deadline for bank consolidations on 31 December 2005, Stanbic Bank of Nigeria Limited acquired the IBTC Bank Plc in 2006. As a result, the number of banks in Nigeria was further reduced from 25 in 2004 to 24 in 2006.[228] Even those banks that were not able to re-capitalize at the time and where subsequently earmarked for liquidation by the banking regulatory

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[225] O. Akinsulire, *Financial Management* (Lagos: Toda Ventures 2008) 567

[226] M A. Babatunde and O. Olaniran, 'The Effects of the Internal and External Mechanism on Governance and Performance of Corporate Firms in Nigeria' (2009) *Corporate Ownership and Control* Vol. 7 (2) 332

[227] Central Bank of Nigeria, 'Draft of Central Bank of Nigeria. Annual Report for the Year Ended 31 December, 2005' (2006) <http://www.cenbank.org/OUT/PUBLICATIONS/REPORTS/RD/2006/ARP-2005-PART1.pdf> accessed 10 January 2015

[228] R.O.C. Somoye, The performances of commercial banks in post-consolidation period in Nigeria: An empirical review (2008) *Eur. J. Econ. Fin. Admin. Sci*. Vol. 14 62-73

authorities were eventually acquired by successfully recapitalized banks.[229] In January 2012, Access Bank Plc acquired the former Intercontinental Bank Plc, thereby creating an expanded bank and becoming one of the four largest banks in Nigeria.[230]

In the Nigerian oil industry, there are no recorded acquisitions or take-overs by the corporations registered in the country. However, it is noted that there have been a series of mergers between the parent corporations of the subsidiaries operating in Nigeria. For instance, the US corporations of Exxon and Mobil merged and now have its ExxonMobil subsidiary in Nigeria. Similarly, Elf merged with Total to produce Total Plc, which is the subsidiary corporation registered in Nigeria. Though there are no recorded take-overs and acquisitions between oil MNCs in Nigeria, it is argued that the same pressures which the markets exert on other corporations are equally applicable to these oil corporations. According to Sanusi (a former CBN Governor), prevailing economic sentiments – which mandates all corporations (including oil corporations) in the country to be subject to the powers of the markets – have encouraged the rapid and explosive growth in the operations of MCCs in contemporary Nigeria.[231]

The contention, therefore, is that the operations of the markets for corporate control have become the overriding determinant of how corporations are acquired in Nigeria and are now used to facilitate shareholder value through the expansion of efficient and effective 'acquiring' activities. Furthermore, in the bid to prevent hostile acquisitions and takeovers, corporate managers (including those in the oil sector) are pressurized into pursuing activities that enhance the market value and future earnings of their corporations. In prioritizing the interest of shareholders, other interests in Nigeria, including those represented by CSR, are neglected. In this way, the activities of the MCCs constitute practical barriers to the realization of effective CSR.

[229] A. Ebimobowei and John M. Sopia, 'Mergers and Acquisitions in the Nigeria Banking Industry: An Explorative Investigation' (2011) *The Social Sciences*, Vol. 6 (3) 213-220

[230] A.O. Adaramola and Luke O. Oluwagbuyi, 'Synergistic Effect of Recent Mergers and Acquisitions in Nigerian Banking Industry' (2014) *Developing Country Studies* Vol. 4 (8) 45-52 at 5

[231] L. S. Sanusi, The Nigerian Banking Industry: What went Wrong and the Way Forward (a convocation lecture to mark the Annual Convocation Ceremony of the Ade Bayero University, the Convocation Square, Ade Bayero University, Kano, Friday 26 February, 2010)

The Nigerian Stock Market

As was stated earlier, the Nigerian Securities and Exchange Commission (SEC) was established to protect investors and promote the growth and development of the capital market in Nigeria. It is the apex regulatory organ of the Nigerian stock market.[232] The Nigerian stock market was established in 1960, as the Lagos Stock Exchange and was subsequently converted to the Nigerian Stock Exchange (NSE) in 1977, with different branches later opening at different locations across the country. Kaduna branch was opened in 1978, Port Harcourt in 1980, Kano in 1989, Onitsha in February 1990 and Ibadan in August 1990. The NSE is self-regulatory and supports the SEC in the supervision of securities markets by exercising a degree of control through its financial reporting and disclosure rules, which apply to listed corporations.[233]

The Nigerian stock market (similar to what is obtainable in other jurisdictions) is a market where listed corporations are permitted to raise capital. This market is often referred to as a primary market and operates by allowing shares to be issued for the first time to the public. There is also a secondary market in the stock exchange, where shareholders are permitted to trade in shares of listed corporations through the buying and selling of already existing shares.

As Anyanwu suggests, the Nigerian stock market supplies the 'necessary lubricant' that aids in the rotation of the wheel of the country's economy. For him, 'it not only provides the funds required for investment, but also efficiently allocates these funds to projects of best returns to fund owners'.[234] This distributive function is essential in defining and shaping the growth of the economy as a whole, because 'the functioning of the capital market affects liquidity, acquisition of information about firms, risk diversification, savings mobilization and corporate control'.[235]

[232] M.A. Babatunde and O. Olaniran (n 226) 331
[233] Ibid,
[234] Pat Donwa and James Odia, 'An Empirical Analysis of the Impact of the Nigerian Capital Market on Her Socio-Economic Development' (2010) *Journal of the Social Sciences* Vol.24 (2) 135-142
[235] J.C. Anyanwu, 'Stock Market Development and Nigerian Economic Growth' (1998) *Nigerian Financial Review,* 7(2) 6-13

The introduction of the SAPs in Nigeria (discussed in chapter Three) has resulted in a very significant growth in the country's stock market. The operations of the SAPs directly led to the deregulation of the financial sector and the privatization exercise which exposed both investors and corporations to the disciplinary imperatives of the stock market.[236]

With the ascendancy of neoliberalism in the international financial architecture and the introduction of neoliberal reforms across different economic sectors in Nigeria, the total number of listed securities increased from nine in 1961 to 52 in 1971 and 71 in 1978. It also increased from 157 in 1980 to 276 in 1994, but declined to 260 in 2000, and then increased again to 277 in 2004, with an average annual growth rate of 17 per cent for the entire period. As at 2009, the aggregate quantity of listed corporations stood at 214.[237]

The value of shares traded in 2009 was ₦262.94 billion (US$2.023 billion), while the value of new issues approved was ₦282.3 billion (US$2.172 billion). Market capitalization in 2009 stood at ₦2.9 trillion (US$22.308 billion), while new issues as a proportion of GDP was 5 per cent on average within the same period. This represents the size of funds mobilized by the stock market in relation to GDP.[238]

Additional economic reforms were introduced by the civilian government of Obasanjo in 2004. The reforms led to intensified corporate activities in the stock market beginning from 2006. As a result, there was increased recourse to the stock market by corporations and this led to a sustained market performance on the stock exchange.[239] In this context, there was a further revitalization of the Nigerian stock market after 2006. Essentially, the total market value of securities listed on the stock

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[236] A. Soyode, 'The Role of Capital Market in Economic Development' (1990) *Security Market Journal in Nigeria* 6

[237] A. Ariyo and O.J. Adelegan, *Assessing the Impact of Capital Market Reforms in Nigeria: An Incremental Approach* (Paper presented at the 46th Annual Conference of the Nigerian Economic Society, Lagos, Nigeria, 23–25 August 2005) 22

[238] O. J. Adelegan, 'Does Corporate Leadership Matter? Evidence from Nigeria' (2009) *African Economic Research Consortium* Paper 189 <http://dspace.africaportal.org/jspui/bitstream/123456789/32103/1/RP189.pdf?1> accessed 9 January 2015

[239] Emmanuel Adegbite, 'Corporate Governance and Initial Public Listing in Nigeria' in Alessandro Zakoni and William Judge (eds.) *Corporate Governance and Initial public Offerings: An International Perspective* (Cambridge: Cambridge University Press 2012) 342

exchange rose from ₦2.9 trillion (US $19.25 billion) in 2005, to ₦9.56 trillion (US $ 63.46 billion) by 2009.[240]

In the preceding section one of this chapter, it was argued that in the corporations of the 21st century, corporate power is predominantly exercised through the arms-length mechanism of the market. Essentially, the operations of the stock market equates to a form of regulation which unites concentration with liquidity and enables financial power to wield a strong disciplinary power over market actors. Through the operations of the stock markets in Nigeria, therefore, the disciplinary power of the market is brought to bear on corporations (as market actors) and corporate managers are pressurized into pursuing shareholder profits and keeping the price of corporate shares as high as possible. In doing this, considering the interests of other stakeholders by engaging in effective CSR becomes a distant objective and is de-prioritized. This is because engaging in a moral imperative such as effective CSR invariably impinges on corporate profits and will inevitably decrease the value of corporate shares in the stock markets. In this context, therefore, the operation of the stock market in Nigeria acts as a barrier to the realization of effective CSR.

Foreign Corporations and CAMA 1990

Foreign corporations are permitted to carry-on business in Nigeria. Under section 54 of CAMA 1990 (subject to sections 56-59), every foreign firm, with the intention of carrying on business in Nigeria, shall register a separate entity in the country. Until this is done, the firm shall not carry-on business, exercise any of the powers of a registered corporation or have a place of business in Nigeria. The foreign corporation is only permitted have an address for the receipt of documents and other notices.

However, foreign corporations may incorporate a branch or subsidiary by giving a power of attorney to a qualified solicitor in Nigeria for this purpose. The incorporation documents, in this instance, would disclose that the solicitor is merely acting as an "agent" of a "principal" whose names should also appear on the document. The power of attorney comes to an end and the appointed

[240] Ibid, 339

solicitor terminates all functions, once the registration paperwork is completed. The locally incorporated branch or subsidiary will then register with the Nigerian Investment Promotion Commission (NIPC) before commencing official business. The subsidiary may also apply to the NIPC for other investment approvals – like expatriate quota – and incentives.[241]

Foreign corporations can apply (to the National Council of Ministers) for exemption from the requirements stated above, if they have been invited to Nigeria by or with the approval of the federal government to execute a specific project; are in Nigeria to execute a specific loan project on behalf of a donor country or international organization; are corporations owned by foreign governments and are engaged solely in export promotion activities; are engineering consultants and technical experts engaged in any specialised project under contract with any of the governments in the federation or any of their agencies.[242]

Any application made to be exempted from the above stipulation has to be made in writing and addressed to the Secretary of Government and should include the name and place of business of the foreign corporation outside Nigeria; the name and place of business or the proposed name and place of business of the foreign corporation in Nigeria; the name and address of each director, partner or other principal officer of the foreign corporation; a certified copy of the charter, statutes, or memorandum and articles of association of the corporation or any other documents that defines the constitution of the corporation (if the document is not in English, then a certified translation is required); the names and addresses of one or more person(s) resident in Nigeria that are authorised to accept notices on behalf of the foreign corporation; the business or proposed business of the foreign corporation in Nigeria and the duration of such business; the particulars of any project previously carried out by the corporation as an exempted foreign company and finally, any other particulars that may be required by the Secretary to the Government.[243]

The provision of section 54 is exclusive to the Nigerian Act and was introduced in the legal jurisprudence of the country's corporate law in the 1968 Companies Act. This provision does not exist

[241] See <www.nipc.gov.ng/opportunities.html> accessed 5 May 2012
[242] Section 56, CAMA 1990
[243] ibid

in any of the English Company Acts from which it borrowed many of its provisions. Thus, in England, a foreign corporation has no obligation to re-register before commencing business, but only has to submit the names and addresses of the persons permitted by it to accept services on its behalf with the Registrar of companies.[244] A corporation is only required to register in the UK before doing any business, when it has some degree of physical presence in the country through which it does its business.[245]

Commenting on the local incorporation provision of the Nigerian Act, Amao states that the worrying characteristic of the said section 54;

> ...is that it makes it easier for the parent company of the [multinational corporation] subsidiary in Nigeria to deny liability for any adverse consequences of the operations of the subsidiary, since the subsidiary is incorporated and legally recognised as a Nigerian company. This argument was canvassed in a suit brought by a community in the oil producing area against Mobil and its parent company in the US.[246]

In the case in question, *Mobil Producing (Nig) Unlimited and another V Monokpo*[247] a group of Niger Delta citizens had instituted a case against Mobil Producing USA (the parent corporation) and Mobil Producing Nigeria Unlimited (the Nigerian subsidiary) for ecological damage and injurious affection as a result of the former's operations in the region. They claimed for special and general damages for shock, inconveniences, loss of amenities, cost of surveys and expert reports. In the course of the hearing, the parent corporation brought a motion for dismissal of the plaintiffs' case against it on the ground that the plaintiffs on the pleadings and the evidence led, disclosed no cause of action against the parent corporation. The Supreme Court, while agreeing with the parent corporation, held that only a party who is interested in a judgment can be a party to it. Having found that the parent corporation

[244] Section 691 of the English Companies Act 1985 as amended

[245] See Companies House, 'Overseas Companies Registered in the UK – GPO1' (September 2009) <www.companieshouse.gov.uk/about/gbhtml/gpo1.shtml> accessed 10 November 2013

[246] Olufemi O Amao, 'Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States' (2008) *Journal of African Law* Vol. 52 (1) 97

[247] (2003) 18 NWLR (pt 852) 346 @ 40

has no interest in the matter, since the Nigerian subsidiary was incorporated according to the provisions of section 54, the parent corporation cannot in law be a party to the case.

Again, the provision may hamper the chances of Nigerian indigenes who may want to file for compensation in the home jurisdictions of the parent corporations of the subsidiaries. It is argued that the significance of this provision in the Nigerian corporate governance framework or what it is meant to achieve is not clear.[248] Its inclusion is even more surprising considering that – as is obtainable in other common law jurisdictions – these MNCs are already subject to the jurisdictional authority of the Nigerian state by virtue of their operating in the country. According to Amao, when it is considered that section 60 of the Act has already given corporations the capacity to sue and be sued in the country – in their name or by their agents – the provisions of section54 become superfluous.[249]

Adoga agrees and states that the provisions of the CAMA (especially section 54, dealing with foreign corporations) are limited and inadequate to appropriately regulate and manage foreign MNCs and their incorporated subsidiaries in Nigeria. According to him, complicated multinational ownership arrangements are used by MNCs to evade tax payment obligations and CAMA's inadequacies are the major reasons why MNCs manipulate the country's national laws and regulations, evade operational transparency and deny liability for acts of subsidiaries.[250]

Notwithstanding this strong criticism of section 54, it is suggested that the major flaw which undermines the effectiveness of the Act as a whole, is that it has become out-dated. According to Adegbite and Amaeshi;

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[248]The argument is that it was included in the 1968 Act because the country (much like other emerging nations of the south) wanted to assert its sovereignty over foreign institutions in its territory. How correct this argument is, however, remains to be seen. By 1990, the sovereignty of the country was no longer in doubt and that argument will certainly not stand anymore. It cannot therefore, be the basis for the retention of the provision, particularly when it wrecks havoc on the arguments of indigenous people attempting to sue for damages in the home countries of the multinational corporations.

[249] Olufemi O Amao (n 246) 97; Note however that there have been attempts to distinguish between the purport of the provisions of S. 54 and S. 60. While S.54 deals with carrying on business in Nigeria, S. 60 deals with issues of suing and being sued in the country; see also Yusuf O Ali, 'The Purposeful Interpretation of the Provisions of Section 60 of CAMA in Aid of International Trade' (2011) *Barrister Yusuf Alli's Website* <www.yusufali.net/articles/THE_PURPOSEFUL_INTERPRETATION_OF_THE_PROVISIONS_OF_SECTION_60_OF_CAMA_IN_AID_OF_INTERNATIONAL_TRADE.pdf> accessed 14 May 2013

[250] Onjefu Adoga, 'New Frontiers for Corporate Regulations in Nigeria' (April 16, 2009*) Brooke Chambers Publication* < www.hg.org/article.asp?id=6228> accessed 6 May 2012

> It is even more important to note that the CAMA has not undergone an extensive review since 1990, two decades later. Thus there are increasing concerns with regards to the ability of the Act to tackle specific corporate governance issues that have risen since it became law.[251]

The World Bank supports this statement. In its country Report on the Observance of Standards and Codes (ROSCs) 2011, the organization stated that many of the provisions of CAMA 1990 fall short of current international good practices in areas of corporate auditing, accounting and governance.[252]

CAMA and Corporate Governance in Nigeria: A Practical Barrier to Effective CSR?

In the context of the discussion above, it appears reasonable to conclude that there are significant reservations regarding the extent to which the Anglo-American corporate governance framework is effective in the Nigerian situation. Since the Nigerian corporate legal structure is a mirror-image of the Anglo-American system in theory, Okike submits that it will be considered imprudent for one to 'believe that the Nigeria corporate governance framework' favours – in application and practice – the efficient allocation of resources.[253]

As was argued above, the main provisions of CAMA 1990 mirror the neoliberal Anglo-American shareholder value maximization model discussed in section one. The contention in that section was that the existence of various mechanisms which embed and promote shareholder value act as practical barriers to effective CSR. Since the Nigerian framework reflects the Anglo-American model, it appears reasonable to conclude that these mechanisms exist in the Nigerian situation,

[251] E Adegbite and K Amaeshi, 'Multiple Influences on Corporate Governance in Sub-Saharan Africa: Actors, Strategies and Implications' (October 2010) *CSGR University of Warwick Working Paper* 267/10, 14-15 <www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/2010/26710.pdf> accessed 13 May 2013

[252] See Report on the Observance of Standards and Codes (ROSC) Nigeria- Accounting And Auditing (6 June, 2011) <www.worldbank.org/ifa/rosc_aa_nigeria_2011.pdf> accessed 20 May 2013

[253] ENM Okike (n 165) 173–193.

rendering it unlikely that CSR in its contemporary form will do much to resolve the problems found in the Niger Delta.

In this context, it is submitted that the Anglo-American corporate governance framework in Nigeria appears utterly deficient in grasping indigenous challenges and ways of tackling them. For Adegbite and others, the country's corporate governance framework does not allow for variety in its application; the result is a 'forceful legitimization of the Anglo-American (shareholder) variant of corporate governance', and the attendant favouring of foreign capital.[254]

These challenges are worsened by endemic and prevalent 'corruption, political instability, bad leadership, ethnic rivalry and religious tensions'.[255] These are serious drawbacks which have permeated all facets of the Nigerian economy, lead to abuse and defilement of the system and an apparent failure of the governance framework to properly regulate the activities of foreign MNCs.[256]

Concluding Remarks

This chapter has been able to identify a second set of barriers that confront the supporters of effective CSR – the practical barriers. It argued that the implication of the belief that corporations should profit maximize finds expression in the claim that corporate governance is a simple agency problem: how do you get corporate managers to act in the interests of inactive and often dispersed shareholders? To this end, the chapter explored the various mechanisms which have been developed to solve this agency problem. While some of the mechanisms are internal to the corporation – performance related pay and the use of Non- Executive Directors to monitor managers – others are external to it – the stock markets and the MCCs. It argued that these mechanisms have incentivized managers to maximize shareholder value and get the share price of their corporations as high as possible. The resulting model

[254] E Adegbite, K Amaeshi and C Nakajima, 'Multiple influences on corporate governance practice in Nigeria: Agents, Strategies and Implications' (2013) *International Business Review* Vol.22 524–538 at 533

[255] ibid

[256]Other subsidiary legislations regulating the operations of MNCs in Nigeria include the Investment and Securities Act (CAP 124) LFN 2004; the Foreign Exchange (Monitoring and Miscellaneous Provisions) (Cap F34) LFN 2004; and the Immigration Act (Cap 171) 1990

of corporate governance, which is essentially the Anglo-American stock-market based model, is promoted and supported by international organizations like the OECD, FSB, IMF and the World Bank.

The chapter, in section two, also explored the Nigerian corporate governance framework and argued that there are good reasons for thinking that the country's corporate governance framework mirrors the neoliberal Anglo-American shareholder value model, with its practical barriers to effective CSR discussed in section one. In this context, the chapter concludes with the contention that the operations of these corporate governance mechanisms constitute major practical barriers to effective CSR in the country.

Chapter Five

The Power of Resurgent Finance: A Political Barrier to Effective CSR?

Introduction

In chapter Three, the main ideological barriers to effective CSR – neoliberalism and shareholder value – were discussed. Chapter Four dealt with the various corporate governance mechanisms used to embed shareholder value. These mechanisms incorporate practices and cultures that act as practical barriers to the realization of effective CSR. In this concluding chapter of Part Two, the aim is to highlight another barrier to the realization of effective CSR, both in the Niger Delta and at the international level: the re-asserted power of finance. It represents the ability of a powerful group of financial interests[1] – in their quest for personal wealth accumulation – to politically stifle any intended policy decision towards 'the collective good', including effective CSR. [2]

As was discussed in chapter Three, there are good reasons for thinking that the ideas of neoliberalism and shareholder value are fundamentally antithetical to any engagement with meaningful or transformative CSR. This is because effective CSR tilts towards collectivism, while shareholder value – rooted in the neoliberal free market imperative – promotes individualism. It was

[1] In the context of this thesis, the re-asserted power of finance describes a powerful group of financial interests who rose to prominence with the ascendancy of neoliberalism as an economic theory. It is necessary to point out, however, that even though they all support shareholder value, these interests are by no means a homogenous group; their interests vary. This powerful group includes shareholders, financial institutions, corporate CEOs and senior executives. For Dobbin and Zorm, the interests that benefit from shareholder value include; managers of hostile takeover firms who, through their activities in markets for corporate control (MCCs), focus corporations' attention on realizing shareholder value; institutional investors who, by focusing management attention on earnings through popularizing stock options, see 'earnings management' as the best means of increasing shareholder value; and securities analysts who aggressively market their 'profit projections' as the dominant statistics of corporate performance, thereby making a lot of money for themselves in the process. These three were able to convince corporate executives that it is in their interest to manage share price. They were also able to convince shareholders that they stood to gain more after hostile take-overs and that they benefited more when firms manage earnings instead of expansion through diversification; See F Dobbin and D Zorn, 'Corporate Malfeasance and the Myth of Shareholder Value' in DE Davis, *Political Power and Social Theory Vol. 17* (Cambridge, MA: MIT 2005) 179-198

[2] Ismail Erturk, Julie Froud, and others, 'Deep Stall: The Euro Zone Crisis, Banking Reforms and Politics' (2012) *Centre for Research on Socio-Cultural Change (CRESC) Working Paper* Series No. 110 45

suggested that it will be quite challenging to realize the 'general interests' embodied in CSR, in a system dominated by 'entrenched special interests' exemplified by shareholder value.[3]

It was also argued that the strengthening of the power of financial elites by international organizations, through the promotion of neoliberal economic policies, and the concurrent 'disempowerment of the critics of finance', through the introduction of a string of democratic disengagements, has led to 'a stifled revolution and the re-assertion of power by traditional elites'.[4]

The contention was that beginning from the 1980s; national governments began to sponsor and protect finance, through the processes of deregulation and privatization. The deregulation of the stock markets and the implementation of an extensive privatization process made it easy for finance to increasingly move freely around the world, and contributed to the creation of gigantic financial institutions. Through the process of globalization, the institutions created were able to spread and dominate world economies. The 'socially and geographically narrowly confined elite', which this form of developmental process produced, established a 'cosy' relationship with government officials and policy makers. With the use of lobby and sundry pecuniary inducements,[5] these financial elites have been able to influence government policies towards the protection of their special interests.[6]

This aligns with the argument that the first requirement of financial power is to create powerful and sophisticated lobbying networks which will connect financial elites with government policy-makers.[7] Through the 'slick' operations of this network, governments ostensibly ceased to be 'the suspicious or adversarial regulator of a dangerous financial sector' and now became 'the sponsors of an apparently successful' financial elite.[8]

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[3] ibid

[4] Julie Froud and others, 'Groundhog Day: Elite Disconnects and the Failure of Financial Reform in the UK' (2011) *Centre for Research on Socio-Cultural Change (CRESC)* Working Paper Series No. 108 5

[5] Especially in developing economies like that of Nigeria

[6] Julie Froud (n 4) 15

[7] Andrew Bowman and others, 'Business Elites and Undemocracy in Britain: a Work in Progress' (2013) *Centre for Research on Socio-Cultural Change (CRESC)* Working Paper Series No. 125 18

[8] Andrew Bowman and others, 'The Finance and Point Value-Complex' (2012) *Centre for Research on Socio-Cultural Change (CRESC)* Working Paper Series No. 118 12

The support and protection of these financial interests continued even after the global economic recession of 2007-2008.[9] Through the use of a well-oiled lobby system, this financial class was able to influence policy makers and limit attempts to regulate financial activities.[10] As Froud and others submit, in the UK for instance;

> After 2008, the British economy moved into an L shaped recession and every elite assumption about the world and the national economy was discredited, but our national political and policy elites managed to retain control of everything that mattered to the exercise of their power in financialized capitalism. Specifically, the primacy of shareholder value was never challenged; the changes to the regulatory system continued to be decided congenially by elite contest (not mass incursion).[11]

In view of the foregoing, therefore, this chapter is concerned with neoliberalism, not as an ideology but as a practical political project, aimed at furthering the interests of a class. The argument is that SV is championed by this class as a means of perpetuating their monopoly of international finance – maximizing shareholder profits to their advantage. This political project is what has been labelled 'financial power' or 'the power of resurgent finance'.[12] It is believed that the apparent dominance of SV in the international financial system would not have been possible without the existence and influence of this powerful interest group, whose reach and power took on frightening dimensions with the rise to prominence of neoliberalism. The existence of this capitalist elite – with a strong bias for capital accumulation – and their ability to influence government decisions, will always act as a barrier to the realization of effective CSR. This is because both concepts are directed by different imperatives.

To this end, section one of the chapter begins with the concept of globalization and the argument that globalization aids the neoliberal class project. It will then go on to look at how international organizations have promoted and protected the interests of this powerful group through

[9] This is against the widely held belief that the recklessness of the financial sector contributed in no small measure to the crisis.

[10] Andrew Bowman 'Business Elites and Undemocracy in Britain' (n 7) 19

[11] Julie Froud (n 4) 6-7

[12] See Paddy Ireland, 'Financialization and Corporate Governance' (2009) *Northern Ireland Legal Quarterly* Vol. 60 (1) 4

policies contained in the Washington Consensus and the later Post-Washington Consensus.[13] The section will trace the evolution and transformation of these policy decisions into what Gill and Schneiderman labels 'disciplinary neoliberalism' and 'the new constitutionalism' respectively.[14] The contention is that through the process of disciplinary neoliberalism or the new constitutionalism, the neoliberal economic project transforms into a political project for the protection of financial interests.

The section will also look at the contemporary activities of corporate managers, whose activities, by virtue of their becoming part of the share-holding class – made possible by the introduction of managerial performance related pay – arguably constitute a barrier to effective CSR.

In section two of the chapter, the application of the new constitutionalism in Nigeria and how this has created a class of financial elites fundamentally opposed to the realization of effective CSR will be discussed. The chapter will finally examine the problem of institutional corruption in the country and will argue that the 'slick alliance' between oil corporations and the Nigerian government officials is a major political barrier to the realization of effective CSR in the Niger Delta and Nigeria.

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[13] This modification became necessary as a result of the South-East-Asian financial crisis of 1996-1997

[14] This concept is discussed below; See also Stephen Gill, *The Constitution of Global Capitalism* (Paper presented to a Panel: The Capitalist World, Past and Present at the International Studies Association Annual Convention, Los Angeles, 2000) <www.uv.es/~mperezs/intpoleco/Lecturcomp/Geoeconomia%20y%20Globalizacion/Constitution%20of%20Global%20Capitalism%20S%20Gill.pdf> accessed 20 October 2013; David Schneiderman, 'Investment Rules and the New Constitutionalism'(2000) *25 Law and the Social Inquiry*, 757

Section One

I

ECONOMIC GLOBALIZATION,[15] NEOLIBERALISM AND THE RE-ASSERTED POWER OF FINANCE

Before looking at the re-asserted power of finance (or neoliberalism in practice), it is necessary to examine a closely related phenomenon which helped in spreading this movement internationally – economic globalization. Economic globalization, in this context, is taken to mean the ability of capital to move freely and rapidly around the world. Neoliberalism and economic globalization are so connected that they are sometimes mistaken as one and the same thing. Treanor asserts that economic globalization has been labelled by many, as an ideologically neutral term for the re-asserted power of finance and that both has been used interchangeably.[16]

Economic globalization has become a popular catchphrase in recent years. In the contemporary world, 'politicians, government officials, business people, trade unionists, environmentalists, church leaders, public health experts, third world activists, economists and lawyers' have all become experts in the field of economic globalization. The notion of globalization – especially economic globalization – is seen by many as a major 'defining feature of the Post-Cold War World'.[17]

According to Stiglitz, former Chief Economist of the World Bank, economic globalization is 'the closer integration of the countries and peoples of the world which has been brought about by the enormous reduction of costs of transportation and communication, and the breaking down of artificial

[15]Globalization is a tricky and controversial concept. It means different things to different people. In the context of this thesis, it is taken to mean the freedom of finance and the liberalization of capital across boundaries and territories. It is the lifting of the ban on capital and the ability of finance to move freely and rapidly around the world.

[16] Paul Treanor, 'Neoliberalism: Origins, Theory and Definition' (2005) <http://web.inter.nl.net/users/Paul.Treanor/neoliberalism.html> accessed 1 April, 2013

[17]Van Den Bossche, *The Law and Policy of the World Trade Organisation* (2nd Edition, London: Cambridge University Press 2008) 3

barriers to the flow of goods, services, capital, knowledge and (to a lesser extent) people across borders'.[18] Thomas Friedman similarly defines it as;

> The inexorable integration of markets, nation states and technologies to a degree never witnessed before - in a way that is enabling individuals, corporations and nation states to reach around the world farther, faster, deeper, cheaper than ever before and in a way that is enabling the world to reach into individuals, corporations and nation-states, farther, faster, deeper and cheaper than ever before.[19]

From the above definitions, one can deduce that it is a move towards the gradual but steady assimilation of national economies, such that there will be only one global, borderless economic regime.[20] Stiglitz accepts the fact that there are benefits derivable from economic globalization. According to him;

> ...opening up to international trade has helped many countries grow far (more) quickly than they would otherwise have done. International trade helps economic development when a country's exports drive its economic growth. Export led growth was the centre piece of the industrial policy that enriched much of Asia and left millions of people there far better off. Because of globalisation, many people in the world now live longer than before and their standard of living is far better... Globalisation has reduced the sense of isolation felt in much of the developing world and has given many people in the developing countries access to knowledge well beyond the reach of the even the wealthiest in any country a century ago...Even where there are negative sides to globalisation, there are often benefits. [21]

The suggestion is that there is indeed a connection between neoliberalism and economic globalization. In the past two centuries, capitalism was almost associated with nationalism. There were native markets, bounded territories and strong protection from the state. During its formative years, the UK and the US dictated the pace and set the rules as to how capitalism should be practiced. In recent

[18] Joseph Stiglitz, *Globalisation and its Discontents* (London: Penguin Books 2002) 9

[19] Thomas Friedman, *The Lexus and The Olive Tree: Understanding Globalisation* (2nd Edition, New York: First Anchor Books 2000) 9

[20] Van Den Bossche (n 17) 4; This is achieved through free trade on an international scale and an unrestricted (but usually state protected) foreign direct investment

[21] J Stiglitz (n 18) 12

years, however, the role of national governments[22] in the operations of the principle of capitalism has been drastically whittled down by capitalist actors. Except in those instances where the coercive powers of the state are needed to advance or protect the interests of capital, the role of governments has become minimal and almost extinct.[23]

According to Burgi and Gollub;

> Globalization is said to be making the nation state obsolete, politics irrelevant and national sovereignty an empty shell. This alleged demise of the nation state and national sovereignty is part and parcel of the Universalist claims of contemporary capitalism. For the first time in history, capitalism has spread its reach to the remotest parts of the world and posits itself as a global system. Neither British capitalism in the 19th century nor even the American Post-1945 version was truly universal. Today, capitalism is said to have finally broken away from its national moorings. It has become, as it were, extra-territorial, rootless, identity-less.[24]

Furthermore, they argue that the current character of national governments can be described as 'at best, just one among a number of otherwise private players in the international system (and) at worst, to have lost control altogether and to be no longer capable of influencing the course of events'.[25] In this sense, with the intensified globalizing trend, national governments have become mere spectators in the daily affairs of human existence (except where capitalist interests are to be protected). They watch indifferently as the balance of power shifts away from them, towards the globalized markets. With globalization and the dominance of neoliberalism, there is a continuous growth in the powers of markets which has impacted significantly on the powers of the state. However, the importance of governments is not entirely diminished because the 're-asserted power of finance' recognises that governments play key roles in creating and maintaining markets, unlike the classical liberals, who believed that states should not interfere at all in the operation of the naturally occurring markets.[26]

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[22]At least rhetorically – for as discussed below, the reality is often the opposite

[23]N Burgi and PS Gollub, 'Has Globalisation Really Made Nations Redundant?: The States we are still in' (2000) *Le Monde Diplomatique* <http://mondediplo.com/2000/04/07golub> accessed 20 February, 2011

[24] ibid

[25] ibid

[26] See Chapter Three, the section on the differences between classical liberalism and neoliberalism.

Even though the two concepts of neoliberalism and globalization are complementary and the application of one may lead to the actualization of the other, they are not the same. While neoliberalism purports to have global application, globalization is the tool through which the concept is disseminated internationally. As a result, globalization has become an important instrument for the actualization of the political project of neoliberalism. Shah supports this trend of argument and holds that it has come to be accepted that globalization is an instrument for international commerce and investment, allegedly required for all countries to advance reasonably and progress fairly.[27] Who gains from the growth of international commerce and investment and in the spread of markets and market mechanisms? There can be only one answer – those with financial power.

For Burgi and Gollub, therefore, it is apparent that globalization greatly aided the spread of capitalism internationally. The proliferation of this capitalist movement has created a new form of capital accumulation and global investment which has transformed virtually all aspects of society into commodities capable of being transacted in markets. This capitalist form is neoliberalism, which according to Harvey, is a political project that favours a particular class – the rich.[28] Burgi and Gollub agree and similarly observe that the last three decades have witnessed the birth of a capitalist movement so enormous, that the old industrial capitalism has now been replaced by 'finance capitalism'.[29]

According to Ireland, the term 'finance capitalism' was first coined by the Austrian Economist, Rudolf Hilferding in 1910[30] and was brought about by a development in which the economies of industrialized nations of the West became dominated by a relatively small amount of large incorporated corporations. This led to a form of capitalist inclination in which productive activity in the developed or capitalist world came to be dominated by high finance and the

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[27] Anup Shah, 'A Primer on Neoliberalism' (2010) *Global Issues* <www.globalissues.org/article/39/a-primer-on-neoliberalism> accessed 16 February 2013

[28] David Harvey, *A Brief History of Neoliberalism* (Oxford: Oxford University Press 2005) 79; The idea that neoliberalism is a project t for maintaining class power is discussed further below

[29] N Burgi and PS Gollub (n 23); this finance capitalism is what sets the parameter of what should or should not be done and coerces all into a particular acceptable behaviour.

[30] Rudolf Hilferding, 'Finance Capital: A Study of the Latest Phase of Capitalist Development' (1910) *Marxist Internet Archive* <www.marxists.org/archive/hilferding/1910/finkap/> and accessed 2 April, 2013

'marketization' of almost all corporate ventures.[31] This has necessitated the claim that finance was the instigator of the transition to neoliberalism and that neoliberalism is best seen as the ideological expression of the re-asserted power of finance.[32]

II

INTERNATIONAL POLICIES AND THE POLITICS OF FINANCIAL POWER

The activities of international financial organizations in the governance and regulation of MNCs were highlighted in chapter Four. The point was made that these international institutions are merely working in partnership with the governments in Washington and London, who in turn are influenced by the owners and financiers of industries.[33]The argument is that with the ascendancy of neoliberalism and the ideological re-assertion of shareholder value, contemporary mechanisms of corporate governance have enabled a 'small minority to appropriate a grotesquely disproportionate share of total social wealth and production, both nationally and internationally'.[34] Using their prevailing powers – through the various networks created – they have been able to dominate national and international arrangements, thereby determining and altering the direction of the social order.[35]

The financial class created with the re-emergence of shareholder value, controls national financial and industrial systems, using their 'power' over the transfer 'of current funds through bank

[31]Paddy Ireland (n 12) 4; Throwing more light on the intimate relationship between this new form of capitalist accumulation (neoliberalism) and finance, Ireland holds that "the key role played by the markets in the exercise of contemporary financial power also accounts for the close links between resurgent finance and neoliberalism, with its supposition that free markets- private, contractual, economic ordering and the unregulated forces of supply and demand- are the best ways to maximize not only freedom but also growth, wealth and welfare. See ibid, 22

[32]Gerard Dumenil and Dominique Levy, 'Costs and Benefits of Neoliberalism: A Class Analysis' in Epstein (ed.) *Financialization and The World Economy* (Massachusetts: Edward Elgar Publishing 2005) 17

[33] See Chapter Four

[34] Paddy Ireland, 'Defending the Rentier: Corporate Theory and the Reprivatisation of the Public Company' in J Parkinson, A Gamble and G Kelly (eds.) *The Political Economy of the Company* (Oxford: Hart Publishing 2001)

[35] ibid; see also C Quigley, *Tragedy and Hope: A History of the World in Our Time* Vol. 1 -8 (New York: The Macmillan Company, 1986) <www.wanttoknow.info/war/tragedy_and_hope_quigley_full1090pg.pdf> accessed 7 February, 2014

loans, the discount rate, and the re-discounting of commercial debts'.[36] In similar vein, they control and influence national governments by dominating government loans and the operations of international foreign exchanges. With corporate shareholders elevated to a position of 'glory' with the re-assertion of shareholder value, they have succeeded in establishing an international system where finance is in the management of a few private hands. Using international financial organizations such as the IMF, World Bank and the Bank for International Settlements (BIS) in Switzerland, they ensure – through their operations with national central banks – that international capital remains under their control.[37]

It has been suggested that the birth of this capitalist class – with the emergence of neoliberalism – led to the centralization of the hegemony of international finance. It equally led to the use of international organizations for the promotion of the interests of financiers, to the detriment of all other interests, including those that embrace moral imperatives such as CSR.[38] With the process of globalization rendering national boundaries obsolete, the states of origin of financial elites and their corporations became less important and international agreements reached at international organizations such as the IMF, World Bank, BIS and World Trade Organization (WTO) became far more important.[39]

The following sections will now explore how these international organizations have aided and promoted the activities of resurgent finance, using policy packages which later came to be labeled 'the Washington Consensus' and 'the Post-Washington Consensus'.

The Washington Consensus (WC)

The phrase 'Washington Consensus' has been credited to the economist John Williamson, who coined it in 1989. At the time he articulated his view under the general title of the Washington Consensus,

[36] C Quigley, *Tragedy and Hope* (n 35)
[37] ibid
[38] ibid
[39] L Sklair, *The Transnational Capitalist Class,* (Oxford; Wiley-Blackwell, 2001) 1-352; see also W. Carroll, *The Making of a Transnational Capitalist Class* (London: Zed Books 2010) 1-320

there had been wide-spread crisis in the Latin American continent. The Institute for International Economics (IIE) organised a conference in which they sent out invitations to representatives of 10 Latin American countries to participate. The representatives were expected to present papers on the crisis in their respective countries. In order to aggregate a mutual collection of questions for the representatives to address, Williamson wrote a paper – presented at the conference – where he enumerated a blue-print for reforming and solving the crisis in the Latin American economies. He labelled this reform agenda the Washington Consensus.[40]

The Washington Consensus eventually came to be identified with what Thompson calls the triptych; liberalization, privatization and deregulation.[41] According to Williamson, the 'Washington' in the agenda includes 'both the political Washington of Congress and senior members of the administration', as well as 'the technocratic Washington of the international financial institutions, the economic agencies of the U.S. government, the Federal Reserve Board, and the think tanks'.[42]

The ten explicit economic recommendations were: fiscal discipline; reordering public expenditure priorities; tax reforms; liberalization of interest rates; competitive exchange rates; trade liberalization; liberalization of inward foreign direct investment; privatization; deregulation; and property rights.[43]

The term has come to refer to one of two things. In the first instance, it may be used to refer to market responsive guidelines which were used for both the developed and the developing economies. On the other hand, it has also been used to cover policies prescribed only for developing countries, for the reduction of budget deficits, deregulation and liberalization of commerce and transnational investments.

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[40]G Thompson, 'Wither the "Washington Consensus", the "Developmental State", and the "Seattle Protests": Can "Managed Free Trade and Investment" Become an Alternative Development Model?'(2002) *E-Journal* Vol. 33(131) 221 <www.ejournal.unam.mx/pde/pde131/PDE13107.pdf> accessed 6th April 2011

[41] ibid

[42] John Williamson, *A Short History of the Washington Consensus* (Fundación CIDOB Conference "From the Washington Consensus towards a new Global Governance": Barcelona, September 24–25 2004) <www.iie.com/publications/papers/williamson0904-2.pdf> accessed 12 March 2011

[43] John Williamson, 'From Reform Agenda to Damaged Brand Name: A Short History of Washington Consensus and Suggestions for What to Do Next?' [September, 2003] *Finance and Development*, Vol. 40 (3) <www.imf.org/external/pubs/ft/fandd/2003/09/pdf/williams.pdf> accessed 12 March 2011

Williamson argued that the term Washington Consensus came to mean something he never intended and that the recommendations contained in his original paper were later implemented in ways different from his original intention. For instance, he argues that the second recommendation in his original paper was the re-ordering of public expenditures. This particular recommendation was eventually not part of what the Consensus came to be understood for. In fact, as practiced by the Washington-based financial institutions, the reverse was the case.[44]

However, many critics disagree with Williamson. To this group, Williamson's Washington Consensus is exactly the same as Neoliberalism. Krever, for instance, argues that the policies deployed by the IMF and the World Bank already encompassed the policies long before Williamson coined his term in 1989. According to him;

> The neoliberal agenda that emerged was to become a familiar set of policies labelled the 'Washington Consensus' by economist John Williamson. Deployed by the Bank and other mainstream development agencies throughout the 1980s, this agenda had by the time Williamson coined his term in 1989, gained widespread acceptance as the necessary route to economic growth.[45]

From this point of view, Krever makes the case that the policy guidelines in the Washington Consensus were already being applied by international financial institutions, long before Williamson formulated his Consensus. After all, the market-oriented policies and reductions in government expenditures advocated by the Berg Report (commissioned by the World Bank in 1981) were reflected in the Bank's lending practises as early as 1982. The only thing Williamson did, the argument continues, was to bring these policies together under the heading of the Washington Consensus.[46]

In practical terms, the Washington institutions (the IMF, The World Bank, The BIS etc), given the power to supervise the implementation of the recommendations by the economically hard-hit countries, chose the policies that suited their neoliberal ideology, while ignoring the ones that did

[44] John Williamson, 'Did the Washington Consensus Fail?' (2002) <www.iie.com/publications/papers.paper.cfmResearchID=488> accessed 25 April 2011

[45] Tom Krever, 'The Legal Turn in Late Development Theory: The Rule of Law and the World Bank's Development Model' [Winter 2011] *Harvard International Law Journal* Vol. 52 (1) 297

[46] ibid

not advance liberalization, privatization and deregulation – i.e. neoliberalism. This led to the promotion and imposition of the neoliberal corporate governance framework, with its shareholder value bias on most countries in need of financial aid.

The South-East-Asian Financial Crisis

As was stated in chapter Three, the neoliberal approach to economic development had spread across many countries by the 1990s, irrespective of geographical divides. Through the application of the various structural policies embodied in the Washington Consensus, coupled with the proliferation and increase in the number of bilateral and multilateral trade and investment treaties, many state economies were opened up to international trade and commerce. The South-East-Asian countries were part of this liberalization process, though it has been argued that their own method of liberalization was not on all fours with the dictates of the neoliberal paradigm.[47] At a time, the economies of these countries grew quite rapidly that they became known as the miracle economies of South-East-Asia. They were also used as examples of how neoliberalism can transform a country's economy for good.[48]

However, this miracle economy did not last for long. By 1996-1997, there was an economic crisis in the region, of such a magnitude that the entire global financial system was threatened. As was reported by the IMF;

> The economies of East Asia, at the centre of the recent crisis have been some of the most successful emerging market countries in terms of growth and gains in living standards. With generally prudent fiscal policies and high private saving rates, these countries had become a model for others. That this region might become embroiled in one of the worst financial crisis in the post-war period was hardly ever considered-within or outside the region- a realistic possibility.[49]

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[47] Susanne Soederberg, 'The Promotion of the Anglo American Corporate Governance in the South: Who Benefits from the New International Standard?' [Feb 2003] *Third World Quarterly* Vol.24 (1) 10

[48] ibid

[49] International Monetary Fund, 'Financial Crisis – Causes and Indicators' (May 1998) *World Economic Outlook* 3 <www.imf.org/external/pubs/cat/longres.aspx?sk=2535> and accessed 10 February 2014

The region became embroiled in financial crisis and by July 2 1997, the Central Bank of Thailand announced that it would let market forces determine the value of the Thai currency, the Baht. Until then, the Baht had been tied to a basket of currencies essentially based on the US dollar. The Baht immediately fell against the dollar by about 17 per cent and somewhat less against the yen. On 11 July, the Central Bank of the Philippines announced that it too was abandoning the policy of defending its currency, and the Peso quickly dropped by 11 per cent. Malaysia followed three days later, and a month later, so did Indonesia. The South Korean Won, which had not been pegged, slid steadily throughout the summer.[50]

A number of factors have been adduced as causing the economic crisis in South-East-Asia in 1996-1997. For one, it is contended that an unsustainable current account deficit contributed in the crisis.[51] Secondly, these countries were over dependent on short-term foreign funds.[52] As Goldstein suggests;

> Heavy reliance on short term, foreign currency denominated borrowing makes it easier to get into a crisis and tough to get out of one, and when the true cost of this borrowing strategy are included in the over-all calculus, the true cost of this borrowing strategy can be expensive indeed.[53]

Thirdly, the regulation of the economy was very poor. It is argued that there was a dearth of regulatory structures for commercial activities, most especially as they related to banks. It was not necessary for the organizations to possess enough 'equity in their balance sheets'.[54] As a result, they were exposed to critical levels of the 'moral hazard' crisis, which made the proprietors of these institutions to engage in extreme and usually unwarranted 'risky lending', with the hope that they

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[50] AF Lowenfeld, *International Economic Law* (2nd edition, London: OUP 2008) 694-695

[51] P Bustelo, 'The East Asian Financial Crisis: An Analytical Survey' (1998) *ICEI Working Papers* No. 10 17 <http://pendientedemigracion.ucm.es/info/eid/pb/ICEIwp10.pdf> accessed 27 November 2913

[52] International Monetary Fund, 'Crisis in Asia: Regional and Global Implications' (December,1997) *IMF World Economic Outlook: Interim Assessment*, 12-13 <www.imf.org/external/pubs/FT/Weo/weo1297/index.htm> accessed 26 November, 2013

[53] M Goldstein, 'Early Warning Indicators of Currency and Banking Crisis in Merging Economies' (March 2008) *Financial Crises and Asia* 51-52

[54] Robert Chote, 'Financial Crisis: The Lessons of Asia' (March 2008) *Financial Crisis and Asia* 10

would be bailed-out by the state if their ventures failed.[55] Soederberg maintains that as far as the international financial institutions (IFIs) were concerned, the crisis was a result of both state and market failures. The state failed to properly supervise the financial actions of participants in the economy and in so doing, could not decrease the exposure of the financial and corporate sector to foreign exchange speculations. Furthermore, this was worsened by the very relaxed regulation of the financial sector, which in turn came about as a result of the high concentration in corporate ownership, otherwise known as cronyism.[56]

Fourthly, it is argued that the greed and profit-oriented mentality of foreign investors contributed to the crisis. The suggestion here, which is also central to this chapter, is that the greed of foreign investors – a trait which is common to most neoliberal actors[57] – was the reason for their unrelenting focus on returns. In any situation where there is borrowing, there is also lending. Conversely, where there is over-borrowing, there is also over-lending. The cause of the crisis was thus dual: the carelessness of domestic financial intermediaries and the greed of foreign investors insistent on maximizing profits to the detriment of the Asian economy.[58] The international investors equally suffered from the moral hazard of over-investment and as a result, for as long as they made profits, they were not bothered about the perceived vulnerabilities existing in the Asian economy.[59]

In reacting to the crisis, the international financial institutions – particularly the IMF – were mandated to help these ailing economies. The Fund gave out US$100 billion to help rescue Indonesia, Thailand and South Korea. For these financial institutions, the only way to ensure that there is no repeat of such a crisis was to eliminate the 'legitimacy crisis' that was threatening to engulf the neoliberal ideology, as contained in the Washington Consensus policy package. In this context, the status-quo needed to be modified.

For Stiglitz;

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[55] ibid

[56] Susanne Soederberg (n 47) 10

[57] As was discussed in chapter Three

[58] B Eichengreen, *Toward a New International Financial architecture: A Practical Post-Asia Agenda* (Washington DC: Institute of International Economics 1999) 23

[59] Jakob Vestergaard, 'The Asian Crisis and the Shaping of 'Proper' Economies' (2004) *Cambridge Journal of Economics* 28

> The US Treasury had during the early 1990s heralded the global triumph of capitalism. Together with the IMF, it had told countries that followed the 'right policies'—the Washington Consensus policies—they would be assured of growth. The East Asia crisis cast doubt on this new world view *unless it could be shown that the problem was not with capitalism, but with the Asian countries and their bad policies*. The IMF and the US treasury had to argue that the problem was not with the reforms-implementing liberalization of capital markets...but with the fact that the reforms had not been carried out far enough.[60]

The reform of the Washington Consensus policy package had to be done in three ways. The first was to change the development theory underlying neoliberalism, through the incorporation of institutions in the market process and the importation and enshrining of the policy directives in national laws. This led to the Post-Washington Consensus era (discussed below) and to the adoption of the slogan that 'institutions matter', beginning from the 2000s. The second was through the creation of the Financial Stability Forum (FSF) – later renamed the Financial Stability Board (FSB)[61] – to oversee the operation and function of international financial systems. The third was through the imposition, on mostly developing states, of the conditionality and surveillance principles by the IMF and World Bank.[62]

The Post-Washington Consensus

As was discussed above, one of the ways through which the failed Washington Consensus could be reformed was to modify its core principles. Leaving markets to organize themselves was not yielding the desired results, thereby, rendering a higher level of institutional involvement necessary. Neoliberals now called on states to provide institutional supports to enable markets function effectively. It has been suggested that in order to prevent a re-occurrence of the financial crisis, some

[60] J Stiglitz (n 18) 213
[61] See chapter Four
[62] J Stiglitz (n 18) 12; See chapter Four for a detailed discussion of this point

states introduced different methods of financial markets' regulation, while others were compelled to standardize their financial sectors. In this context, Malaysia began to control its capital flow, Vietnam and China pursued successful state-oriented policies and other states in the region began to build up sovereign wealth funds (SWF) to eliminate dependence on IMF loans. From Chiapas to Argentina and the 'battle of Seattle' in 1999, there was a growing emergence of economic and political legitimacy crisis directed at neoliberalism.[63]

The protagonists of neoliberalism saw all these as threats to their hegemony and began to look for ways to solve the legitimacy crisis, without harming the principal idea of free markets. They advocated for the development of appropriate institutions and a greater role for states in supporting markets. Thus, the idea that 'institutions matter' was introduced in the classical neoliberal literature. Neoliberals now realized that institutions matter – they matter not as institutions per se – but only when markets rely on them to function properly.[64]

This change in policy towards 'constitutionalism and governance' authorized a more active role for states, which amounted to an acknowledgement of the 'revisionist accounts of the East-Asian successes'.[65] Neoliberals now saw the state as supplementary to markets and not a substitute for it. From anti-market, through market-conforming, to market-friendly, the state was seen in a more positive light. The neoliberals at the Post-Washington Consensus stage advocated for the use of market mechanisms to advance the performance of the state through the deployment of motivating arrangements and competition.[66]

The Post-Washington Consensus also approved the importance of 'specificity' and advocated for the moving away from the former 'best practice, one size fits all approach' that had been the hallmark of the Washington Consensus era. It advised that country specific institutions, based on a proper understanding of cultural values and social norms, should be incorporated into the neoliberal

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[63] RH Wade, 'US Hegemony and the World Bank: The Fight over People and Ideas' [2002] *Review of International Political Economics* Vol. 9(2) 201- 229

[64] Dani Rodrik, A Subramanian and F Trebbi, 'Institutions Rule: The Primacy of Institutions over Geography in Economic Development' [2004] *Journal of Economic Growth* Vol. 9. 2 131

[65] Ben Fine, 'Neither the Washington nor the Post Washington Consensus: An Introduction' in B Fine, C Lapavitsas, and J Pincus (ed.) *Development Policy in the Twenty-First century: Beyond the Post Washington Consensus* (London: Routledge Publishers 2001) 2

[66] ibid

agenda of the Post-Washington Consensus.[67] This led, for instance, to the introduction of the OECD principles of corporate governance which was discussed extensively in chapter Four.

In the final analysis, Sheppard and Leitner submit that the Post-Washington directive involved an innovative idea of policy instruments used as governance and poverty reduction alternatives to the seemingly failing 'discourse of structural adjustment and privatization' formerly advocated by neoliberalism.[68] According to them, 'this shift was a failed response to the failures of the Washington Consensus to make good on its claims, to the 1997 Asia Economic Crisis, and to increasing trenchant contestations of neoliberalism in civil society and states'.[69]

The Post-Washington Consensus and its policy dictates, it is argued, led to the creation of the new constitutionalism.

III

THE NEW CONSTITUTIONALISM/ DISCIPLINARY NEOLIBERALISM

As was discussed in chapter Three[70], the fundamental assumption of neoliberalism is that a free market[71] is the best means of ensuring the most-efficient allocation of resources and to the optimal maximization of economic growth, wealth and welfare for the benefit of society as a whole. In neoliberal ideology, politics (and by implication, the state) is made up of 'self seeking bureaucrats and politicians with limited capabilities, operating under influences from interest groups'.[72] As a result, politics is an avenue for 'sectional interests' which 'distort the rationality' of the market imperative. Undeniably, neoliberal advocates assume that the inability of any economy to be deferential to the

[67] Y Hayami, 'From the Washington Consensus to the Post Washington Consensus: Retrospect and Prospect' [2003] *Asian Development Review* Vol. 20(2) 55
[68] E Sheppard and H Leitner, 'Quo Vadis Neoliberalism? The Remaking of Global Capitalist Governance after Washington Consensus' [March 2010] *Geoforum* Vol. 41(2) 187
[69] ibid 188
[70] In the section dealing with the meaning of Neoliberalism
[71] Private economic re-ordering and the unregulated forces of supply and demand
[72] Ha-Joon Chang, 'Breaking the Mould: An Institutionalist Political Economy Alternative to the Neoliberal Theory of the Market and the State' (2002) *Cambridge Journal of Economics* Vol. 26 (5)

governance mechanism of the free market is a formula for economic calamity, be it within an individual organization or that of the nation-state. This assumption has led to the ascendancy of the idea of 'competitive deregulation'.[73]

In the last two decades, as a result, a significant feature of global 'economic policy and development', has centred on the 'revolution' created by resurgent neoliberalism. Within the same time, 'the ambit and power of the market extended and extended again' as market imperatives were imposed on sectors formerly outside market jurisdictions and deepened in other areas where markets controlled initially.[74] As Ireland observes;

> Financial markets have been transformed, with dramatic consequences, and organisational forms within both the private and public sectors have been re-shaped. Out-sourcing and subcontracting have become the order of the day and markets and quasi-markets have appeared in sectors in which the operation of markets forces had hitherto been limited, most notably perhaps in health, education and the former nationalised industries.[75]

The transformation of financial markets is generally attributed to the slow destruction of welfare states and the momentous swing in the allocation of resources, nationally and internationally. In bringing about this transformation, neoliberals have utilized the major tools of privatization, liberalization and deregulation, terms that indicate the broadening of the reach 'of private property, contract and market mechanisms, and to the free unhindered operation of those mechanisms once in place'.[76] These are concepts which neoliberals use to 'de-politicise the economy', by limiting the reach of the state and 'by reducing the room for policy discretion in those areas where it is allowed to operate'.[77] When this is done, they argue, efficient allocation of resources will be the end result.

The practical application of these neoliberal concepts, through the exploitation of globalization, has seen the financialization of financial markets and deployment of market-based

[73] Paddy Ireland, 'Property, Private Government and the Myth of Deregulation' in Sarah Worthington (ed.) *Commercial Law and Commercial Practice* (Oxford: Hart Publishing 2003) 85-86
[74] ibid
[75] ibid
[76] ibid
[77] Ha-Joon Chang (n 72)

structures, as a form of disciplinary mechanism over states. This form of 'market rationality' requires structural reforms in many sectors including banking, corporate governance, tax administration, legal systems and property rights, etc. The requirements for restructuring in the various policy sectors operate as a 'political counterpart' to the socio-economic authority of 'market forces (or the dominance of disciplinary neoliberalism) and the power of capital'.[78]

Disciplinary neoliberalism 'involves the extension of the processes of commodification and alienation based on the intensification of the discipline of capital in social relations'.[79] It insists that state action is necessary to guarantee social control and to provide laws and 'coercive potential', which will 'ensure that the owners of capital determine how production' operates. This process is best achieved through the imposition on states, of the 'political-juridical form' of neoliberalism, eminently recognized as the 'new constitutionalism'. The new constitutionalism demands for a more conscious emphasis on actively moulding and reinforcing the state to provide a more stable political environment for capital. The essential nature of the new constitutionalism is made clearer in the words of Renato Ruggiero, a one-time Director-General of the World Trade Organisation (WTO), who declared that 'we are writing the constitution of a single global economy'.[80]

The new constitutionalism is the 'quasi-legal restructuring of the state and internationalization of international political forms' which bestow 'privileged rights of citizenship and representation on corporate capital'.[81] They are a set of projected changes with political and constitutional dimensions in the neoliberal scheme, 'to politically "lock-in" neo-liberal reforms' in the areas of 'macroeconomic stability, protection of property rights and capital mobility'.[82] The purpose is to whittle down the power national politics exercises over markets.[83] Inherent in the hegemony of the new constitutionalism is the fact that not only is the freedom of capital guaranteed, there is also the

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[78] Stephen Gill, 'The Constitution of Global Capitalism' (2000) <www.uv.es/~mperezs/intpoleco/Lecturcomp/Geoeconomia%20y%20Globalizacion/Constitution%20of%20Global%20Capitalism%20S%20Gill.pdf> accessed 20 October 2013

[79] ibid

[80] ibid

[81] David Schneiderman, 'Investment Rules and the New Constitutionalism' (2000) *25 Law and the Social Inquiry* 757

[82] Stephen Gill, 'New Constitutionalism and the Reconstitution of Capital' (1999) www.meijigakuin.ac.jp/~iism/pdf/nenpo_002/Gill.pdf accessed 20 October, 2013

[83] GW Anderson, *Constitutional Rights after Globalisation* (Oxford: Hart Publishing 2005) 113

imposition of binding constraints on the state's – internal and external – macroeconomic, trade, investment and industrial policies.[84]

The New Constitutionalism: Neoliberal Practice versus Neoliberal Theory – Entrenching the Power of Resurgent Finance

These beliefs which underline neoliberal philosophy have been criticised by both lawyers and economists alike. Apart from the gulf between neoliberal rhetoric (anti-state, reduce state welfare etc.) and neoliberal practice (increased state support for finance),[85] these critics have noted 'the socially, politically and legally constructed nature of private property and exchange rights'.[86] As Ireland recounts, the underlying nature of property as a bundle of rights is always legally constituted. To this end, 'markets are as much products of regulation as they are subjects of it'.[87] He refers to the writings of Robert Lee Hale,[88] a legal critic of early twentieth century laissez-faire[89], who observed that;

> ...as property and exchange rights were to a significant extent socially (politically and legally) constructed, there was no such thing as an 'unregulated market operating according to purely 'economic rationality. Like private property rights, markets could be (and were) legally and politically constituted in many different ways, generating different rationalities and different distributional outcomes.[90]

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[84] Stephen Gill 'The Constitution of Global Capitalism' (n 78)
[85] Discussed below
[86] Paddy Ireland, 'Property, Private Government' (n 73)
[87] ibid
[88] In numerous works including; Robert Hale, 'Economic Theory and the Statesman' in RG Tugwell (ed.) *The Trend of Economics* (New York; Knopf 1924) 189; Robert Hale, 'Economics and Law' in WF Ogburn and A Goldenweiser (eds.) *The Social Sciences and their Interrelations* (London: Allen & Urwin 1927) 131; R Hale, 'Rate Making and the Revision of Property Concept' (1922) *Columbia Law Review*, Vol. 22 209; R. Hale, 'Coercion and Distribution in a Supposedly Non-Coercive State' (1923) *Political Science Quarterly* Vol. 38, 470; R Hale, 'Lawmaking by Unofficial Minority' (1920) *Columbia Law Review*, Vol. 20 451: R Hale, *Freedom Through Law* (New York: Columbia University Press 1952)
[89] While commenting on the writings of Wesley Hohfeld
[90] Paddy Ireland (n 73)

Markets, he continues, are not merely territories where people use their freedoms, but are also dominions of compulsion. This is because market participants, with the support of the state, utilize their rights – particularly those dealing with private property – coercively against each other. Markets, as a result, are actually 'structures of mutual coercion'.[91] Hale is suggesting here that markets are sites in which power is exercised. The development and expansion of financial markets has enabled finance to exercise more and more coercive powers over other economic actors.

From an economist's perspective, Chang similarly maintains that there are no free functioning markets. According to him, the materialization of markets was as a result of an intentional contrivance by the state, particularly during the early part of capitalist development. This is true, he argues further, because 'even in the UK, where the market economy' is assumed to have been established of its own accord, 'state intervention played a critical role in the emergence of individual markets and of the market system'.[92]

He criticizes the highly political nature of property rights and other legal entitlements that neoliberalism assumes as given. He argues that the policies that were followed by the countries of the developed world – such as US and UK – when they were seeking development were not liberal. On the contrary, they were extremely proscriptive and anti-free market. By attempting to enforce neoliberal, free market policies on developing states, these developed countries are only acting like 'Bad Samaritans'.[93]

In similar vein, Polanyi states that, 'the road to the free market was opened and kept open by an enormous increase in continuous centrally organised and controlled interventionism'.[94] Again, Freeman observes that, 'the US was the birthplace of the idea of infant industry protection'[95] and operated one of the most profound protectionist economies for more than a century, before the Second

[91] ibid

[92] Ha-Joon Chang (n 72)

[93] Ha-Joon Chang, *Bad Samaritans: The Guilty Secrets of Rich Nations and the Threat to Global Prosperity* (London: Random House 2008) 16-17

[94] Karl Polanyi, *The Great Transformation* (Boston: Beacon Press 1957) 140

[95] C Freeman, 'New Technology and Catching Up' (1989) *European Journal of Development Research* Vol. 1 (1)

World War.[96] In reality, therefore, contrary to what neoliberals believe, there are no free unregulated markets.

Furthermore, neoliberal critics point to the fact that neoliberal policies have not actually produced smaller states, despite anti-state rhetoric that accompanies them. Rather, neoliberalism has produced 'a market state instead of a small state'.[97] As Plant argues, minimizing the state has proved politically impracticable, making neoliberals to converge instead towards utilizing the state as a tool for restructuring social institutions and bringing them into conformity with market imperatives – an undertaking that a small state cannot perform.[98] Increasing the power of the state, he argues further, despite what its theory says, 'has always been the inner logic of neoliberalism, because, in order to inject markets into every corner of social life, a government' has to be substantially omnipresent. The upshot of social restructurings, in conformity with market imperatives, 'has been to make the state' ubiquitous.[99]

What neoliberals have done is to strategically increase the positional power of neoliberal ideas and their application in the practices of key social institutions – including the state, market, schools hospitals etc. This situation is made possible by the 're-configuration of power relations, a re-distribution of wealth and the intensification of new patterns of social and economic inequality'.[100]

Put in another way, what the neoliberals have done is to significantly reconstruct market relations, by effecting radical changes to prevailing structures of legal rights, in order to enhance the coercive power of owners of capital and their institutional representatives. This power of finance, of the owners of financial properties like shares, acting through their different representatives, explains the more arduous enforcement of shareholder value and why it undermines effective CSR. Perceived as the project of the shareholder class, the 'free market' is used 'not as an instrument of efficiency, but as an instrument of private power', as one of the strategic instruments through which 'financial property owners can exert pressures on workers, on corporate managers and on states', in order to

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[96] Ha-Joon Chang (n 72)

[97] R Plant, *The Neoliberal State* (Oxford: Oxford University Press 2010) 1-304 at 235

[98] ibid

[99] ibid

[100] Stephen Gill (n 82)

guarantee that they appropriate a greater percentage of industrial and economic dividends internationally.[101] For Dumenil and Levy, what is witnessed is the 'attempt by a class of capitalist owners to restore, in alliance with top management, its power and income after a setback of several decades'.[102] Thus, while the overall economic record of neoliberalism may be poor, the widespread adoption of neoliberal policy programmes has generated major increases in income and wealth inequality, both within and between nations.[103]

Harvey and Soederberg similarly argue that neoliberalism is indeed best seen as a political project to restore the power and wealth of capital and financial property owning elites. Thus viewed, they insist, there is a contradiction between the theory and practice of neoliberalism. For Harvey, there are two glaring disparities in proof of the rhetoric of neoliberalism. The first lies in the 'need to create a good business or investment climate' for neoliberal actions. While some conditions for realising this objective, like 'political stability or full respect for the law', are class-neutral, other conditions like 'the treatment of labour and the environment as mere commodities', are biased, in favour of class power. Thus, where there is a conflict between business and society, neoliberalism will always side 'with a good business climate, against the collective rights (and quality of life) of labour and the environment to regenerate itself'.[104] Secondly, as between the integrity of both the financial system (including the solvency of financial institutions) and that of the welfare of the public or environment, neoliberalism will be biased in favour of the former, against the latter.[105]As an example, neoliberalism – represented by the IMF and World Bank – will prioritize the needs of banks and financial institutions, while diminishing the standard of living of a debtor country through the imposition of structural adjustment programmes.[106]As a result, Harvey maintains that there is a

[101]Gerard Dumenil and Dominique Levy, 'The Nature and Contradictions of Neoliberalism' (2002) *CEPREMAP-CNRS Working Paper* <www.jourdan.ens.fr/levy/dle2002c.pdf> accessed 20 October 2013
[102]ibid
[103] Paddy Ireland, 'Shareholder Primacy and the Distribution of Wealth' (2005) *68 Modern Law Review* Vol. 49 30
[104] David Harvey (n 27) 70-71
[105] ibid
[106] ibid, 73

'burgeoning disparity between the declared public aims of neoliberalism – the well-being of all – and its actual consequences – the restoration of class power'.[107]

For Soederberg, on the other hand, the actual purpose of the 'good corporate governance measures,[108] which neoliberalism coerces from mainly developing nations is to guarantee that investors – suppliers of finance and shareholders – enjoy the dividends of their investments. The claim that good corporate governance embodies 'universal principles', for her, cannot be substantiated. By concentrating only on mechanisms for the realization of the Anglo-American neoliberal model, these measures are merely the means through which 'the interests of foreign capital are protected'.[109]

The OECD Principles of Corporate Governance (discussed extensively in chapter Four) is a good example of such a mechanism. According to Soederberg, the principles were purportedly formulated to create 'coherence' between OECD and non-OECD states, and to help both members and non-members 'more efficiently reap the rewards of a neoliberal world order based on free market mobility'.[110] However and on the contrary, such policy directives as the OECD Principles are formulated purely to wear down national boundaries in the name of global stability, unlock new territories and ease the incursion of powerful transnational institutional investors into new markets in developing economies. In the end, the principles merely symbolize particular 'material interests' associated with stock markets and powerful multinational corporations. They are only used as a disciplinary mechanism, to regulate the activities of budding economies better, rather than the fostering of development in these developing economics.[111]

From the foregoing, it is suggested that the power of finance – supported and promoted by states[112] and international organizations including the OECD, the IMF and the World Bank – having transformed shareholder value maximization into an economic imperative – acts as a political barrier

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[107] ibid, 75

[108] See chapter Four on Corporate Governance Mechanisms

[109] Susanne Soederberg, *The Politics of the New International Financial Architecture: Re-imposing Neoliberal Domination in the Global South* (London: Zed Books 2004)139-149

[110] ibid, 155

[111] ibid

[112] Especially the developed states, even though this support by some developing ones may be as a result of compulsion

to effective CSR. To the financial interests involved, effective CSR impinges on profits and undermines class power. The growing power and continued hegemony of this political class invariably makes the realization of effective CSR difficult.

IV

CORPORATE MANAGERS AS BARRIERS TO EFFECTIVE CSR

In chapter Three, Friedman's contestation that the 'business' of business is the maximization of shareholder value and that any consideration of other issues is a distraction at best, or a cost at worst was discussed. Following from this, neoliberals argue that managers who forfeit shareholder profit for social purposes like CSR 'are in effect imposing a tax on their shareholders and arbitrarily deciding how that money should be spent', which means that they are practically 'usurping the role of elected government officials, if only on a small scale'.[113] This apparently is against the tenets of SV primacy.

In order to make corporate managers accountable to shareholders, neoliberals aligned the remuneration of managers' to the performance and share price of the corporation in the stock market. Through this alignment, there are good reasons for thinking that corporate managers have now become a political barrier to the realization of effective CSR. This is because under these circumstances, business comes first, social issues like CSR are relegated to the background and CSR initiatives are only considered relevant when they do not impinge negatively on corporate profits. Adams submits that the aligning of remuneration with performance 'prevents widespread improvements consistent with social welfare'.[114]

[113] C Strandberg, 'CSR Governance' (2007) *Strandberg consulting Thought Leader Study Working Paper* 3 <http://corostrandberg.com/wp-content/uploads/files/CSR-Governance-Thought-Leader-Report.pdf> accessed 21 October 2013

[114] CA Adams, 'Internal organizational factors influencing corporate social and ethical reporting: Beyond Current Theorising' (2002) *Accounting, Auditing and Accountability Journal Vol. 15(2)* 223–250

Through the mechanism of share options,[115] for instance, managers become stock owners themselves and are incentivized to prioritize share profits above effective CSR. As a result, they become locked in a battle between supporting effective CSR – thereby suffering from dwindling personal income – and supporting shareholder value – thereby enjoying higher dividends from shares prices. In this context, the suggestion is that support for shareholder value has trumped pursuit for effective social welfare imperatives. By embracing the mechanism of performance related pay, corporate managers, tasked with social responsibility undertakings filter such initiatives through an economic lens.[116]

Again, the fear of personal job losses, either through termination or through the operations of MCCs,[117] imposes obligations on corporate managers to fight against the realization of effective CSR. In situations where corporate managers are inclined to relinquish a part of corporate profits to promote social causes, they could be fired as a result and their positions taken over by those who will prioritize profit. Viewed from this perspective, it appears reasonable to think that supporting effective CSR might jeopardize the future survival of those corporate managers, whose personal inclinations favour CSR.[118]

In contemporary societies, corporate managers usually struggle with how to widen the gap between profits and costs, to enable the former outstrip the latter. In this struggle, expecting them to pay more attention to effective CSR appears untenable, since CSR will only narrow this gap. Ensnared by short-termism, managers appear unwilling to tolerate the cost imperatives of CSR, more so when they cannot promptly establish the financial gains of such activities. [119] As Adams reports, an interview-based research on managers in chemical and pharmaceutical corporations in the UK and

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[115] Issues of remuneration and Performance alignment were discussed in chapter Four

[116] CA Adams (n 114) 228

[117] Also discussed in chapter Four

[118] A Karnani, 'The Case against CSR' (2010) *The Wall Street Journal* <http://online.wsj.com/news/articles/SB10001424052748703338004575230112664504890> accessed 21 October 2013

[119] A King and M Lenox, 'Does it Really Pay to be Green? An Empirical Study of Firm Environmental and Financial Performance' (2001) *The Journal of Industrial Ecology Vol. 5(1)* 105–116

Germany found that managers see CSR projects as secondary to the major issue of economic performance.[120] To this end, CSR practices of corporations are not likely to be effective.

Strandberg reports that in many cases;

> Boards and CEOs are under huge pressure from shareholders to deliver shareholder value through cost cutting. Under these conditions it is very tempting to turn a blind eye to CSR or the full implications of their choices and to initiate courses of action that lead to irresponsibility. (The BP Texas oil refinery deadly explosion was cited often as an example of this in which while BP is perceived to have strong CSR values at the top, yet management level short term cost pressures resulted in serious safety violations).[121]

Following from these arguments, corporate managers subject issues of CSR to 'financial calculations', in the same way as other business ventures. The question they eventually ask themselves is; what is the performance of a CSR initiative going to cost us? The fear of slashed remunerations, job losses and outright takeovers by other corporations force managers into opposing effective CSR initiatives.

By aligning managerial remuneration with share price and performance, structural and legal imperatives have apparently permitted a merely ameliorative form of CSR, with corporate managers arguably acting as barriers to the realization of effective CSR. It is suggested that effective CSR will be supported by corporate managers, not only when they are made to understand that performing useful CSR initiatives for the benefit of society as a whole is a by-product of the pursuit of shareholder primacy, but also when the pressures of shareholder value maximization are lifted from them.[122]

[120] CA Adams (n 114)
[121] C Strandberg (n 113)
[122] A Karnani (n 118)

Section Two

Political Barriers to Effective CSR in Nigeria

The Power of Resurgent Finance

As was discussed in section one above, the new constitutionalism – that is the 'quasi-legal restructuring of the state and internationalization of international political forms which bestow privileged rights of citizenship and representation on corporate capital – created a class of financial interests who support and promote shareholder value. The argument was that the activity of these powerful financial elite invariably acts as a political barrier to the realization of effective CSR. In similar vein, in section two of chapter Three, it was argued that Nigeria, much like many other developing economies that found themselves in financial difficulties, went to the International Monetary Fund (IMF) and the World Bank in the early 1980s for loans. The country was giving 17 conditions to fulfil, in order to benefit from any loan facility from the international financial organizations. According to Adeyemo and Salami, these conditions were all linked to the structural adjustment programmes (SAPs), allegedly aimed at restructuring the economy and making it more competitive and efficient.[123]

Through the efforts of these international financial institutions, the country was pressurized into adopting and implementing far-reaching neoliberal reforms; mainly those of privatization, liberalization and de-regulation of many aspects of the country's economy. In pursuance of these neoliberal imperatives, the country's borders were opened up to international market forces, with the intention that this will attract more foreign direct investments, foster economic growth and lead to the stabilization of the country's macro-economic system. It was also hoped that the adjustment programmes will lead to a reduction in the role that government plays in the provision of social

[123] D.O Adeyemo and A Salami, A Review of Privatization and Public Enterprises Reform in Nigeria (2008) *Contemporary Management Research* Vol. 4 (4) 401-418 at 410

welfare to Nigerian citizens, bring about a reduction in the country's fiscal deficits, diminish public sector borrowing and aid the reduction of government subsidies towards unprofitable ventures.[124]

Consequently, the country has witnessed an intensified deregulation in many sectors of the economy, especially the downstream sector of the Nigerian economy, privatization of most government-owned enterprises and the liberalization of trade and opening up of the country's borders, through the mechanisms of bilateral and multilateral investment treaties. In the post-neoliberal Nigerian system, therefore, the process of the new constitutionalism has through the application of political and legal mechanisms that are not easily repealed, provided anchorage for capital in the long term.[125]

In this context, the downstream sector of the Nigeria economy has continuously been deregulated. The downstream sector is a term commonly used to refer to the refining of crude oil and the selling and distribution of natural gas and products derived from crude. Such products include liquefied petroleum gas (LPG), gasoline or petrol, jet fuel, diesel oil, other fuel oils, asphalt and petroleum coke. The downstream sector also includes oil refineries, petrochemical plants, petroleum product distribution, retail outlets and natural gas distribution corporations. Before the intensification of the process of disciplinary neoliberalism in the country, government regulated the sector and provided subsidies for the Nigerian citizens. The argument is that subsidies are economically beneficial in the sense that the lower prices are used to motivate specific economic segments or sections of the country. For example, it is used to ease the country's poverty level and enhance the enjoyment of energy resources. Again, at the communal level and for purposes of promoting collective interests, fuel subsidy is a veritable tool used to maintain employment, especially in periods of economic transition.[126]

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[124] Edwin Etieyibo, 'Privatization in Nigeria, Social Welfare, and the Obligation of Social Justice' (2011) *Journal of Economics* Vol. 2 (1) 37-44 at 38-39

[125] See for instance, the discussion of how Nigeria uses hard laws to protect the interests of investors in chapter three.

[126] European Environmental Agency, 'Energy Subsidies in the European Union: A Brief Overview' (2004) EEA Technical Report No 1 <http://reports.eea.europa.eu/technical_report_2004_1/en/Energy_FINAL_web.pdf.> accessed 23 February 2012

The government has always maintained a high level of control over the downstream sector, especially through the provision of subsidies for internally used oil. The reluctance of many past governments in Nigeria to fully deregulate fuel price for local consumers reflect unease about the unfavourable effect of higher prices on household real incomes.[127] Of specific concern is the effect this will have on lower-income households who are least able to soak up pressures that arise from the welfare cost of higher prices. Consequently, proof of the enormity of the welfare impact of fuel price hike, and how this is distributed across income groups, is usually an important and very critical consideration when deciding how best to protect households from higher fuel prices.[128]

With the introduction of neoliberal policy packages in the country, however, and on the advice of the IMF and the World Bank, there have been important changes in this regard. Following the introduction of the SAPs of Ibrahim Babangida, successive governments have variously implemented polices geared towards the whittling down of governmental control and the eventual deregulation of the sector. In doing this, majority of Nigerians, already over-burdened by the effects of the structural adjustment programmes, continue to suffer as a result of the higher fuel prices.[129]

In the area of privatization, until recently, Nigerian governments had participated in the ownership and management of enterprises. This tendency dates back to the colonial era, when the British colonial government owned most agencies including enterprises such as the Nigerian Railway Corporation (NRC), Nigerian Telecommunications (NITEL), Nigerian Postal Services (NIPOST) and others. With the introduction of neoliberal ideas and SAPs, successive governments – especially that of Obasanjo between 1999-2007– began to pursue an aggressive privatization of state-owned enterprises. In fact, the government did not restrict its privatization drive only to state enterprises.

[127] OI Eme and A Onyishi, 'The Fallacies about the Down Stream Oil Sector Deregulation in Nigeria' (2011) *Interdisciplinary Journal of Contemporary Research in Business* Vol. 3(8) 187

[128] J Granado, D Coady, and R Gillingham, 'The Unequal Benefits of Fuel Subsidies: A Review of Evidence for Developing Countries' (2010) *IMF Working Paper* <www.imf.org/external/pubs/ft/wp/2010/wp10202.pdf> accessed 23 February 2012

[129] OI Eme and A Onyishi (n 127)

Many other aspects of the economy, including education, health, pensions, power and communications were also privatized.[130]

In the area of liberalization of trade, and in the spirit of the process of the new constitutionalism (as advocated by the IMF, World Bank and other international financial institutions), Nigeria has continued to open its economic borders and has joined a host of other nations in entering into bilateral and multilateral trade agreements. In this regard, Nigeria is a current member of the World Trade Organisation (WTO) and as at the time of conducting this research, has entered into bilateral trade and investment agreements with many developed economies including; France (which entered into force 19 August, 1991); United Kingdom (11 December 1990); Netherlands (1 February, 1994); Germany (20 September, 2007); Switzerland (1 April, 2003); Spain (19 January 2006); and Sweden, signed on 18 April, 2002 (but yet to enter into force at the time of this research).[131] It has also entered into bilateral trade agreements with emerging economies like China, Korea and Romania.[132]

In theory, these bilateral and multilateral investment treaties are expected to protect and realistically safeguard the assets and treaty rights of foreign investors in a particular host-community. They are equally supposed to safeguard and insulate these foreign investors from political and other economic hazards which are common in many developing countries. Instead of being neutral, however, foreign investors are often granted higher security and better treatment than their local counterparts.[133] Moreover, it is also argued that these BITs/MITs in developing countries like Nigeria

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[130] Otive Igbuzor, *Privatization in Nigeria, Critical Issues of Concern to Civil Society* (Paper presented at a Power Mapping Round Table Discussion on The Privatization Programme in Nigeria organised by the Socio-Economic Rights Initiative: Abuja, 3rd September 2003) <www.dawodu.com/otive2.htm> accessed 7 May 2013

[131] A Adefulu, 'Nigeria: National Treatment & Nigeria's New Local Content Legislation' (2010) *Mondaq Publication* <www.mondaq.com/x/102400/international+trade+investment/National+Treatment+Nigerias+New+Local+Content+Legislation> accessed 14 November 2013

[132] See UNCTAD BITs Database <*www.unctad.org/Templates/Page.asp?intItemID=2364&lang=1*Cached - Similar> accessed 5 February 2012

[133] E Neumayer and L Spess, 'Do Bilateral Treaties Increase Foreign Direct Investment to Developing Countries?' [2005] *World Development* Vol. 33 (10) 1567-1585 at 1570

encourage the promulgation of twisted 'government policies such as protective tariffs or tax incentives' in favour of foreign investors.[134]

As a result of the lopsided nature of these investment treaties, the argument is that it is increasingly difficult for a developing economy such as Nigeria to encourage the growth and efficient operation of local businesses, in the midst of heavily protected and superior foreign investment. This situation is most evident in the oil sector, where foreign oil corporations have practically snuffed out the growth possibilities of local firms. For Neumayer and Spess, international investment treaties 'seriously restrict the ability of host-states to regulate foreign investment'.[135]In similar vein, Elkins and others contend that as far as bilateral (and multilateral) treaties are concerned, 'developing countries are trading sovereignty for credibility'.[136]

Through the joint implementation of these neoliberal policies (i.e. deregulation, privatization and liberalization), few local financiers and powerful MNCs are afforded more opportunities to pursue their profit accumulation tendencies with much more vigour. In this way, the convergence of ideological, political and practical forces propelling the process of economic globalization continues to move away from the Nigerian government (primarily responsible for the welfare of its citizens in general), towards a handful of individuals and corporations. The financial interests, thus created, driven by the singular quest for short-term financial gains, dominate and in some instances, determine the country's economic and political arrangements.[137]

It is argued that the 'normative theories' promoting disciplinary neoliberalism as a public policy directive in Nigeria drew its inspiration principally from the vision 'grounded in individualism' and the expanding domain of private property rights and intensified market forces.[138] As a result, the re-asserted power of finance has unleashed 'the competitive profit motive' in the political economy of

[134] ibid
[135] ibid
[136] Z Elkins, A Guzman and B Simmons, 'Competing for Capital: The Diffusion of Bilateral Investment treaties 1960-2000' (2008) *University of Illinois Law Review* 2008 (1) 265-306
[137] Ibid 22
[138]Paul Starr, 'The Meaning of Privatization' in A. Kahn and S Kamerman (eds.) *Privatization and the Welfare State* (Princeton: Princeton University Press 1989) 15-48 at 36

Nigeria.[139] The new constitutionalism in Nigeria has, therefore, translated into a system where few individuals now constitute the majority of property owning class, with most corporate and commercial profits swelling their pockets. In this context, the neoliberal concept of privatization for example, has allowed individuals to reap the advantages of the free market system, and arguably created a class of financial elites who see collective interests like CSR as an unwanted restraint on profit accumulation.[140]

Furthermore, the argument that private capital accumulation in Nigeria has benefited the power of resurgent finance is evident, for instance, in the joint support for liberalization and privatization by the MNCs and the local elite, who both claim that liberalization and privatization would create wealth and generate employment opportunities for Nigerians. This collaboration is possible because the foreign investors (MNCs) have come to realize that they require the support of the local political and economic elite to succeed in their quest to replicate forms of capitalist relations similar to the ones they have at home.[141] Conversely, the economic and political elite in Nigeria require the legitimacy of multinationals to locally actualize their private capital accumulation tendencies.[142]

In this sense, Berkman (a former employee of the World Bank) contends that the development strategies forced by the international financial institutions (as symbolized in the Post-Washington Consensus package and the new constitutionalism/disciplinary neoliberalism) upon developing countries like Nigeria, beginning from the 1980s, have generally diverted development resources into the pockets of corrupt local elites and their corporate partners from industrialized countries. This imposition of neoliberal imperatives, according to him, has created a minority class of wealthy individuals and a widening gap between the rich and the poor.[143]

[139] D.O Adeyemo and A Salami (n 123) 404

[140] E. C. Ugorji, 'Privatization/Commercialization of State-owned Enterprises in Nigeria: Strategies for Improving the Performance of the Economy' (1995) *Comparative Political Studies* Vol.27 (4) 537-560

[141] M. M. Hoogvelt and A. Tinker, 'The Role of Colonial and Post-Colonial States in Imperialism-A Case Study of the Sierra Leone Development Company' (1978) *Journal of Modern African Studies* Vol. 16 (1) 67-79

[142] Roland Robertson, 'Glocalization: Time-Space and Homogeneity-Heterogeneity' in Mike Featherstone, Scott Lash and Roland Robertson (eds.) *Global Modernities* (London: Sage 1995) 25-44

[143] Steve Berkman, *The World Bank and the Gods of Lending* (Bloomfield CT: Kumarian Press 2008) 157-174

As a result, the international financial institutions, prodded on by international investors and multinational corporations, are often motivated by the need to advance the interests of the investors and that of the local elite, rather than by the interests and welfare of the generality of the people in these developing countries. According to John Perkins, (who worked as an international consultant for many years), the international financial institutions, some developed countries (for instance the US) and multinational corporations persuaded other foreign governments (like Nigeria) to enter into various kinds of economic arrangements and contracts, and into accepting billions of dollars of loans from the international financial institutions, to 'build infrastructure that they could not afford', and in the process, enrich a few local and foreign financial investors.[144]

Korten further expounds on some of the arguments underlying the contentions of Berkman and Perkins. According to him, the allegiance of the world's MNCs is 'purely to further their own bottom lines', and not to promote 'national or local interests'. In this context, investors are less concerned with advancing national goals than with pursuing objectives which advance the interests of the shareholders – including growth, profits and market power.[145] Much like the European powers that colonized territories in other continents, mostly because they wanted to establish bigger markets and channels to further intensify their investment motives, international investors (including multinational corporations) search for markets and outlets through which there surplus capital can be re-invested, in order to accumulate more profits. These channels and outlets are radically extended when countries sign free trade agreements and adopt economic reform policies like the SAPs, liberalization and privatization, which are generally promoted by the World Bank and the IMF.[146]

As evidence of the collaboration between international investors and local elites, a leaked document from the US Embassy by Wiki Leaks shows how the oil MNC, Shell, has been complicit in the country's political and economic arrangements. In the document, Ann Pickard, then Shell's vice-president for sub-Saharan Africa, informed the US Ambassador to Nigeria, Robin Renee Sanders, in a confidential memo from the US embassy in Abuja on 20 October 2009, that;

[144] John Perkins, *Confession of an Economic Hitman* (New York NY: Plume 2005) 132

[145] David Korten, *When Corporations Rule the World* (San Francisco: Berrett-Koehler Publishers 2001) 127

[146] ibid

> Shell had seconded people to all the relevant ministries [in the government of Nigeria] and that Shell consequently had access to everything that was being done in those ministries.[147]

This information supports the argument that Shell (and indeed many other MNCs in Nigeria) has a 'vice-like grip' on the country's oil wealth. Akpobari states that MNCs and the political elite in Nigeria are two sides of the same coin. According to him, the MNCs in Nigeria have become even more powerful than the Nigerian government and are everywhere and have an eye and an ear in every ministry in Nigeria.[148] This argument is supported by Amunwa, who contends that even though MNCs claim that they have nothing to do with local politics, in reality however, they work 'deep inside the system, and has long exploited political and economic channels in Nigeria to their own advantage'.[149]

This 'collaboration' for economic gains has resulted in a 'healthy' relationship between the Nigerian political/economic elite and the international investors represented by oil MNCs. Thus, MNCs have been able to use their immense capital to infiltrate and persuade domestic economic and political actors to pursue their special interests. Through this partnership, the MNCs end up enriching both their international shareholders and the local economic and political elite. Issues of host-communities' welfare, environmental protection and preservation and respect for ecosystem limits – subjects of sustainable development and effective CSR – are thereby relegated to the background.

II

Institutional Corruption in Nigeria: A Political Barrier to Effective CSR?

In Nigeria, as in many other African countries, issues of corporate governance are usually debated alongside the problem of institutional corruption, which has acted as an impediment to the realization

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[147] Wiki Leaks Cable, 'Shell's Grip on Nigerian State Revealed' (8 December 2010) *The Guardian Newspapers* <http://www.guardian.co.uk/business/2010/dec/08/wikileaks-cables-shell-nigeria-spying> accessed 24 May 2011

[148] ibid

[149] ibid

of socio-economic and political development of the continent. It is, therefore, not surprising that in recent years, issues of corporate governance in the continent have been earmarked as 'one of the most useful tools for reducing corporate corruption.[150] As Adegbite submits;

> In the wake of the financial crises of the late 1990s, the World Bank and the International Monetary Fund (IMF) emphasized the major role that the observance of international standards and codes of best practices can play in strengthening national and international financial systems. They therefore called for the preparation of Reports on the Observance of Standards and Codes (ROSC), which constitute an assessment of the degree to which an economy observes internationally recognized standards and codes.[151]

In its 2011 ROSC (accounting and auditing) on Nigeria,[152] the World Bank, while re-iterating the contents of an earlier report in 2004,[153] suggested that corruption is a principal impediment to the realization of development in the country. The reports declared that there is a broad-spectrum descent in the quality of standards' observance amongst stakeholders in Nigeria, attributable to the corrupt practices of these officials.[154]

Though the problem of corruption is wide-spread in Nigeria, it appears to be worse in the oil sector. As Gandy suggests, corruption in Nigeria is generally attributed to oil. This is because 'oil does not just dominate economic life; it also dominates politics' in the country. As a result, the politics of Nigeria is classified as 'authoritarian governmentality', 'petro-capitalist' or petro-business.

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[150] S Mensah, K Aboagye, E Addo and S Buatsi, 'Corporate Governance and Corruption in Ghana: Empirical Findings and Policy Implications' (2003) *African Capital Markets Forum* cited in E. Adegbite, 'Corporate Governance Regulation in Nigeria' (2012) *Corporate Governance* Vol. 12 (2) 259

[151] E Adegbite, ibid

[152] See Report on the Observance of Standards and Codes (ROSC) Nigeria- Accounting And Auditing (6 June 2011) www.worldbank.org/ifa/rosc_aa_nigeria_2011.pdf accessed 20 May 2013

[153] See Report on the Observance of Standards and Codes (ROSC) Nigeria -Accounting and Auditing (17 June 2004) <www.worldbank.org/ifa/rosc_aa_nga.pdf> accessed 20 May 2013

[154] ENM Okike, 'Corporate Governance in Nigeria: The Status Quo' (2007) *Corporate Governance: An International Review* Vol. 15(2) 175

In this context, 'the Nigerian government operates with corporate oil interests' and not the livelihood or well-being of its citizens.[155]

In the last three decades, the allegation is that Nigerian state officials, in conjunction with employees of oil corporations, have engaged in various acts of corruption. This manifests not only in the way the sector operates, but also in the relationship between the government and the oil corporations. Even though Nigeria is by no means a small country – its population today is estimated to be over 160 million[156] – the suggestion is that oil MNCs have besieged the country and used their influence and power to ride roughshod over the country's legal and regulatory systems.[157]

Critics support this assertion by stating that while the oil industry has witnessed considerable infrastructural development, ordinary Nigerians lack basic social amenities necessary for their subsistence. The progress recorded in the areas of high speed transportation of oil and advanced exploratory devices have unfortunately not been replicated anywhere else in the country. Beginning from the 1970s, through what has been labelled a corrupt alliance, it is suggested that the state has transferred allegiance and accountability from local communities to MNCs.[158]

As Obi, recounts;

> Oil MNC's are much richer than the individual petro-states with which they do business. Such states are not accountable to their citizens as they live off external oil rents, while the companies are not accountable to the citizens of the countries that they do business with. As such it is often easy for the transnational partners to collude and unleash violence when their interests in oil extraction are threatened.[159]

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[155] M Gandy, 'Planning, Anti-Planning and the Infrastructure Problem Facing Lagos' in Amanda Kass, *Neoliberal Nigeria, The United States, and Oil: Linking Production and Consumption* (A Senior Honours Thesis, The Ohio State University 2008) 12

[156] Nigerian National Bureau of Statistics, 'Nigeria Population 2013' (2 December, 2013) *World Population Review* <http://worldpopulationreview.com/countries/nigeria-population/> accessed 10 February 2014

[157] D Ogundipe, 'Oil Production, Corruption, and its Effects on Nigeria's Post-Colonial Economy' (2005) *African Outlook Publication* <www.africanoutlookonline.com/index.php?option=com_content&view=article&id=1916%3Anigerian-oil-production-corruption-and-its-effects-on-post-colonial-economy-of-nigerian&Itemid=53> accessed 10 May 2012

[158] ibid

[159] CI Obi, 'The Petroleum Industry: A Paradox or (sp)oiler of Development' (2010) *Journal of Contemporary African Studies,* 445-446

In similar vein, while commenting on the level of corruption in the oil industry, the Secretary of the Nigerian Extractive Industries Transparency Initiative (NEITI),[160] Orji Ogbonnaya Orji, stated that,

> …the massive corruption [which] had been perpetrated in the oil sector of the country's economy were not surprising given the prevailing poor institutional linkages, infrastructural weakness, governance and process lapses as well as some kind of impunity which appear to frustrate all efforts at enthroning openness, transparency and good business ethics in the oil and gas industry over the years.[161]

Shell, ExxonMobil and other oil corporations in the country have all been variously accused of complicity in encouraging corruption in the oil sector.[162] However, they are not alone. Numerous other MNCs have been indicted for encouraging corruption in the oil industry. In 2003, Halliburton[163] was indicted – in conjunction with other MNCs – of corruption charges. In the Halliburton's case, in 1999, a US$4 billion gas plant was earmarked for construction in Bonny Island, off Nigeria's coast. Contract was granted to a consortium of MNCs, with Halliburton's subsidiary in the country as a principal partner. The other MNCs involved included; Brown & Root (the British Subsidiary of Halliburton), Technips of France, Spamprogetti of Italy and JGC Corporation of Japan. A total consultancy fee of about US$137 million was allegedly paid to Nigerian officials and foreign consultants in order to prevent competitive bidding. Jeffery Tessler, the foreign consultant hired by Halliburton, was paid US$32.5 million to sustain beneficial dealings with government officials.[164] Halliburton admitted to

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[160] A federal government department

[161] 'Oil industry Ridden with Corruption – NEITI' (7 May 2012) *The Punch Newspapers* <www.punchng.com/business/business-economy/oil-industry-ridden-with-corruption-neiti/> accessed 7 May 2012

[162] See chapters One and Two

[163] A US Based Multinational Corporation

[164] S Dare, 'Investigating Corruption In Nigeria's Oil and Gas Industry' (2008) *News Digest International Magazine* <www.gijc2008.no/handouts/408/OIL_AND_GAS_INDUSTRY.ppt> accessed 8 May 2012

the US Security and Exchange Commission that its junior cadre staff had bribed employees of the Nigerian Federal Inland Revenue Service (FIRS) in other to gain advantageous tax concessions. [165]

In 2007, Vetco Gray Controls Incorporated, Vetco Gray Controls Limited and Vetco Gray UK Limited, subsidiaries of Vetco International Limited, all admitted complicity in a bribery allegation amounting to US$2.1 Million, offered to staff of the Nigerian Customs Service to obtain trade favors. In the same vein, a former manager of Wilbros Group[166] was convicted of bribery allegations worth US$6 Million, made to obtain a contract to construct gas pipelines in Nigeria worth US$387 Million. Within the same time also, Siemens was found guilty by a court in Germany of having paid bribes to Nigerian officials to the tune of 10 million Euros.[167]

In view of this situation, Okorie alleges that;

> Over the decades of oil production, the severe corruption problem at the federal level has seeped down to local levels, to the heads of the communities in the Niger Delta. With numerous complicated layers composing the system of bribery, payoffs and kickbacks, oil-motivated crime and conflict between indigenes and the government-backed multinationals, have given rise to unsafe, violence-ridden communities. These problems have been worsened by a chronic lack of transactional transparency and concern for the welfare of indigenes. Federal and state government officials, the military, representatives of multinational oil companies, heads of local communities, and gangs have jointly woven the tangled web of corruption and crime.[168]

In summarizing the points made in this section, it has been suggested that due to the huge and largely unjustified profits which oil business represents, it has come to be the overriding economic sociology in the governance philosophy of the Nigerian state. This has led to the massive centralization of activities in the sector and symbolizes the negative alliance between state and capital. Using the over-reliance on oil by the Nigerian state to their advantage, oil corporations initiate and encourage

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[165]Kenneth Amaeshi and Olufemi Amao, 'Corporate Social Responsibility (CSR) in Transnational Spaces: An Institutionalist Deconstruction of MNCs' Practices in the Nigerian Oil and Gas Sector' (2008) *University of Warwick CSGR Working Paper* 248/08 15

[166] Another US Based Corporation

[167]Kenneth Amaeshi and Olufemi Amao (n 165) above

[168] Amarachi Okorie, 'Nigeria Oil: The Role of Multinational Oil Companies' (2005) *E297c Term Paper* <www.stanford.edu/.../Nigerian oil> accessed 30 July 2011

corruption in the sector and fraudulently induce government officials to abandon their regulatory functions.[169]

The argument is that in a situation where the ruling elite deploy governmental might to preserve and protect oil wealth at all costs, the Nigerian state inevitably acts like a 'corporation', for the purpose of aiding oil MNCs.[170] The system which this engenders translates to one in which local communities are neglected, host-communities' welfare are seldom discussed, and effective CSR is seen as an obstacle to the business of profit accumulation.

Viewed from this perspective, it appears reasonable to argue that corruption is a political barrier to the realization of effective CSR in the Niger Delta and Nigeria.

Concluding Remarks

In this chapter, it has been suggested that apart from the ideological and practical barriers to effective CSR discussed in the preceding chapters, there is another barrier; the political barrier, made possibly by the activities of the re-asserted power of finance. The chapter began by looking at the concept of globalization and how it has aided the spread of disciplinary neoliberalism and the power of finance internationally. It equally explored how international financial organizations – The IMF, the World Bank etc – use policies linked to the Washington Consensus and the Post-Washington Consensus to promote a new form of constitutionalism, which merely promotes the interest of financial elites. The chapter contended that the effect of this new constitutionalism has led some critics to conclude that neoliberalism is a class project aimed at protecting and furthering the interests of financial elites. The chapter equally discussed the activities of corporate managers and suggests that it is arguable that corporate executives are now themselves one of these financial interest groups, even if their interests seem at times to conflict with those of shareholders.

[169] Michael Watts, 'Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria' (2004) *Geopolitics* Vol. 9 (1): 50–80 at 60

[170] Cyril I Obi, 'Oil Extraction, Dispossession, Resistance, and Conflict in Nigeria's Oil-Rich Niger Delta' (2010) *Canadian Journal of Development Studies* Vol. 30(1–2) 222

The chapter also looked at the activities of the new constitutionalism in Nigeria and how, through its protection and promotion of the power of finance, it has contributed to the establishment of a financial class whose interests are fundamentally antithetical to the realization of effective CSR in the country. The chapter finally examined the problem of institutional corruption in the country and argued that the 'slick alliance' between oil corporations and the Nigerian government officials, has become a major political barrier to the realization of effective CSR in the Niger Delta and Nigeria.

The chapter concludes with the argument that the activities of this powerful financial interests amount to political barriers to effective CSR both in Nigeria, and perhaps more generally.

General Conclusion

I

IS CONTEMPORARY CSR AN EFFECTIVE SOLUTION TO THE NIGER DELTA CRISIS?

From the findings in Part One of this thesis (chapters one and two), there are good reasons to conclude that the experience of people in the Niger Delta suggests an ineffective CSR, despite the claims of oil MNCs. In Part Two (chapters three, four and five), a number of inter-connected but distinguishable barriers to effective CSR were identified and separated for purposes of analysis: ideological, practical and political. The Part also explored these barriers to effective CSR in the Nigerian context and argued that their existence and operation in Nigeria renders it unlikely that CSR, in its contemporary form, will do much to resolve the problems in the Niger Delta. In this final section, the thesis shall conclude by bringing all the points and arguments together.

Main Ideological Barriers to Effective CSR: Neoliberalism and Shareholder Value

The thesis has argued that shareholder value arose out of the campaign by inactive, uninvolved shareholders with completely financial – and habitually short-term – interests, functioning through an assortment of various kinds of financial arrangements, to re-assert their power over corporate activities. Endowed with absolute control rights, this powerful group function actively in financial markets and in MCCs, intermittently prevailing directly in corporate decisions. This exploitative class have dominated corporations, and imposed shareholder value obligations on corporate managers, which the latter must fulfil in order to survive.

In chapter Three, it was contended that there is a fundamental tension between ideas about the desirability of socially responsible corporate behaviour (CSR) and the belief that it is to the benefit of society as a whole for corporations to be run solely in the interest of their shareholders, and for

managers to seek to maximize shareholder value. The first (and perhaps most obvious) barrier to effective CSR is, therefore, ideological.

In the context of examining the underlying tension between the ideas of neoliberalism (and shareholder value) and that of effective CSR, it was argued that neoliberal societies are generally classified as 'societies of traders relentlessly striving to improve their financial positions', in a state of unhindered natural selection. They are societies in which it is normal and legitimate to acquire unlimited material wealth, as long as it is done through 'voluntary agreement instead of force'.[1] Accordingly, an 'open-ended' maximization of economic gain is a cardinal norm which drives the neoliberal theory and in any society where the theory is practiced, the successful trader is the one who strives to accumulate more profits, notwithstanding previous accomplishments in profit aggregation, or the effects of his actions on others. Indeed, maximization is the 'hallmark' of neoliberalism, while restraining economic activities to only those things that are essential for one's requirements (including ideas such as CSR) are the product of economic traditionalism and collectivism. In a neoliberal economy, therefore, maximization is rational, normal and legitimate, while traditional and effective CSR is not.

Going further, it was also suggested that the intrinsic vitality of neoliberalism as a social order is strengthened by the existence of 'competitive pressures' in its free markets. Competition compels actors to endlessly scrutinize their place and actions, in connection with the conduct of competitors and that of society, and encourages the development of an approach of undeviating vigilance. It exists in situations 'where there is a social licence for actors' to strive and advance their status to the detriment of others. An authorization to compete entails an authorization to act in ways that are the opposite of shared objectives. As a result, 'capitalism is characterised by a high reward for those actors who skilfully and innovatively breach norms of solidarity in order to enrich themselves, even if this means impoverishing others who are less successful'.[2]

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[1] Wolfgang Streeck, 'Taking Capitalism Seriously; Towards an Institutionalist Approach to Contemporary Political Economy' (2011) *Socio-Economic Review* Vol. 9 143
[2] ibid 151

In this context, it was argued that the authorisation to compete in the maximization agenda bestows on the capitalist actor an extraordinary and inventive re-interpretation of prescribed collective norms, with the aim of deviating from them in a legally incontrovertible manner. This imaginative construal requires a deliberate lack of 'good faith', evidenced in the shape of a strong-minded denunciation of the collective familiar conception of what the norm in question means, coupled 'with an under-socialised attitude' of ingenious pragmatism when it comes to social rules. Neoliberal actors, in essence, are 'socialized in a culture in which the deliberate outwitting of social rules is an approved, and indeed prestige carrying behaviour'.[3]

This culture makes discontentment with present situations a major characteristic of neoliberal capitalism. As Utting submitted, the reason why conventional capitalists have shown remarkable capacity to accommodate opposition and resistance, and to deal with crisis conditions and contradictions by developing new institutions – through the reform or strengthening of existing ones – is because they are 'born opportunists' in matters of collective stability and harmony.[4]

In similar vein, McBarnet contended that corporate capitalists are exceptionally proficient at discovering 'dubiously' legitimate methods of evading 'regulatory control', by applying the genius of 'creative compliance' – or what Boltanski and Chiapello identified in chapter Three as the 'motivating spirit of capitalism' – in order to 'simultaneously escape legal control and any threat of penalty for doing so'.[5] The culture which this engenders is one in which people always look for ways to convert social arrangements into opportunities for profit, or weakening them in cases where conversions are not possible.[6]

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[3] Wolfgang Streeck, *Reforming Capitalism: Institutional Change in the German Political Economy* (London: Oxford University Press 2009) 241

[4] Peter Utting, 'Corporate Responsibility and the Movement of Business' (2005) *Development in Practice* Vol. 15 (3&4) 376

[5] Doreen McBarnet, 'Corporate Social Responsibility Beyond the Law, Through the Law, For the Law: The New Corporate Accountability' (2009) *University of Edinburgh School of Law Working Paper* Series 2009/03 <http://ssrn.com/abstract=1369305> accessed 27 September 2013

[6] Very recent cases of tax avoidance by Google, Apple, Microsoft and Amazon, and contemporary issues of creative accounting by many large conglomerates are typical instances of creative compliance at work; See C Moraes, 'Consumers Won't Boycott Apple or Google over Tax...Yet' (May, 2013) *The Conversation* <http://theconversation.com/consumers-wont-boycott-apple-or-google-over-tax-yet-14649> accessed 22 November 2013

By destroying collective and institutionalized social arrangements, through opportunistic and greedy activities, modern corporations use CSR codes and declarations as alternatives to the destroyed social arrangements. Kinderman argued that the establishment and growth of business-led CSR is associated with the erosion and dismantling of institutionalized social solidarity.[7] To him, contemporary CSR is not a countervailing force that follows neoliberal market exposure; rather, it is the alternative to an already decimated institutionalized social solidarity. Accordingly, both in the US and the UK, (where shareholder value is championed), the chronological route to contemporary CSR surfaced as an integral aspect of the triumph of 'business over institutionalised social solidarity'.[8]

As a consequence, the increase in contemporary CSR practices is attributed to the triumph of neoliberalism, the dismantling of the Keynesian hegemony and the systematic modification of capitalism beginning from the 1970s. It was used to support the authority of private commercial endeavours and of the market system in the wake of their destruction of collective social arrangements.[9]

Since this form of CSR is based on a 'market driven logic', it is intrinsically limited to those circumstances where 'a business case for CSR' is projected. The interpretation of contemporary CSR as a discipline of voluntary interest, aids in clarifying how the contradictions of shareholder value and social responsibility are contemporarily re-united. CSR implementation is, thus, meticulously united with the 'business case and market logic' of private corporations, leading Aguilera and others to suggest that, 'it is more strongly shaped by the instrumental motives relative to moral or relational demands for CSR'.[10]

The argument was that contemporary CSR is devoid of the 'radical spirit' with which CSR was identified in the 1950s and 1960s. According to Newell and Frynas, contemporary CSR is little

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[7] Daniel Kinderman, 'The Political Economy of Corporate Responsibility Across Europe and Beyond: 1977-2007' (2010) *Unpublished PhD Dissertation* cited in Daniel Kinderman, 'Free us up so we can be Responsible! The Co-Evolution of Corporate Social Responsibility and Neo-liberalism in the UK, 1977-2010' (2012) *Socio-Economic Review* Vol. 10 34

[8] Daniel Kinderman, 'Free us up so we can be Responsible! The Co-Evolution of Corporate Social Responsibility and Neo-liberalism in the UK, 1977-2010' (2012) *Socio-Economic Review* Vol.10 32

[9] ibid, 33

[10] RV Aguilera, D Rupp, CA Williams and J Ganapathi, 'Putting the 'S' Back in Corporate Social Responsibility: A Multi-level Theory of Social Change in Organisations' (2007) *Academy of Management Review* Vol. 32, 836-863

more than a public relations tool adopted by MNCs to ward-off criticisms, win detractors and at the same time potentially capitalize on 'emerging business opportunities associated with doing and being seen to be doing good'.[11] Viewed from this perspective, contemporary CSR is merely an aspect of a broader understanding 'of "enlightened" shareholder value'.[12] Such business case situations are only capable of provoking insignificant adjustments that fail to tackle systemic un-productivity and governance insufficiencies in most economies.[13]

Apart from being an avenue for profit maximization, declaring a commitment to CSR helps to anticipate and prevent any form of government regulation. As Gjəlberg submitted, deliberate approaches to CSR by corporations are sufficient indication of how corporations rally against expected regulations and use voluntary proposals to contain criticisms. The result 'is a regulatory capture in which the regulation (or lack thereof) favours the interest of the regulated rather than the public interest and common good'.[14]

It was contended that as a result of the breach in governance and 'regulatory failure' occasioned by neoliberal shareholder value obsession, and the inability of governments to control the excesses of corporations, civil society organizations became discontented with the activities of modern corporations and began to target them directly. Corporations then resorted to CSR as a kind of forced reaction to civil society attacks. In this context, it was suggested that the proliferation of corporate codes of conducts from the 1980s was mainly as a result of the influences and pressures applied on corporations by civil society movements. By engaging in CSR-linked projects, the thinking was that corporations will eventually evade the assessment that they are insensible, callous and heartless. These projects will convey the emotion that as a minimum, corporations are doing well, thus, drawing criticisms away from themselves. With the reception and dominance of the neoliberal

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[11] Peter Newell and JG Frynas, 'Beyond CSR? Business, Poverty and Social Justice; An Introduction' (2007) *Third World Quarterly* Vol. 28 (4) 670

[12] S Brammer, G Jackson and D Matten, 'Corporate Social Responsibility and Institutional Theory: New Perspectives on Private Governance' (2012) *Socio-Economic Review* Vol. 10 11

[13] D Doane, 'Beyond Corporate Social Responsibility: Minnows, Mammoths and Markets' (2005) *Futures* Vol. 37 215-229

[14] Maria Gjəlberg 'Explaining Regulatory Preferences: CSR, Soft Law, or Hard Law? Insights from a Survey of Nordic Pioneers in CSR' (2011) *Business and Politics* Vol. 13 (2) 7; J Moon, 'An Explicit Model of Business-Society Relations' in A Habisch, J Jonker, M Wegner and R Schmidpeter (eds.) *Corporate Responsibility Across Europe* (Berlin: Springer 2005) 55

theory in Nigeria, the ideology of shareholder value has become the dominant corporate governance model in the country. As a result, this insincere model of CSR is also applicable in the Nigerian situation. As was discussed in chapter three, this form of CSR appears ineffective, both in the Niger Delta specifically and, perhaps more generally.

Viewed from this angle, it appears reasonable to conclude that neoliberalism and shareholder value are the main ideological barriers to effective CSR.

Major Practical Barriers to Effective CSR: Contemporary Corporate Governance Mechanisms

The barriers to effective CSR are not only – or largely – ideological. If it were to be, there would clearly be hope for effective CSR: all its supporters would have to do is to persuade corporations and their executives that they should take account of the wider social interest in their decision-making – either because it is worthwhile in itself or because (as many supporters of 'stake-holding' have tried to argue) acting in a socially responsible manner is in the long-term interests of shareholders.[15]

As was shown in chapter Four, there are good reasons for thinking that the barriers/obstacles standing in the way of effective CSR are not purely or even predominantly ideological. Indeed, it appears reasonable to think that achieving effective CSR will require much more than just winning the battle of ideas. In this regard, the thesis identified another related barrier that confronts the supporters of CSR; the practical barriers to effective CSR.

In the said chapter, the various obligations imposed on corporate managers and how they have metamorphosed into key practical barriers to effective CSR were examined. The implication of the belief that corporations should profit maximize, it was suggested, found expression in the claim that corporate governance is a simple agency problem: how do you get corporate managers to act in the interests of inactive and often dispersed shareholders? The mechanisms which were developed to solve this agency problem – performance-related pay; the use of NEDs; the operation of MCCs and the stock markets – operate in such a way that they have incentivized corporate managers to maximize

[15] An idea captured in the notion of 'enlightened shareholder value'.

shareholder value and get the share price of the corporations they manage as high as possible. Managers were compelled to do so in order to avoid the wrath of 'the markets' and threats of takeovers. These entrenched mechanisms have led to an essentially Anglo-American market-based model of CG, championed and supported by international organizations such as the OECD, IMF, World Bank and the FSB. The consequence of this CG model is the financialization of corporate governance, short-termism, rent seeking, financial manipulation, engineering and fraud, productive decline, growing social inequality and environmental degradation.

Since the Nigerian corporate governance model mirrors the neoliberal Anglo-American model, it appears reasonable to conclude that these mechanisms are equally present in the Nigerian situation. The contention, therefore, is that both in the context of Nigeria and in the global corporate governance system, there are good reasons for believing that the existence and operation of these entrenched mechanisms now constitute major practical barriers to effective CSR.

Political Barrier to Effective CSR: The Power of Resurgent Finance

As was discussed in chapter Five, the strengthening of the power of financial elites by international organizations, through the promotion of neoliberal economic policies, and the concurrent 'disempowerment of the critics of finance', through the introduction of a string of democratic disengagements, led to the re-assertion of power by traditional elites. The highly restrictive class which this form of developmental process created established a 'cosy' relationship with government officials and policy makers. Through the use of lobby and financial inducements, these financial elites were able to influence government policies towards the protection of their special interests, against the interests of the collective, including CSR.

The existence and role of this powerful interest group[16] contributed to the imposition of shareholder primacy and the entrenching of the corporate governance mechanisms discussed in chapter Four. In this context, it was argued that globalization aided the spread of neoliberalism. It was also argued that international organizations – through the application of the Washington Consensus

[16] Or the power of resurgent finance

and Post-Washington Consensus policy packages – have helped to strengthen the power of this financial interest group. The suggestion was that the Post-Washington Consensus package is the precursor of what has been termed disciplinary neoliberalism or the new constitutionalism. The effect of this new constitutionalism has led some critics to conclude that neoliberalism is a class (political) project aimed at protecting and furthering the interests of 'a financial elite'. Arguably, the activities of this group explain the contrast between neoliberal rhetoric and neoliberal practice.

Indeed, it is also arguable that corporate executives are now themselves one of these financial interest groups, even if their interests seem at times to conflict with those of shareholders. The conclusion, therefore, is that the activities of this powerful financial interests amount to political barriers to effective CSR.

In the Nigerian context specifically, it was argued that beginning from 1986, when the international financial institutions' imposed structural adjustment policies on Nigeria, the interlocking of international investment laws through the application of the new constitutionalism, has led to the rise of a minority elite made up of a handful of local economic and political elite on the one hand and their foreign collaborators (in the form of MNCs) on the other hand. The collaboration between these international investors and the local economic and political elite has resulted in the domination of entrenched private interests and relegation to the background of collective interests like social welfare and effective CSR. To this end, the activities of this financial interest amounts to a political barrier to effective CSR.

The problem of institutional corruption occasioned by oil business and the 'slick alliance' between oil corporations and government officials were also highlighted. It was contended that corruption has become a major political barrier to the realization of effective CSR in the Niger Delta specifically and in Nigeria generally.

II

IS THERE HOPE FOR THE NIGER DELTA AND NIGERIA?

Having identified the possible barriers that make contemporary CSR ineffective as a solution to the Niger Delta crisis, this thesis will suggest recommendations, which it is hoped, will help to scale down the crisis in the region.

To The Nigerian Government

As was discussed in chapter one, it is clear that the Nigerian government has failed to properly regulate the activities of oil MNCs in the Niger Delta region. As a result of the factors enumerated in that chapter, the legal framework for the regulation of the oil industry appears to be ineffective. This position is worsened by the fact that the various petroleum contracts which determine the roles, duties and responsibilities of parties do not make adequate provisions for the protection of the environment. It is recommended that the Nigerian government should devise an effective environmental policy that will properly regulate the conduct of economic actors in the oil industry. In recent years, government has introduced legislations (for instance the NESREA Act 2007) which ordinarily should adequately tackle issues of environmental degradation, but this has not been the case. It is, therefore, suggested that government should put in place effective machinery to ensure the strict enforcement of these legislations. It is not enough to create environmental legislations and agencies, when they are not put to their proper use.

In this context, the recommendation is that the Nigerian government should establish strong and competent agencies, with the mandate to investigate and sanction oil MNCs found to be guilty of environment abuse. As was discussed in chapter two, failure of the oil MNCs to perform the negative injunction CSR duty is at the heart of the crisis in the Niger Delta. To this end, it is the duty of the

Nigerian government to put in place machineries for the investigation of alleged environmental abuses like oil spills, and sanction erring corporations appropriately. Allowing oil MNCs to transfer the negative consequences of their operations to the host-communities is not in the best interest of the communities.

Furthermore, the Nigerian government should be pro-active enough to re-write the various petroleum contracts it has entered into with the oil MNCs, in order to include terms that will preserve and protect the environment. In chapter one, it was stated that this appears to be the current trend in many international investment contracts, and many other countries working in partnerships with MNCs have made provisions for the protection of the environment in their contracts and model investment treaties. There is no reason why the Nigerian government should not do so. The government should not compromise the welfare and survival of its citizens because of its profit-motivated partnership with the oil MNCs.

Again, in Nigeria, it is generally accepted that wide-spread corruption in the oil sector is a big barrier to effective CSR in the Niger Delta region. As was shown in chapter Five, corruption has become endemic in the Nigerian socio-political economy. It appears reasonable to conclude that it will be difficult to end the crisis in the region, except the Nigerian state purges itself of corrupt public officers who embezzle public funds meant for development purposes. The cankerworm of corruption and institutional decay manifests in public office holders condoning and in many cases encouraging the 'gross violation of Nigerian laws' for personal advantages and corporate profits.

In this context, the reality is that the overdependence of the Nigerian state on oil proceeds logically directs most of its policies 'towards minimizing loss of oil revenue at the expense of environmental protection or the protection of citizens' rights'.[17]As Ikporukpo pointed out over two decades ago, when the significance of oil to the Nigerian economy is considered, the negligence in implementing existing laws may in reality amount to a premeditated and conscious strategy to promote foreign direct investment in the country's oil industry.[18]

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[17] ibid

[18] CO Ikporukpo, 'The Management of Oil Pollution of Natural Resources in Nigeria' (1985) *Journal of Environmental Management* Vol. 20(3) 18-36.

Oil revenues promote the volatility, insecurity, corruption, and patronage-driven politics which typify state authority in the country. Corruption, whether concerning government officials or encouraged by their inability to act, limits the country's earning prospects by 'misallocating' revenues and contracts, remunerating incompetence and ineptitude, and by directly or tacitly encouraging the bunkering of the country's oil. Oil-related corruption equally damages the 'national interest', by multiplying the quantity of money acquired through unlawful channels.[19]

In the final analysis, 'responsibility and accountability' organizations, including the country's legislature, judiciary, anti-corruption institutions, civil society, media and citizens must exert meaningful efforts to provide adequate and efficient supervision of the oil sector, if the cankerworm of corruption is to be eradicated. It is accepted that all the listed organizations do not have the same capacity to influence governance processes. Nevertheless, where each group operates according to its capacity, there is no doubt that corrupt practices will be reduced, if not eradicated, and the application of effective CSR will be encouraged.

To The Oil MNCs

As was stated in chapter one, oil MNCs and other private corporations are expected to contribute positively towards the sustainable development of their host-communities. Apart from performing their obligations under national laws and according to the provisions of the contracts governing their commercial activities, they are also expected to act in a socially responsible manner. In chapter two, it was suggested that CSR is made up of positive affirmative duties, as well as duties to care for the environment – negative injunction duties. These duties are reciprocally strengthening.[20] Adherence to the positive duties – by constructing class room blocks, roads, health clinics, etc – while

[19] Alexandra Gillies, 'Reforming Corruption out of Nigerian Oil' (2009) *CHR Michelsen Institute's U4 Brief, Part 1: Mapping Corruption Risks in Oil Sector Governance*, 4 <www.cmi.no/publications/file/3295-reforming-corruption-out-of-nigerian-oil-part-one.pdf> accessed 27 September 2013

[20] MO Agwu, 'Community Participation and Sustainable Development in the Niger Delta' (2013) *British Journal of Education, Society and Behavioural Science* Vol. 3 (1) 36

simultaneously neglecting the duty to the environment – through continued pollution of rivers and the environment, gas flaring, forest fires and causing acid rains etc – does not support the claim that MNCs are being socially responsible. As was suggested in that chapter, Niger Delta inhabitants are mainly aggrieved with oil MNCs because of their inability of to perform the negative injunction duties and this lies at the heart of the crisis in the region. Host-communities allege that corporate activities have led to the environmental degradation and unsustainable development of the communities.

The argument was that issues of water and air pollution, gas flaring, acid rains, inadequate clean up of oil spills and arbitrary waste disposal are environmental hazards which threaten the very existence of Niger Delta inhabitants. Many of the recorded demonstrations in the area were caused by the failure of multinationals to perform one or more of the negative injunction duties. It was contended that no amount of philanthropy – building of schools, hospitals, roads, etc – will prevail over the pollution of a river which is a community's only source of drinking water. The reasoning is that no amount of boreholes constructed by oil multinationals will cover the effects of gas flaring and acid rain on the inhabitants. It was suggested that if oil multinationals are actually committed to the spirit, as well as the letters of effective CSR, they must be ready to extend their dedication to development, beyond the current rhetoric. They will have to produce long-lasting blue-prints for tackling environmental degradations, while continuing with positive affirmative duties in the form of developmental projects.[21]

Generally, it was argued that the pre-occupation of corporations in their relationship with the wider society should not be one of accumulating profits for shareholders by all means and then handing out a small portion of it to communities as philanthropy. It should be about how a corporation earns its money, how that corporation is run and how it interacts with communities. The MNCs in the Niger Delta appear not to have complied with this philosophy. Indeed, there are good reasons for thinking that the obvious inconsistencies between the theory of CSR and the practice of same by multinationals in the area, coupled with a significant dependence on a 'blame-game' oratory regarding

[21] J Rexler, 'Beyond the Oil Curse: Shell, State Power, and Environmental Regulation in the Niger Delta' (2010) *Stanford Journal of International Relations* Vol.12 (1) 28

the actual causes of oil spills, indicate an inherent acknowledgment of MNCs' failures to meet their corporate social obligations in the Niger Delta.

It is asserted that contrary to the nature of the modern oil corporations, framed around the neoliberal free market rhetoric and propelled by profit accumulation and the supposition that all would gain from oil exploration activities, host-communities see oil MNCs as integral parts of communal existence.[22] As a result, corporations are expected – like every other member of the community – to automatically confer with the people and take into consideration, community concerns in their decision making processes. They are equally expected to deal urgently with community matters and not wait until there is rebellion before doing so. In this context, oil MNCs are enjoined to see themselves, not as neutrals in the conflict in the region, but as partners and facilitators of social, economic and environmental development.

On this issue of corporate-community partnerships, it was pointed out in chapter two that some oil MNCs in the Niger Delta have recently taken steps towards the introduction of the Corporate-Community-Partnership (CCP) initiatives in many Niger Delta host-communities. The introduction of these schemes is arguably predicated on the need to align corporate interests with the sustainable development of host-communities. The MNCs have also begun to adopt and use global memorandum of understandings (GMOUs) to design and implement development plans, in order to create and sustain a safe and peaceful working environment. Although these are welcome developments, the suggestion is that much still needs to be done, especially in the area of the duty to care for the environment.

To the Niger Delta Communities

Notwithstanding the fact that Niger Delta host-communities may have legitimate grievances, it is also important for them to understand that they have a role to play in the de-escalation of the crisis and the

[22] R. Jenkins, 'Corporate Social Responsibility and the Mining Industry: Conflict and Constructs' (2004) *Corporate Social Responsibility and Environmental Management* Vol. 11 (1) 23-24

actualization of sustainable development in the region. In this context, their principal pre-occupation should be to work towards the preservation of the ‘carrying capacity’ of the delicate Niger Delta ecosystem, and not the pursuit of monetary rewards. As was argued in chapter One, many inhabitants of the Niger Delta region have compromised their positions and are now pursuing selfish intentions or monetary rewards. It was suggested that some of the traditional chiefs and elites have forgotten their initial struggles for social and environmental justice, and have now become compensation professionals. They invent different schemes to obtain compensation from the government, oil corporations and international relief agencies. In situations like this, money meant for developmental purposes are usually diverted into private pockets, instead of being used to execute developmental projects in the communities.

As a result, it is strongly recommended that members of the oil host-communities should eschew selfish economic pursuits and work instead towards the general development of the region. The militant youths should stop their acts of violence and work harmoniously with the government and the oil MNCs, in order to effectively utilize oil rents for the development of the region.

In this context, the suggestion is that the advancement of monetary compensation to some members of the Niger Delta communities should be de-accentuated, and completely eliminated if possible. Rather than hand out money to community elites and traditional chiefs, both the government and oil MNCs should consult extensively with the communities and apply any due compensation fund towards the provision of agreed projects within the communities. This will generate a sense of belonging and the communities will believe that they are been carried along when decisions affecting them are made.

Final Remarks

From the arguments developed in this thesis, it appears reasonable to conclude that contemporary CSR is not an effective solution to the Niger Delta crisis. The thesis has argued that contemporary CSR, in its voluntary and ameliorative form, merely scratches at the surface of social responsibility.

In this context, the thesis suggests that any intention of making CSR effective in the Niger Delta, and perhaps more generally, will require challenging powerfully vested financial interests. It will equally entail challenging conventional wisdoms and understandings, one of the most important of which is the idea that shareholders are corporate 'owners', which in turn underlies the belief that corporations should be run solely in their interests.[23]

This will involve embarking on a programme of 'institutional re-design', which would surely include a re-appraisal of the rights-obligations structures that make up modern corporations, necessitating a rejection of these structures as fundamentally unalterable 'givens'. It will compel a significant examination of the constituent elements of corporate rights and duties and a willingness to alter them. It will also require an analytical de-construction, and if necessary, a radical alteration in the nomenclature of shareholder rights. This process will require underlining the separation (both in law and in reality) of the corporation from its shareholders (particularly those with merely pecuniary interests). Put in another way, it will require taking separate corporate personality seriously. However, pursuing the argument for the re-structuring of the corporate form is outside the ambit of this research.[24]

What this thesis has done is to investigate whether the CSR practices of the oil multinationals is an effective solution to the unrest in the Niger Delta region. In doing this, it gave an account of the history of the Niger Delta conflict and the CSR practices of the MNCs. In the course of the narrative, the thesis was able to identify and categorize for analytical purposes, a number of inter-connected but distinguishable barriers to effective CSR: ideological, practical and political. It argued that these barriers, rooted mainly in the Anglo-American neoliberal free market ideology, make it impossible for corporations to take CSR seriously and see the concept as anything beyond the business case. The thesis was also able to examine the processes through which the Nigerian state became commoditized

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[23] For a detailed analysis of whether shareholders are the true owners of the corporation, see John Kay and A Silberston, 'Corporate Governance' (31 August 1996) *Perspectives on Company* Law Vol. 2 <www.johnkay.com/1996/08/31/corporate-governance-with-aubrey-silberston> accessed 10 September 2013; See also Paddy Ireland, 'Company law and the Myth of Shareholder Ownership' (1999*) Modern Law Review* Vol. 62 (1) 32-57

[24] For an analysis of the programme of institutional re-designing of corporations, see Colin Mayer, *Firm Commitment: Why the Corporation is failing us and How to Restore Trust in It* (Oxford: Oxford University Press 2013)

and offered to the highest bidders – the oil MNCs. Furthermore, it analysed the problem of corruption and how it now constitutes a political barrier to effective CSR in the Nigerian context. In the end, it suggested that it will be difficult to expect contemporary CSR to be effective as a solution to the Niger Delta crisis.

In the final analysis, corporations desire to transmit 'as much risk as possible to others', while permitting and encouraging those others to be ignorant of the actual character of such risks. Flourishing corporations 'do not – and cannot – take into account the human victims of the collateral damage' arising from their activities. This accounts for why corporations are accused of being fundamentally immoral, notwithstanding the facade of 'benevolent engines of growth' which they portray.[25] The suggestion is that expecting contemporary CSR – on its own and in its voluntary form – to solve the Niger Delta debacle appears futile and meaningless. In the words of MacIntyre, 'teaching ethics to traders' will be 'as pointless as reading Aristotle to your dog. The better the trader, the more morally despicable they will be'.[26]

This does not mean that contemporary CSR is entirely without value. Being seriously committed to the negative injunction duties of CSR is a factor that can cloak corporate practices with a considerable degree of legitimacy and respectability. By engaging more in this duty, corporations will show that they are committed to both the spirit and the letters of CSR. Moreover, the Nigeria state has to curtail the level of corruption in the country and make efforts to properly regulate the activities of oil MNCs. This will encourage and ensure the equitable distribution of the country's abundant resources. Perhaps, it is only when these are done that effective CSR will be realized in Nigeria and the Niger Delta specifically.

[25] J Cornwell, 'MacIntyre on Money' (20 October 2010) *Prospect Magazine* <www.prospectmagazine.co.uk/magazine/alasdair-macintyre-on-money/> accessed 27 September 2012
[26]Quoted in J Cornwell, ibid

BIBLIOGRAPHY

Books and Edited Collections

Aaron KK, 'Two Theses on Corporate Social Responsibility Performance in the Niger Delta' in Aaron KK and Dawari G (eds.) *Placebo as medicine: The Poverty of Development Intervention and Conflict Resolution Strategies in the Niger Delta Region of Nigeria* (Nigeria: Kemuela Publications 2010)

Adams I, *Political Ideology Today* (Manchester: Manchester University Press 2001)

Adegbite E, 'Corporate Governance and Initial Public Listing in Nigeria' in Alessandro Zakoni and William Judge (eds.) *Corporate Governance and Initial public Offerings: An International Perspective* (Cambridge: Cambridge University Press 2012)

Akinpelu AO, *Corporate Governance Framework in Nigeria: An International Review* (Bloomington: iUniverse 2012)

Akinsulire O, *Financial Management* (Lagos: Toda Ventures 2008)

Alalade CB, 'The Economic Performance of International Oil Companies in Nigeria' (PhD Thesis submitted to the Bournemouth University, July 2004)

Allen F, *Implementation of Oil Related Environmental Policies in Nigeria: Government Inertia and Conflict in the Niger Delta* (Newcastle upon Tyne: Cambridge Scholars Publishing 2012)

Amuwo, A, *Constructing the Democratic Developmental State in Africa: A Case Study of Nigeria, 1960-2007* (Johannesburg: Institute for Global Dialogue 2008)

Anderson GW, *Constitutional Rights after Globalisation* (Oxford: Hart Publishing 2005)

Ariyo A and Adelegan OJ, *Assessing the Impact of Capital Market Reforms in Nigeria: An Incremental Approach* (Paper presented at the 46th Annual Conference of the Nigerian Economic Society, Lagos, Nigeria, 23–25 August 2005)

Asuni JB, *Understanding the Armed Groups of the Niger Delta* (New York NY: Council on Foreign Relations Working Paper 2009)

Balkan J, *The Corporation: The Pathological Pursuit of Profit and Power* (London: Constable and Robinson Limited 2005)

Barry A, Osborne T and Nikolas R, (Eds.) *Foucault and Political Reason-Liberalism, Neoliberalism and the Rationalities of Government* (London: University College London Press 1996)

Berkman S, *The World Bank and the Gods of Lending* (Bloomfield CT: Kumarian Press 2008)

Berle A and Means GC, *The Modern Corporation and Private Property* (New York: Transaction Books 1932)

Berle A *The Modern Corporation and Private Property* (2nd Rev. Edition, New York: Harcourt Brace & World 1968)

Bollier D, *Aiming Higher: 25 stories of how companies prosper by Combining Sound Management and Social Vision* (New York: Amacom Publishers 1996)

Boltansk L and Chiapello E, *The New Spirit of Capitalism* (New York: Verso Publishers 2007)

Bond P, 'Neoliberalism in Sub- Saharan Africa: From Structural Adjustment to NEPAD' in Filho AS and Johnston D (eds.) *Neoliberalism A Critical Reader* (London: Pluto Press 2005)

Bossche VD, *The Law and Policy of the World Trade Organisation* (2nd Edition, London: Cambridge University Press, 2008)

Brunsson N, 'Organized Hypocrisy' in Czarniawska B, and Sevon G, (eds.) *The Northern Lights: Organization Theory in Scandinavia* (Stockholm: Liber AB 2003)

Buchholz RA, *Principles of Environmental Management: The Greening of Business* (2nd Edition, New Jersey: Prentice Hall 1993)

Carroll AB and Buchholtz AK, *Business and Society: Ethics and Stakeholder Management (*5th ed. Australia: Thomson South-Western 2003)

Carroll W, *The Making of a Transnational Capitalist Class* (London; Zed Books 2010)

Carroll, AB, 'A History of Corporate Social Responsibility: Concepts and Practices' in Andre Crane et al (eds.) *The Oxford Handbook of Corporate Social Responsibility*, (New York: Oxford University Press 2008)

Chabal P and Daloz JP '*Africa Works: Disorder as Political Instrument* (Bloomington: Indiana University Press 1999)

Chang H, *Bad Samaritans: The Guilty Secrets of Rich Nations and the Threat to Global Prosperity* (London: Random House 2008)
___ *23 Things They Don't Tell You about Capitalism* (London: Penguin Books 2010)

Clark RB, (ed.) *The Long Term Effects of Oil Pollution on Marine Populations, Communities and Ecosystems* (London: Royal Society 1982)

Davies GF, *Managed by the Markets: How Finance Re-shaped America*, (New York: Oxford University Press 2009)

Davies P, 'Shareholder Value, Company Law, and Securities Markets' in Hopt KJ and Wymeersch E (eds.) *Capital Markets and Company Law* (Oxford: OUP 2003)

Dean M, *Governmentality: Power and Rule in Modern Society* (London: Sage Publications 1999)

DesJardins J, *An Introduction to Business Ethics* (2nd ed., New York, NY: McGraw-Hill 2006)

Dibua J, *Modernization and the Problem of Development in Africa* (Vermont: Ashgate Publishing 2006)

Dike KO, *Trade and Politics in the Niger Delta 1830-1885: An introduction to the Economic and Political history of Nigeria* (Oxford: Oxford University Press 1956)

Dobbin F and Zorn D, 'Corporate Malfeasance and the Myth of Shareholder Value' in Davis DE, *Political Power and Social Theory*, *Vol. 17* (Cambridge, MA: MIT 2005)

Dolzer R and Stevens M, *Bilateral Investment Treaties* (The Hague: Martinus Nijhoff Publishers 1995)

Dumenil G and Levy D, 'Costs and Benefits of Neoliberalism: A Class Analysis' in Epstein (ed.) *Financialization and the World Economy* (Massachusetts: Edward Elgar Publishing 2005)

Duruigbo E, O. Wozniak & Leighton M, *Oil development in Nigeria: a Critical Investigation of Chevron Corporation's Performance in the Niger River Delta* (Berkeley: Natural Heritage Institute-nautilus institute- Human Rights Advocates 2001)

Eichengreen B, *Toward a New International Financial architecture: A Practical Post-Asia Agenda* (Washington DC: Institute of International Economics 1999)

Feil M, *Global Governance and Corporate Social Responsibility in Conflict Zones* (Basingstoke: Palgrave Macmillan 2012)

Fine B, 'Neither the Washington nor the Post Washington Consensus: An Introduction' in Fine B, Lapavitsas C, and Pincus J (ed.) *Development Policy in the Twenty-First century: Beyond the Post Washington Consensus* (London: Routledge Publishers 2001)

Foucault M, *The Birth of Bio politics – Lectures 1978-9* (Paris: Gallimard 2004)

Friedman T, *The Lexus and the Olive Tree: Understanding Globalisation* (2nd Edition, New York: First Anchor Books 2000)

Frynas JG, *Oil in Nigeria: Conflict and Litigation between Oil Companies and Village* (Hamburg-London: LIT Publishers 2000)

Galbraith JK, *American Capitalism: The Concept of Countervailing Power* (New York: Houghton Mifflin 1956)

___ *The Great Crash 1929: The Classical Account of Financial Disaster* (London: Penguin Books 2009)

Garner BA, *Black's Law Dictionary* (8th Ed. London: St Paul West Publishing Co. 2004)

Grampp WD, '*The Stoic Origins of Liberalism: Economic Liberalism, Vol.1' (*New York: Random House 1965)

Guobadia A, 'Minority and Public Interests in Nigerian Company Law: The Corporate Affairs Commission as a Corporations Ombudsman' in McMillan F (ed.) *International Company Law Annual*, *Vol.1* (Oxford-Portland Oregon: Hart Publishing 2000)

Hale R, 'Economic Theory and the Statesman' in Tugwell RG (ed.) *The Trend of Economics* (New York; Knopf, 1924)

___ 'Economics and Law' in Ogburn WF and Goldenweiser A (eds.) *The Social Sciences and their Interrelations* (London: Allen & Urwin, 1927)

___ *Freedom through Law* (New York: Columbia University Press, 1952)

Hannah L, 'Visible and Invisible Hands in Great Britain' in Chandler AD & Daems H (eds.) *Managerial Hierarchies* (Cambridge, Mass.: Harvard University Press, 1980)

___*The Rise of the Corporate Economy* (2nd edition, London: Methuen & Co, 1983)

Hansen MH, *A Comparative Study of Thirty City-State Cultures: An Investigation* (Kgl. Danske Videnskabernes Selskab, Denmark: 2000)

Hansmann H and Kraakman R, 'Towards a Single Model of Corporate Law?' in McCahery J and others, (eds.) *Corporate Governance Regimes: Convergence and Diversity* (Oxford: Oxford University Press 2002)

Harvey D, *A Brief History of Neoliberalism* (Oxford: Oxford University Press 2005)

___*The Enigma of Capital and the Crisis of Capitalism* (London: Profile Books 2010)

Helleiner E, *States and the Re-Emergence of Global Finance: From Bretton Woods to the 1990s* (New York: Cornell University Press 1995)

Herrigel G, 'Corporate Governance: History without Historians' in G. Jones and Zeitlin Z (eds.) *Handbook of Business History* (Oxford: Oxford University Press 2006)

Holton JH, *The Rogues and Rogueries of New York* (Seattle: CreateSpace Independent/Amazon Publishing 1969)

Horn N, 'Enterprise Organization Relating to Law on Shares in High Industrialization (1860-1920), Germany, France, and the USA in Comparison' in N. Horn & J. Kocka (eds.) *Law and the Formation of Big Enterprises in the 19th and Early 20th Centuries* (Gottingen: Vandenhoek & Ruprecht, 1979)

Hyden G, *African Politics in Comparative Perspective (*Cambridge: Cambridge University Press 2005)

Iheme E, *The Incubus: The story of Public Enterprise in Nigeria* (Lagos: Helmsman Associates Pub 1997)

Ikein AA, Alamieyeseigha DSP and Azaiki SS, *Oil, Democracy, and the Promise of True Federalism in Nigeria* (New York: University Press of America 2008)

Ingham B, *International Economics; A European focus* (London: Pearson Education Ltd 2004)

Ireland P and Pillay RG, 'Corporate Social Responsibility in a Neoliberal Age' in P. Ytting, and J. Marques, (eds.) *Corporate Social Responsibility and Regulatory Governance* (Hampshire: Palgrave Macmillan, 2009)

Ireland P, 'Defending the Rentier: Corporate Theory and the Reprivatisation of the Public Company' in J. Parkinson, A. Gamble and G. Kelly (eds.) *The Political Economy of the Company* (Oxford: Hart Publishing, 2001)
___'Property, Private Government and the Myth of Deregulation' in Worthington S (ed.) *Commercial Law and Commercial Practice* (Oxford: Hart Publishing 2003)

James VU (ed.), *Sustainable Development in Third world Countries: Applied and Theoretical Perspectives* (London: Praeger Publishers 1996)

Kamensky J, *The Exchange Artist: A Tale of High Flying Speculation and America's First Banking Collapse* (New York, Viking Publishers 2008)

Kass A, *Neoliberal Nigeria, the United States, and Oil: Linking Production and Consumption* (A Senior Honours Thesis, Ohio State University 2008)

Keynes JM, *The General Theory of Employment, Interest and Money* (London: Macmillan, 1936)

Khurana R, *From Higher Aims to Hired Hands: The Social Transformation of American Business Schools and the Unfulfilled Promise of Management as a Profession* (Princeton, NJ: Princeton University Press, 2007)

Korten DC, *When Corporations Rule the World* (London; Earthscan Publications 1999)

Kristol I, *Reflections of a Neoconservative: Looking Back, Looking Ahead* (New York: Basic Books 1983)

Kuhn T, *The Structure of Scientific Revolutions* (3rd edition, Illinois: University of Chicago Press, 1996)

Larner W and Walters W (eds.), *Global Governmentality: Governing International Spaces* (London; Routledge 2004)

Laski H, *The Grammar of Politics* (London: George Allen and Unwin 1941)

Law R, *From State Slavery to 'Legitimate Commerce: The Commercial Transition in Nineteenth-Century West Africa (*Cambridge: Cambridge University Press, 1995)

Lipmann W, *The Good Society* (Guildford-Great Britain: Billing & Sons, 1938)
___ *Drift and Mastery: An Attempt to Diagnose the Current Unrest*, (Madison: University of Wisconsin Press, 1914)

Lowenfeld AF, *International Economic Law* (2nd edition, London: Oxford University Press 2008)

Lynch F, *Working within Two Kinds of Capitalism: Corporate Governance and Employee Stake-holding: US and EU Perspectives* (Portland Oregon: Hart Publishing 2003)

M. K. Addo (ed.) *Human Rights Standards and the Responsibility of Transnational Corporations* (Leiden: Brill Academic Publishers 1999)

Mallin C, *Corporate Governance* (London: OUP 2013)

Marchand R, *Creating the Corporate Soul: The Rise of Public Relations and Corporate Imagery in American Big Business*, (Los Angeles: University of California Press, 1998)

Mason ES, *Corporation in Modern Society* (Cambridge MA: Harvard University Press 1959)

Maycock EA, *An Investigation into Performance-Bases pay in Nigerian Financial Institutions* (PhD Thesis, University of Bedfordshire, 2009)

Mayer C, *Firm Commitment: Why the Corporation is Failing Us and How to Restore Trust in It* (Oxford: Oxford University Press 2013)

Mills CW, *The Power Elite* (New York: Oxford University Press 1956)

Mirowski P, 'Post Face' in P. Mirowski and D. Plehwe (eds.) *The Road from Mont Pelerin: The Making of the Neoliberal Thought Collective* (Cambridge Massachusetts: Harvard University Press 2009)

Moon J, 'An Explicit Model of Business-Society Relations' in A. Habisch, J. Jonker, M. Wegner and R. Schmidpeter (eds.) *Corporate Responsibility Across Europe* (Berlin: Springer 2005)

Muchlinski PT, *Multinational Enterprises and the Law* (2nd ed. Oxford: OUP 2007)

Mühle U, *The Politics of Corporate Social Responsibility: The Rise of a Global Business Norm* (Frankfurt am Main: Campus Verlag 2010)

Mukwaya A, 'Truth without Reconciliation: The Niger Delta and the Continuing Challenge of National Reconciliation' in Fawole, Alade & Ukeje (eds.) *The Crisis of the State and Regionalism in West Africa. Identity, Citizenship and Conflict*, (Butherworths: Dakar 2005)

Noriah N, Dyer D and Dalzell F, *Changing Fortunes: Remaking the Industrial Corporation* (New York: Wiley 2002)

O'Sullivan MA, *Contests for Corporate Control: Corporate Governance and Economic Performance in the United States and Germany* (New York: Oxford University Press 2000)

Obi CI, 'Global, State and Local Intersections: Power, Authority, and Conflict in the Niger Delta Oil Communities' in Callaghy T, Kassimir R and Latham R (eds.) *Intervention and Transnationalism in Africa* (Cambridge: Cambridge University Press 2001)

Odeleye I, 'Corporate Social Responsibility and the In-house Counsel' in R Mullerat and D. Brennan (eds.) *Corporate Social Responsibility: The Corporate Governance of the 21st Century* (Hague: Kluwer Law International 2005)

Ogundele OJK, *Management and Organisations: Theory and Practice*, (Lagos: Molofin Alominee Publishers 2005)

Ojakorotu V, *The Internationalisation of a Domestic Crisis: a Case Study of the Niger Delta in Nigeria, 1993-2003* (Draft Doctoral Thesis, Department of International Relations, Wits University, Johannesburg 2004)

Okonta I and Douglass O, *Where Vultures Feast; Shell, Human Rights and Oil* (London: Verso Books 2003)

Olukoshi A, 'Impact of IMF-World Bank Programmes in Nigeria' in B Onimode (ed.) *The IMF, The World Bank and the African Debt: The Economic Impact* (London: Zed Books 1989)

Omeje K, *High Stakes and Stakeholders: Oil Conflict and Security in Nigeria* (Hampshire and Burlington: Ashgate Publishers 2006)

Omeri MOA and Nchi SI, *Petroleum in Nigeria: Legal, Economic and Political Issues* (Jos: Greenworld Publishing 2008)

Omorogbe Y, *Oil and Gas Law in Nigeria* (Lagos: Malthouse Press 2001)

Orojo JO, *Company Law and Practice in Nigeria*, (3rd Ed., Lagos, Nigeria: Mbeyi & Associates Nigeria Ltd, 1992)

Otobo D (ed.) *Labour Relations in Nigeria* (Malthouse Press Lagos 1992)

Palley TI, 'From Keynesianism to Neoliberalism: Shifting Paradigms in Economics', in Johnston D and Filho AS, (ed.) *Neoliberalism, A Critical Reader* (New York: Pluto Press, 2004)

Perkins J, *Confession of an Economic Hitman* (New York NY: Plume 2005)

Perrow C, *Organising America: Wealth, Power and the Origins of Corporate Capitalism* (Princeton, NJ: Princeton University Press 2002)

Phillips RA, *Stakeholder Theory and Organizational Ethics* (San Francisco: Barrett-Koehler 2003)

Philp M, 'Michel Foucault', in Skinner Q (ed.) *The Return of the Grand Theory in the Human Sciences*, (Cambridge: Cambridge University Press, 1985)

Plant R, *The Neoliberal State* (Oxford: Oxford University Press, 2010)

Plehwe D & Walpen B, 'Between Network and Complex Organisation: The Making of Neoliberal Knowledge and Hegemony' in Plehwe D, Walpen B and Neunhoffer G (Eds.) *Neoliberal Hegemony; A Global Critique* (London: Routledge 2006)

Polanyi K, *The Great Transformation* (Boston: Beacon Press 1957)

Rapley J, *Understanding Development and Practice in the Developing World*, (3rd Ed. New York: Lynne Rienner Publishers 2007)

Robertson R, 'Glocalization: Time-Space and Homogeneity-Heterogeneity' in Mike Featherstone, Scott Lash and Roland Robertson (eds.) *Global Modernities* (London: Sage 1995)

Roe MJ, *Strong Managers, Weak Owners: The Political Roots of American Corporate Finance* (Princeton, NJ: Princeton University Press 1994)

Ronne A, 'Public and Private Rights to Natural Resources and Differences in their Protection?' in Aileen McHarg and others (eds.) *Property and the Law in Energy Resources* (Oxford: OUP 2010)

Salvatore D, *International Economics*, (9th edn, New York: John Wiley and Sons Inc. 2007)

Sanusi SL, *The Nigerian Banking Industry: What went Wrong and the Way Forward* (a convocation lecture to mark the Annual Convocation Ceremony of the Ade Bayero University, the Convocation Square, Ade Bayero University, Kano, Friday 26 February, 2010)

Schneiderman D, *Constitutionalizing Economic Globalization* (Cambridge: Cambridge University Press 2008)

Sennett R, *The Culture of the New Capitalism* (New Haven: Yale University Press 2006)

Simon GJ, Powers WC & Gunnemann PJ, 'The Responsibilities of Corporations and their Owners' in Beauchamp TL & Bowie NE (ed.) *Ethical Theory and Business* (Englewood Cliffs: Prentice-Hall 1972)

Skinner A (Ed.), '*Introduction' to Adam Smith's The Wealth of Nations, first published 1776*, (Harmondsworth: Penguin Books 1970)

Sklair L, *The Transnational Capitalist Class* (Oxford; Wiley-Blackwell, 2001)

Soederberg S, *The Politics of the New International Financial Architecture: Re-imposing Neoliberal Domination in the Global South* (London: Zed Books 2004)

Starr P, 'The Meaning of Privatization' in A. Kahn and S Kamerman (eds.) *Privatization and the Welfare State* (Princeton: Princeton University Press 1989)

Stiglitz J, *Globalisation and its Discontents* (London: Penguin Books 2002)

Streeck W, *Reforming Capitalism: Institutional Change in the German Political Economy* (London: Oxford University Press 2009)

Styles J, *Titus Salt and Saltaire: Industry and Virtue* (Shipley-England: Salts Estates Ltd. 1994)

Suberu T.R, *Ethnic Minority Conflicts and Governance in Nigeria* (Ibadan: Spectrum Books 1996)

Swope G, *The Swope Plans: Details, Criticisms, Analysis* (New York: Business Bourse 1931)

T. Bergin, *Spills and Spin: The inside Story of BP* (London: Random House Business Books 2011)

Taylor I, "Introduction" in Taylor I and Popham G (eds.) *An Introduction to Public Sector Management* (London: Unwin-Hayman 1989)

Taylor J, *Creating Capitalism: Joint-Stock Enterprise in British Politics and Culture, 1800-1870* (London: Royal Historical Society Pub 2006)

Todaro MP and Smith SC, *Economic Development (*8th Edition, Harrow: Pearson Addison Wesley 2003)

Ukaogo V, 'Transnational Business Ethics, Government Policies & the Crisis of Pollution & Under Development in the Niger Delta' in Osuntokun A (ed.) *Environmental Problems of the Niger Delta* (Lagos: Frederick Ebert Foundation 2000)

Urwick L, 'The International Position', in Mackay RJ (ed.) *Business and Science: Being Collected Papers Read to the Department of Industrial Co-operation at the Centenary Meeting of the British Association for the Advancement of Science, London, September, 1931* (London: Sylvan Press 1932)

Useem M, *Executive Defense: Shareholder Power and Corporate Reorganisation* (Cambridge: Harvard University Press 1993)

Utting P, *The Next Step in Social Development* (Geneva: United Nations Research Institute for Social Development 2000)

Veblen T, *Absentee Ownership and Business Enterprise in Recent Times: The Case of America* (New York: B.W Heubsch 1923)

Weiss B, *The Hell of the English: Bankruptcy and the Victorian Novel*, (Lewisburg: Bucknell University Press 1986)

Whately R, *Easy Lessons on Money Matters: For the Use of Young People* (London: J.W. Parker 1845)

Wheeler D and SillanPaa M, *The Stakeholder Corporation: A Blue Print for Maximising Stakeholder Value* (London: Pitman, 1997)

Williamson O, *The Economic Institutions of Capitalism* (New York: Free Press Publishers 1985)

Wolfensohn J, *The Other Crisis: 1998 Annual Meeting Address* (Washington DC: World Bank/IMF Annual Meetings October 1998)

Woods EM, *The Origin of Capitalism: A longer View* (London: Verso Publishers 2002)

Yergin D & Stanislaw J, *The Commanding Heights: the Battle between Government and Market Place that is Remaking the Modern World* (New York: Simon & Schuster Pub 1999)

Young D & Scott P, *Having Their Cake... How the City and Big Bosses are consuming UK Business* (London: Kogan Page Limited 2005)

Zawada A, *Neoliberal Governmentality, Corporate Responsibility and the Governing of Citizens in Nigeria: The Case of ExxonMobil, Shell and Chevron* (Dissertation submitted to the Faculty of Graduate Studies, University of Windsor 2010)

Journal Articles and Working Papers

Aaron KK and Patrick JM, 'Corporate Social Responsibility Patterns and Conflicts in Nigeria's Oil-Rich Region' (2013) *International Area Studies Review*, Vol.16 (4) 341–356

Aaron KK, 'New Corporate Social Responsibility Models for Oil Companies in Nigeria's Delta Region: What Challenges for Sustainability?' (2012) *Progress in Development Studies Vol.*12 (4) 259-273

Aborisade F, 'Petro-Capitalism, Neoliberalism, Labour and Community Mobilization in Nigeria' (2010) *Capital and Society* Vol. 43 (1) 32-62

Ackoff R, 'The Corporation as a Community, not as a Corpus' (2002) *Reflections* Vol. 4(1) 14-21

Adams CA, 'Internal organizational factors influencing corporate social and ethical reporting: Beyond Current Theorising' (2002) *Accounting, Auditing and Accountability Journal, Vol. 15(2)* 223–250

Adaramola AO and Oluwagbuyi LO, 'Synergistic Effect of Recent Mergers and Acquisitions in Nigerian Banking Industry' (2014) *Developing Country Studies* Vol. 4 (8) 45-52

Adegbite E, 'Corporate Governance Regulation in Nigeria' (2012) *Corporate Governance,* Vol. 12 (2) 259

Adegbite E, Amaeshi K and Nakajima C, 'Multiple Influences on Corporate Governance Practice in Nigeria: Agents, Strategies and Implications' (2013) *International Business Review*, Vol.22, 524–538

Adelegan OJ, 'Internal and External Governance Mechanisms: Evidence from the Nigerian Banking Industry' (2005) *Corporate Ownership and Control* Vol. 2(3), 62–67

Adeyemo DO and Salami A, 'A Review of Privatization and Public Enterprises Reform in Nigeria' (2008) *Contemporary Management Research* Vol. 4 (4) 401-418

Afinotan A and Ojakorotu V, 'The Niger Delta Crisis: Issues, Challenges and Prospects' (2009) *African Journal of Political Science and International Relations* Vol. 3 (5) 195

Aguilera RV and others, 'Putting the 'S' Back in Corporate Social Responsibility: A Multi-level Theory of Social Change in Organisations' (2007) *Academy of Management Review*, Vol. 32, 836-863

Agwu MO, 'Community Participation and Sustainable Development in the Niger Delta' (2013) *British Journal of Education, Society and Behavioural Science* Vol. 3 (1) 36

Ahunwan B, 'Corporate Governance in Nigeria' (2002) *Journal of Business Ethics*, Vol. 37 270

Akanbi TA, Aworemi JR and Amoo RO, 'The Impact of Downstream Oil Sector Deregulation on Petroleum Products Pricing and Consumption in Nigeria' (2013) *Sky Journal of Business Administration and Management* Vol. 1(4) 33 - 39

Ake C, 'The Future of the State in Africa' (1985) *International Political Science Review,* Vol.6 (1) 24

Akinlo AE, 'How Important is Oil in Nigeria's Economic Growth?' (2012) *Journal of Sustainable Development* Vol. 5 (4) 165-180

Akintayo AE, A Good Thing from Nazareth? Stemming the Tide of Neoliberalism against Socio Economic Rights (2014) *ESR Review* Vol. 15 (2) 5-9

Ako RT, Obokoh LO and Okonmah PO, 'Forging Peaceful Relationships between Oil Companies and Host Communities in Nigeria's Niger Delta Region: A Stakeholder's Perspective to Corporate Social Responsibility' (2009) *Journal of Enterprising Communities: People and Places in the Global Economy* Vol. 3 (1) 206-207

Akpan W, 'Between Responsibility and Rhetoric: Some Consequences of CSR Practice in Nigeria's Oil Province' (2006) *Development Southern Africa* 23(2): 223–240.

Akwen GT and Gever DT, 'Challenges of Democracy and Development in Nigeria's Niger Delta Region: An Appraisal' (2012) *European Scientific Journal* Vol. 8 (16) 60

Alkholy A, 'Arbitration in Energy Disputes' (2000) *Journal of Arab Arbitration Vol. 2* 42-48

Amadi BO and Abdullah H, 'Evaluating Multi-Sector Partnerships for Sustainable Community Development in Nigeria' (2011) *Canadian Social Science* Vol. 7(6) 275

___ 'Poverty Alleviation through Corporate Social Responsibility in Niger Delta, Nigeria' (2012) *Asian Social Science* Vol. 8(4) 62-64

Amaeshi K & Amao OO, 'Corporate Social Responsibility in Transnational Spaces: Exploring Influences of Varieties of Capitalism on Expressions of Corporate Codes of Conduct in Nigeria' (2009) *Journal of Business Ethics*, Vol. 86, 226- 227

Amao OO, 'Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States' (2008) *Journal of African Law* Vol. 52 (1) 91-97

Anyanwu JC, 'Stock Market Development and Nigerian Economic Growth' (1998) *Nigerian Financial Review,* 7(2) 6-13

Anyim FC and others, 'Conflict and Environmental Challenges Facing the Oil Companies in Nigeria Niger-Delta Region' (2012) *International Journal of Bus and Management Tomorrow*, Vol. 2(3) 4

Armour J, Deakin S and Konzelmann SJ, 'Shareholder Primacy and the Trajectory of UK Corporate Governance' (2003) *British Journal of Industrial Relations*, Vol. 41, 531

Babaita IS, An Appraisal of Employee Motivation in the Nigeria Banking Industry (2011) *British Journal of Humanities and Social Sciences* Vol. 2(1) 96 -99

Babalola D, 'The Underdevelopment of Nigeria's Niger Delta Region: Who is to Blame?' (2014) *Journal of Sustainable Development* Vol. 7 (3) 118-128

Babatunde MA and Olaniran O, 'The Effects of the Internal and External Mechanism on Governance and Performance of Corporate Firms in Nigeria' (2009) *Corporate Ownership and Control* Vol. 7 (2) 332

Bainbridge SM, 'In Defence of the Shareholder Wealth Maximization Norm: A Reply to Professor Green' (1993) *Washington and Lee law Review*, Vol. 50 (4) 142

Batson CD, Collins E and Powell AA, 'Doing Business after the fall: The Virtue of Moral Hypocrisy' (2006) *Journal of Business Ethics*, Vol. 66 (4), 321-335

Bethoux E, Didry C and Mais A, 'What Codes of Conduct Tell Us: Corporate Social Responsibility and the Nature of Multinational Corporations' (2007) *Corporate Governance: An International Review* 15(1) 77

Bishop D, 'International Arbitration of Petroleum Disputes: The Development of a Lex Petrolea?' (1998) *Year Book of Commercial Arbitration Vol. 23 (1)* 131-141

Boele R, Fabig H and Wheeler D, 'Shell, Nigeria and the Ogoni, a Study in Unsustainable Development: II. Corporate Social Responsibility and 'Stakeholder Management' Versus a Rights-Based Approach to Sustainable Development' (2001) *Sustainable Development*, 9, 123

Boltanski L and Chiapello E, 'The New Spirit of Capitalism' (2005) *International Journal of Political and Cultural Sociology,* Vol. 18, 161-164

Bonini S and others, 'When Social Issues Become Strategic: Executives Ignore Socio-Political Debates at Their Own Peril' (2006) *McKinsey Quarterly Newsletter*, Vol. 2006, 2

Bowman A and others, 'The Finance and Point Value-Complex' (2012) *Centre for Research on Socio-Cultural Change (CRESC)* Working Paper Series No. 118, 12

Bowman A, and others, 'Business Elites and Undemocracy in Britain: a Work in Progress' (2013) *Centre for Research on Socio-Cultural Change (CRESC)* Working Paper Series No. 125, 18

Bradbrook A.J, 'The Relevance of the *Cujus Est Solum* Doctrine to the Surface Landowner's Claims to Natural Resources Located Above and Beneath the Surface' (1998) *Adelaide Law Review* Vol. 11 462-463

Brammer S, Jackson G and Matten D, 'Corporate Social Responsibility and Institutional Theory: New Perspectives on Private Governance' (2012) *Socio-Economic Review*, Vol. 10, 11

Brodie J, 'Reforming Social Justice in Neoliberal Times' (2007) *Studies in Social Justice Vol. 1* 93-107

Caillard V, 'Industry and Production' (1929) *Financial Review of Reviews,* Vol. 22, 43

Carroll AB, 'Corporate Social Responsibility – Evolution of a Definitional Construction' (1999) *Business and Society* Vol. 38(3) 268– 295

Carroll C, 'Corporate Social Responsibility: Evolution of a Definitional Construct' (1999) *Business and Society*, Vol. 38, 271

Chang HJ, 'Breaking the Mould- An Institutionalist Political Economy Alternative to the Neo-Liberal Theory of the Market' (2002) *Cambridge Journal of Economics*, Vol. 26 (5) 2

Chatterji A, Levine D and Toffel M, 'How Well Do Social Ratings Actually Measure Corporate Social Responsibility?' (2009) *Journal of Economics and Management Strategy*, Vol. 18, 125-129

Chote R, 'Financial Crisis: The Lessons of Asia' (March, 2008) *Financial Crisis and Asia*, 10

Christensen J and Murphy R 'The Social Irresponsibility of Corporate Tax Avoidance: Taking CSR to the Bottom line' (2004) *Development Vol.* 47 39

Cour A and Kromann J, 'Euphemisms and Hypocrisy in Corporate Philanthropy' (2011) *Business Ethics: A European Review*, Vol. 20 (3) 268-269

Crafts NFR, 'Determinants of the Rate of Parliamentary Enclosure' (1977) *Explorations in Economic History*, Vol.14, 227–49

Crouch C, 'Modelling the Firm in its Market and Organisational Environment: Methodologies for studying Corporate Social Responsibility' (2006) *Organization Studies*, Vol. 27 (10) **1533**

Davies GF, 'Agents without Principles? The Spread of the Poison Pill through the INTER-Corporate Network' (1991) *Administrative Science Quarterly*, 36 (4) 583-613

___ 'The Twilight of the Berle and Means Corporation' (2011) *Seattle University Law Review*, Vol. 34, 1121-1126

Doane D, 'Beyond Corporate Social Responsibility: Minnows, Mammoths and Markets' (2005) *Futures*, Vol. 37, 215-229

Dodd EM, 'For Whom are Corporate Managers Trustees?' (1932) *Harvard Law Review* 45, 1147

Donaldson T, 'Moral Minimums for Multinationals' (1989) *Ethics and International Affairs*, Vol. 3 (1) 28

Donwa P and Odia J, 'An Empirical Analysis of the Impact of the Nigerian Capital Market on Her Socio-Economic Development' (2010) *Journal of the Social Sciences* Vol.24 (2) 135-142

Eaton JP, 'The Nigerian Tragedy, Environmental Regulation of Transnational Corporations, and the Human Right to a Healthy Environment' (1997) Boston University International Law Journal, 15 261-307

Ebegbulem JC, Ekpe D and Adejumo TO, 'Oil Exploration and Poverty in the Niger Delta Region of Nigeria: A Critical Analysis' (2013) *International Journal of Business and Social Science* Vol. 4(3) 279-280

Ebimobowei A and Sopia JM, 'Mergers and Acquisitions in the Nigeria Banking Industry: An Explorative Investigation' (2011) *The Social Sciences* Vol. 6 (3) 213-220

Egbe ODJ and Apaki FAE, 'The Rhetoric of Corporate Social Responsibility (CSR) in the Niger Delta' (2011) *American International Journal of Contemporary Research*, Vol. 1(3) 126

Ehinomen C and Adeleke A, 'An Assessment of the Distribution of Petroleum Products in Nigeria' (2012) *E3 Journal of Business Management and Economics* Vol. 3(6) 235

Ejims O, 'The Impact of Nigerian International Petroleum Contracts on Environmental and Human Rights of Indigenous Communities' (2013) *African Journal of International and Comparative Law* Vol. 21 (3) 345-377

Ekpu R, 'Corporate Social Responsibility and Peace in Oil Producing Communities' (2007) *NNPC News: Monthly News Bulletin of Nigerian National Petroleum Corporation*, Vol. 29 (9) 16

Elkins Z, Guzman A and Simmons B, 'Competing for Capital: The Diffusion of Bilateral Investment treaties 1960-2000' (2008) *University of Illinois Law Review,* 2008 (1) 265-306

Eme OI and Onyishi A, 'The Fallacies about the Down Stream Oil Sector Deregulation in Nigeria' (2011) *Interdisciplinary Journal of Contemporary Research in Business* Vol. 3(8) 187

Emmanuel A.O and others, 'Poverty, Oil exploration and the Niger Delta Crisis: The Response of the Youth' (2009) *African Journal of Political Science and International Relations*, Vol. 3 (5) 225

Erturk I and others, 'Deep Stall: The Euro Zone Crisis, Banking Reforms and Politics' (2012) *Centre for Research on Socio-Cultural Change (CRESC)* Working Paper Series No. 110, 45

Erunke CE and Kigbu H, 'Globalization, Multinational Corporation and the Nigerian Economy' (April, 2012) *International Journal of Social Science Tomorrow*, Vol. 1 (2) 3

Escobar A, 'Culture, Practice and Politics: Anthropology and the Study of Social Movements' (1992) *Critique of Anthropology*, Vol.12 (4) 396-397

Etieyibo E, 'Privatization in Nigeria, Social Welfare, and the Obligation of Social Justice' (2011) *Journal of Economics* Vol. 2 (1) 37-44

Etikerentse G, 'Taxation and Other Fiscal Provisions in the Petroleum Upstream Sector' (2003) *Oil, Gas & Energy Law Intelligence*, Vol. I (5) 28

Evuleocha SU, 'Managing Indigenous Relations: Corporate Social Responsibility in a New Age of Activism' (2005) *Corporate Communications, Vol. 10*(4) 328-340

Eweje G, 'Multinational Oil Companies' CSR Initiatives in Nigeria' (2007) *Management Law*, Vol. 49(56) 20-26

___ 'The Role of MNEs in Community Development Initiative in Developing Countries: Corporate Social Responsibility at Work in Nigeria and South Africa' (2006) *Business and Society Vol.* 45, 93–129

Ezirim GE, 'Multinationals and Adherence to the United Nations' Global Compact: A focus on Shell Petroleum Development Company in Nigeria' (2011) *Journal of Sustainable Development in Africa* Vol. 13 (3) 15-160

___ 'Resource Governance and Conflict in the Niger Delta: Implications for the Gulf of Guinea Region' (2011) *African Journal of Political Science and International Relations*, Vol. 5(2), 66

Fagbohun O., 'Re-appraising the Nigerian Constitution for Environmental Management' (2002) *AAU Law Journal* Vol.1 No. 1 (2002) 24-47

Fama EF and Jensen MC, 'Separation of Ownership and Control' (June, 1983) *Journal of Law and Economics*, Vol. 26 (2) 301-325

Fama EF, 'Agency Problems and the Theory of the Firm' (April, 1980) *Journal of Political Economy*, Vol. 88(2) 288-307

Ferguson J, ‘Seeing Like an Oil Company: Space, Security, and Global Capital in Neoliberal Africa’ (2005) *American Anthropologist* Vol.107 (3) 376-379

Frankel MS, ‘Professional Codes: Why, How and with What Impact?’ (1989) *Journal of Business Ethics* Vol. 8, 107-122

Franks J and Mayer C, ‘Hostile Takeovers and the Correction of Managerial Failure’ (1996) *Journal of Financial Economics*, Vol.40, 163

___ ‘Ownership and Control of German Corporations’ (2001) *The Review of Financial Studies*, Vol. 14 (4) 943-977

Freeman C, ‘New Technology and Catching Up’ (1989) *European Journal of Development Research*, Vol. 1 (1) 20-42

Froud J and others, ‘Everything for Sale: How Non-Executive Directors Make a Difference’ (2008) *CRESC Working Paper Series* No. 46, 5-6

Froud J, Johal S, Leaver A, Moran M and Williams K, ‘Groundhog Day: Elite Disconnects and the Failure of Financial Reform in the UK’ (2011) *Centre for Research on Socio-Cultural Change (CRESC)* Working Paper Series No. 108, 5

Frynas JG, ‘Corporate and State Responses to Anti-Oil Protests in the Niger Delta’ (2001) *African Affairs, Vol.* 100, 27–54

___ ‘The False Development Promise of Corporate Social Responsibility: Evidence from Multinational Oil Companies’ (2005) *International Affairs* 81, 581-583

___ ‘The Oil Boom in Equatorial Guinea’ (2004) *African Affairs* 103 (413), 527-546

Gebremeskel FP, ‘Emerging Separation of Ownership and Control in Ethiopian Share Companies: Legal and Policy Implications’ (March 2010) *Mizan Law Review* Vol. 4(1) 19-22

Gidado MM, *Petroleum Development Contracts with Multinational Corporations: Focus on the Nigerian Oil Industry* (PhD Thesis submitted to the School of Law, University of Warwick 1992)

Gill S, ‘The Global Panopticon? The Neo-liberal State, Economic Life and Democratic Surveillance’ (1995) *Alternatives*, Vol. 20 (1) 1-49

Gjɵlberg M ‘Explaining Regulatory Preferences: CSR, Soft Law, or Hard Law? Insights from a Survey of Nordic Pioneers in CSR’ (2011) *Business and Politics*, Vol. 13 (2) 7

Goldstein M, ‘Early Warning Indicators of Currency and Banking Crisis in Merging Economies’ (March 2008) *Financial Crises and Asia*, 51-52

Grossman HA, ‘Redefining the Role of the Corporation: The Impact of Corporate Social Responsibility on Shareholder Primacy Model’ (2005) *Deakin Law Review*, Vol. 10 (2) 579

Hale R, ‘Coercion and Distribution in a Supposedly Non-Coercive State’ (1923) *Political Science Quarterly*, Vol. 38, 470

___‘Lawmaking by Unofficial Minority’ (1920) *Columbia Law Review*, Vol. 20, 451

___ ‘Rate Making and the Revision of Property Concept’ (1922) *Columbia Law Review*, Vol. 22, 209

Handman M, ‘Economic History-The Decline of Laissez-Faire’ (March, 1931) *The American Economic Review*, Vol. 21(1)

Hay C, ‘The Normalizing Role of Rationalist Assumptions in the Institutional Embedding of Neoliberalism’ (2004) *Economy and Society*, 33 (4), 500-527

Hayami Y, 'From the Washington Consensus to the Post Washington Consensus: Retrospect and Prospect' [2003] *Asian Development Review*, Vol. 20 (2) 55

Heller MA, 'The Tragedy of the Anti-commons: Property in the Transition From Marx to Markets' (1998) *Harvard Law Review* Vol. 111 622–687

Herskovits J, 'Nigeria: Africa's New Power' (1975) *Foreign Affairs,* 304

Holmstrom B & Kaplan SN, 'Corporate Governance and Merger Activity in the United States: Making Sense of the 1980s and 1990s' (2001) *Journal of Economic Perspectives*, Vol. 15(2) 132

Hoogvelt MM and Tinker A, 'The Role of Colonial and Post-Colonial States in Imperialism-A Case Study of the Sierra Leone Development Company' (1978) *Journal of Modern African Studies* Vol. 16 (1) 67-79

Horn RV and Mirowski P, 'The Road to a World Made Safe for Corporations: The Rise of the Chicago School of Economics' (May, 2005) *University of Notre Dame Vol.* 5(1), 37

Hussain W, 'Corporations, Profit Maximization and the Personal Sphere' (2012) *Economics and Philosophy* Vol. 28, 311

Ibeanu O, 'Oiling the Friction: Environmental Conflict Management in the Niger Delta, Nigeria' (2000) *Environmental Change & Security Project Report*, Vol. 6, 20

Idemudia U and Ite UE, 'Demystifying the Niger Delta Conflict: Towards an Integrated Explanation' (2006) *Review of African Political Economy* Vol. 33 (109) 391-406

___ 'Corporate–Community Relations in Nigeria's Oil Industry: Challenges and Imperatives' (2006) *Corporate Social Responsibility and Environmental Management, Vol. 13,* 194–206

Idemudia U, 'Community Perceptions and Expectations: Reinventing the Wheels of Corporate social Responsibility Practices in the Nigerian Oil Industry' (2007) *Business and Society Review*, Vol. 112 (3) 377

___ 'Conceptualising the CSR Development Debate: Bridging Existing Analytical Gaps' (2008) *Journal of Corporate Citizenship, Vol.* 28, 101

___ 'Corporate Social Responsibility and the Rentier Nigerian State: Rethinking the Role of Government and the Possibility of Corporate Social Development in the Niger Delta' (2010) *Canadian Journal of Development Studies Vol.* 30 (1–2) 131–153

___ 'Oil Extraction and Poverty Reduction in the Niger Delta: A Critical Examination of Partnership Initiatives' (2009) *Journal of Business Ethics*, Vol. 90, 91-116

___ 'Rethinking the Role of Corporate Social Responsibility in the Nigerian Oil Conflict: The Limits of CSR' (2010) *Journal of International Development*, Vol. 22 (7) 833-845

Ihonvbere JO, 'Africa in the 1990s and Beyond: Alternative Prescriptions and Projections' (1996) *Futures* Vol. 28 (1) 23

Ikelegbe, A, 'Civil Society, Oil and Conflict in the Niger Delta Region of Nigeria: Ramifications of Civil Society for a Regional Resource Control (2001) *Journal of Modern African Studies* Vol. 39 (3) 23-24

Ikome FN, 'Conflict in the Niger Delta: Issues and Dynamics' (2005) *Global Insight* Vol. 44 5

Ikporukpo CO, 'The Management of Oil Pollution of Natural Resources in Nigeria' (1985) *Journal of Environmental Management* Vol. 20(3), 18-36.

Inokoba PK and Imbua DL, 'Vexation and Militancy in the Niger Delta: The Way Forward' (2010) *Journal of Human Ecology*, Vol. 29(2), 102

Ireland P, 'Company Law and the Myth of Shareholder Ownership' (1999) *Modern Law Review*, Vol. 62 (1), 32-57

____ 'Financialization and Corporate Governance' (2009) *Northern Ireland Legal Quarterly* Vol. 60 (1), 21

____ 'Law and the Neoliberal Vision: Financial Property, Pension Privatization and the Ownership Society' (2011) *Northern Ireland Legal Quarterly*, Vol. 62 (1) 1-32.

____ 'Limited Liability, Rights of Control and the Problem of Corporate Irresponsibility' (2010) *Cambridge Journal of Economics* Vol. 34 (5) 839

____ 'Shareholder Primacy and the Distribution of Wealth' (2005) *68 Modern Law Review*, Vol. 49, 30

Ite AE and Ibok UJ, 'Gas Flaring and Venting Associated with Petroleum Exploration and Production in the Nigeria's Niger Delta' (2013) *American Journal of Environmental Protection* Vol.1 (4) 70-77

Ite AE, Ibok UJ, Ite MU and Petters SW, 'Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria's Niger Delta' (2013) *American Journal of Environmental Protection Vol*. 1(4) 78-90

Ite UE, 'Changing Times and Strategies: Shell's contribution to Sustainable Community Development in the Niger Delta, Nigeria' (2007) *Sustainable Development*, Vol. 15, 12

___'Multinationals and Corporate Social Responsibility in Developing Countries: A Case Study of Nigeria (2004) *Corporate Social Responsibility and Environmental Management,* Vol. 11(1) 1-11.

Iwejingi SF, 'Socio-Economic Problems of Oil Exploration and Exploitation in Nigeria's Niger Delta' (2013) *Journal of Energy Technologies and Policy,* Vol. 3(1) 76

Jenkins R, 'Corporate Social Responsibility and the Mining Industry: Conflict and Constructs' (2004) *Corporate Social Responsibility and Environmental Management,* Vol. 11 (1) 23-24

Jensen MC & Meckling WH, 'Theory of the Firm: Managerial Behaviour, Agency Cost and Ownership Structure' (1976) *Journal of Financial Economics*, Vol. 3(4) 305-360

Jensen MC, 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function' (2010) Journal of Applied Corporate Finance, Vol. 22 (1) 32-42

___ 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function' (2002) *Business Ethics Quarterly* 12: 235–256

___ 'Takeovers: Folklore and Science' (1984) *Harvard Business Review*, vol. 68 (6) 108-132

Jones B and Nisbet P, 'Shareholder Value versus Stakeholder Values: CSR and Financialization in Global Food Firms' (2011) *Socio-Econ Review*, Vol. 9 (2) 287-314

Kalu K, 'Political Economy in Nigeria: The Military, Ethnic Politics and Development' (1996) *International Journal of Politics, Culture and Society*, Vol.10 (2) 229-247

Kates RW, Parris TM and Leiserowitz AA, 'What is Sustainable Development?: Goals, Indicators, Values and Practice' (2005) *Environment: Science and Policy for Sustainable Development* Vol. 47 (3) 8–21

Kay J and Silberston A, 'Corporate Governance' (31 August, 1996) *Perspectives on Company* Law, Vol. 2

Kaysen C, 'The Social Significance of the Modern Corporation' (1957) *American Economic Review* 47, 313

Kew D and Phillips DL, 'Seeking Peace in Nigeria's War-Torn Niger Delta' (2013) *New England Journal of Public Policy* Vol. 24 (1) 1-19

Kinderman D, 'Free us up so we can be Responsible!' The Co-Evolution of Corporate Social Responsibility and Neo-liberalism in the UK, 1977-2010' (2012) *Socio-Economic Review*, Vol. 10, 34

King A and Lenox M, 'Does it Really Pay to be Green? An Empirical Study of Firm Environmental and Financial Performance' (2001) *The Journal of Industrial Ecology, vol. 5(1)*, 105–116

Kintz F, 'Overview of Current Media Practices and Trends in West Africa' (2007) *Global Media Journal* Vol. 6 (10) 13

Krever T, 'The Legal Turn in Late Development Theory: The Rule of Law and the World Bank's Development Model' [Winter 2011] *Harvard International Law Journal*, Vol. 52 (1) 297

Langlois CC and Schlegelmich BB, 'Do Corporate Codes of Ethics Reflect National Character? Evidence from Europe and the United States' (1990) *Journal of International Business Studies*, 4th Quarter, 519

Lazonick W and O'Sullivan, M, 'Maximizing Shareholder Value: A New Ideology for Corporate Governance' (2001) *Economy and Society*, Vol.29 (1) 14

Lemke T, 'The Birth of Bio-Politics: Michel Foucault's Lecture at the College de France on Neoliberal Governmentality' (2001) *Economy and Society*, Vol. 30(2) 193

Loxley J, 'Berg Report: Accelerated Development in Sub-Saharan Africa' (1983) *Review of African Political Economy* Vol. 10(27/28) 198–204.

Lynch-Wood G, Williamson D and Jenkins W, 'The Over-Reliance on Self-Regulation in CSR Policy' (2009) *Business Ethics: A European Review* Vol. 18, 52-65

Majekodunmi A, 'The Political Economy of Fuel Subsidy Removal in Nigeria' (2013) *International Journal of Management and Social Sciences Research (IJMSSR) Vol. 2 (7)*

Manne HA, 'Mergers and the Market for Corporate Control' (1965) *Journal of Political Economy Vol.* 73 300-310
___ 'The Higher Criticisms of the Modern Corporation' (1962) *Columbia Law Review* Vol. 62 399-403

Marquardt E, 'Mujahid Asari-Dokubo: The Niger Delta's Ijaw Leader' (August, 2007) *Terrorism Monitor* Vol. 5 (15) 7

Mattingly JE and Berman SL, 'Measurement of Corporate Social Action: Discovering Taxonomy in the Kinder Lydenburg Domini Ratings Data' (2006) *Business and Society* Vol. 45, 20-46

Mbat D, Ibok E and Daniel E, 'Exxon-Mobil and Corporate Social Responsibility in Akwa Ibom State, Nigeria: Past and Present' (2013) *Public Policy and Administration Research* Vol. 3(3) 25

McWilliams A and Siegel D, 'Corporate Social Responsibility: A Theory of the Firm Perspective' (2001) *Academy of Management Review, Vol.* 26 117-127

Moon J, 'Business Social Responsibility; A Source of Social Capital' (2001) *Journal of Philosophy of Management* Vol. 1 (3) 386

Morrison J, 'Legislating for Good Corporate Governance' (2004) *Journal of Corporate Citizenship* Vol. 15 121

Munch S, 'Improving the Benefit Corporation: How Traditional Governance Mechanisms can Enhance the Innovative New Business Form' (2012) *North-Western Journal of Law and Social Policy*, Vol. 7 (1) 170

Navin TR, and Sears MV, 'The Rise of the Market for Industrial Securities, 1887-1902' (June, 1955) *The Business History Review*, Vol. 29(2) 105-138

Neumayer E & Spess L, 'Do Bilateral Treaties Increase Foreign Direct Investment to Developing Countries?' [2005] *World Development* Vol. 33 (10) 1567-1585 at 1567

Newell P & Frynas JG, 'Beyond CSR, Business, Poverty and Social Justice; An Introduction' (2007) *Third World Quarterly* Vol. 28 (4) 670

Nisa S and Warsi KA, 'The Divergent Corporate Governance Standards and the Need for Universally Acceptable Governance Practices' (2008) *Asian Social Science* Vol.4 (9) 128

Nixson FI and Yamin M, 'The United Nations Transnational Corporations: A Summary and a Critique' (1980) *British Journal of International Studies* Vol. 6 (1) 72

Nwogwugwu N, Alao OE and Egwuonwu C, 'Militancy and Insecurity in the Niger Delta: Impact on the Inflow of Foreign Direct investment to Nigeria' (2012) *Kuwait Chapter of Arabian Journal of Business and Management Review* Vol. 2(1) 23

Nwufor C, 'Legal Framework for the Regulation of Waste in Nigeria' (2010) *African Research Review* Vol. 4 (2) 491-501

Obasan KA, 'Effect of Compensation Strategy on Corporate Performance: Evidence from Nigerian Firms' (2012) *Research Journal of Financial Accounting* Vol. 3 (7) 37- 44

Obi CI, 'Globalization and Local Resistance: the Case of the Ogoni and Shell' (1997) *New Political Economy* Vol. 2 (11) 23

___ 'Nigeria's Niger Delta: Understanding the Complex Drivers of Violent Oil-related Conflict' *(2009) Africa Development* Vol.34 (2) 103–128

___ 'Oil Extraction, Dispossession, Resistance, and Conflict in Nigeria's Oil-Rich Niger Delta' (2010) *Canadian Journal of Development Studies* Vol. 30(1–2) 222-224

___ 'Oil Minority Rights versus the Nigerian State: Conflict and Transcendence' (2001) *University of Leipzig Papers on Africa, Politics and Economics*, Series No. 53 24-32

___ 'The Petroleum Industry: A Paradox or (sp) oiler of Development' (2010) *Journal of Contemporary African Studies* 445-446

Obodo C, 'Globalization and Corporate Governance Challenges in Nigeria: A Regulatory and Institutional Perspective' (2014) *African Journal of Social Sciences* Vol. 4 (2) 50-64

Odoemena A, 'Social Consequences of Environmental Change in the Niger Delta of Nigeria' (2011) *Journal of Sustainable Development in Africa* Vol. 11(2), 123-135

Ogowewo TI, 'The Shift to the Classical Theory of Foreign Investment: Opening up the Nigerian Market' (1995) *The International and comparative Law Quarterly* Vol. 44 (4) 916

Ogula D, 'Corporate Social Responsibility: Case Study of Community Expectations and the Administrative Systems, Niger Delta' (2012) *The Qualitative Report* Vol. 17 (73) 1-27

Ojakorotu V, 'The internationalisation of Oil Violence in the Niger Delta' (2008) *Alternatives: Turkish Journal of International Relations* Vol. 7 (1) 99

Ojo GU, 'Community Perception and Oil Companies Corporate Social Responsibility Initiative in the Niger Delta' (2012) *Studies in Sociology of Science* Vol. 3(4) 13

Okafor EE, 'Dynamics of Niger Delta Struggles and the State Responses: The State of Terrorism and Terrorism of the State' (2011) *Journal of Sustainable Development in Africa* Vol. 13(2) 97

Okeagu JE and others, 'The Environment and Social Impact of Petroleum and Natural Gas Exploration In Nigeria' (2006) *Journal of Third World Studies* 13 (1) 199-218

Okike ENM, 'Corporate Governance in Nigeria: The Status Quo' (2007) *Corporate Governance: An International Review* Vol. 15(2) 175

Okumagba PO, 'Oil Exploration and Crisis in the Niger Delta: The Response of Militia Groups' (2012) *Journal of Sustainable Society Vol. 1(3) 78-8*

Olorode T, 'The Political Economy of Corruption in Nigeria' (2011) *The National Scholars* Vol. 8 6-

Oni SI and Oyewo MA, 'Gas Flaring, Transportation and Sustainable Energy Development in the Niger-Delta, Nigeria' (2011) *Journal of Human Ecology* Vol.33 (1) 23

Onu D, 'Development Efforts in Oil Companies as Perceived by Rural Households in Selected oil Producing Communities of Rivers State, Nigeria' (2004) *Journal Of Agriculture and Social Research* Vol. 4 (1) 60

Onweazu OO, 'Multinational Oil Corporations' Corporate Integrity Ethics and Sustainable Development in Niger Delta, Nigeria' (2012) *Journal of Sustainable Development* Vol. 5 (10) 116

Onyeizugbe CZ and Onwuka EM, 'Fuel Subsidy Removal as an Imperative for Enhancing Business Development in Nigeria' (2012) *VSRD International Journal of Business & Management Research* Vol. 2 (9) 454-461

Onyishi AO, Eme IO and Emeh IEJ, 'The Domestic and International Implications of Fuel Subsidy Removal Crisis in Nigeria' (2012) *Kuwait Chapter of Arabian Journal of Business and Management Review* Vol. 1(6) 57-80

Orji KE, 'National Security and Sustainable Development in Nigeria: Challenges from the Niger Delta' (2012) *African Research Review* Vol. 6(1) No. 24, 199.

Owusu F, 'Pragmatism and the Gradual Shift from Dependency to Neoliberalism: The World Bank, African Leaders and Development Policy in Africa' [2003] *World Development* Vol. 31 (10) 1655-1672

Pegg S, 'The Cost of Doing Business: Transnational Corporations and Violence in Nigeria' (1999) *Security Dialogue* Vol. 30 (4) 474-475

Pegg SC and Zabbey N, 'Oil and Water: The Bodo Spills and the Destruction of Traditional Livelihood Structures in the Niger Delta' (2013) *Community Development Journal* Vol. 48 (3) 391-405

Perry G and others, 'Oil and Institutions, Tale of Two Cities: Nigeria and Colombia' (June, 2011) *Global Development Network Working Paper* Series No. 44 13

Pickens TB, 'Shareholders: The Forgotten People' (1985) *Journal of Business Strategy* 6 (1)4

Pistor K and others, 'The Evolution of Corporate Law: A Cross-Country Comparison' (2002) *University of Pennsylvania Journal of International Economic Law* 791-811

Porta RL and others, 'Investor Protection and Corporate Governance' (2000) *Journal of Financial Economics* Vol. 58 4

Rexler J, **'**Beyond the Oil Curse: Shell, State Power, and Environmental Regulation in the Niger Delta' (2010) *Stanford Journal of International Relations* Vol.12 (1) 28

Richardson J, 'The Development of Corporate Responsibility in the UK' (1983) *Strathclyde Papers on Government and Politics* 1 19

Rodrik D, Subramanian A & Trebbi F, 'Institutions Rule: The Primacy of Institutions over Geography in Economic Development' [2004] *Journal of Economic Growth* Vol. 9 (2) 131

Rosenau JN, 'Security in a Turbulent World' (May, 2005) *Current History* 592 193-200

Rosenfeld JR, 'Social Responsibility and the Corporation: Alternatives for the Future of Capitalism' (2001) *Journal of Economic Issue* Vol. 16 127

Ross DM, 'Commercial Banking in a Market Oriented Financial System: Britain between the Wars' (1996) *Economic History Review*, Vol.49 (2) 314-335

Saidu S and Mohammed AR, 'The Nigerian Petroleum Industry Bill: An Evaluation of the Effect of the Proposed Fiscal Terms on Investment in the Upstream Sector' (2014) *Journal of Business and Management Sciences* Vol. 2 (2) 45-51

Schneiderman D, 'Investment Rules and the New Constitutionalism' (2000) *25 Law and the Social Inquiry* 757

Schwarz MS, 'A Code of Ethics for Corporate Code of Ethics' (2001) *Journal of Business Ethics* 41 27

Shamir R, 'De-Radicalization of Corporate Social Responsibility' (2004) *Critical Sociology* 30 677

Sheppard E & Leitner H, 'Quo Vadis Neoliberalism? The Remaking of Global Capitalist Governance after Washington Consensus' [March 2010] *Geoforum* Vol. 41(2) 187

Shleifer A & Vishny R, 'A Survey of Corporate Governance' (1997) *The Journal of Finance* Vol. 52(2) 741

Silver I, 'Strategically Legitimizing Philanthropists Identity Claims: Community Organizations as Key Players in the Making of CSR' (2001) *Sociological Perspectives* Vol.44, 233-252

Smith AD, 'Making the Case for the Competitive Advantage of Corporate Social Responsibility' (2007) *Business Strategy Series* Vol. 8 (3) 186-195

Smith RE, 'Defining Corporate Social Responsibility: A Systems Approach for Socially Responsible Capitalism' (2011) *University of Pennsylvania Scholarly Commons*, 1-115

Soederberg S, 'The Promotion of the Anglo American Corporate Governance in the South: Who Benefits from the New International Standard?' [Feb 2003] *Third World Quarterly* Vol.24 (1) 10

Solomon O, Hashim NH, Mehdi ZBT and Ajagbe MA, 'Employee Motivation and Organizational Performance in Multinational Companies (2012) *International Journal of Research in Management & Technology (IJRMT)* Vol. 2 (3) 303-312

Somoye ROC, 'The Performances of Commercial Banks in Post-Consolidation Period in Nigeria: An Empirical Review' (2008) *Eur. J. Econ. Fin. Admin. Sci*. Vol. 14 62-73

Sornarajah M, 'Mutations of Neo-Liberalism in International Investment Law' (2011) *Trade, Law and Development* Vol. 3 (1) 203-204

Soyode A, 'The Role of Capital Market in Economic Development' (1990) *Security Market Journal in Nigeria* 6

Streeck W, 'Taking Capitalism Seriously; Towards an Institutionalist Approach to Contemporary Political Economy' (2011) *Socio-Economic Review* Vol. 9 143

Swanson DL, 'Addressing a Theoretical Problem by Reorienting the Corporate Social Performance Model' (1995) *Academy of Management Review* Vol.20, 43-64

Thompson EP, 'The Moral Economy of the English Crowd in the Eighteenth Century' (1971) *Past and Present* Vol. 50 (1) 78

Tirole J, 'Corporate Governance' (2001) *Econometrica* Vol. 69(1) 1 – 35

Toms S & Wright M, 'Corporate Governance, Strategy and Structure in British Business History, 1950-2000' (July 2002) *Business History* Vol. 44(3) 91-124

Tuodolo F, 'Corporate Social Responsibility: Between Civil Society and the Oil Industry in the Developing World' (2009) *ACME; An International E-Journal for Critical Geography*, Vol. 8 (3) 536

Turban DB & Greening DW, 'Corporate social performance and organizational attractiveness to prospective employees' (1997) *Academy of Management Journal* Vol.40, 658-763

Udayasankar K & Das S, 'Corporate Governance and Firm Performance: the Effects of Regulation and Competitiveness' (2007) *Corporate Governance: An International Review* Vol. 15 (2) 262

Udosen C, Etok AS & George IN, 'Fifty Years of Oil Exploration in Nigeria: The Paradox of Plenty' (2009) *Global Journal of Social Sciences* Vol. 8 (2) 37-47

Ugochukwu CNC & Ertel J, 'Negative impacts of oil exploration on biodiversity management in the Niger Delta area of Nigeria' *(2008) Impact Assessment and Project Appraisal, Vol. 26*(2) 139–147

Ugoh CS & Ukpere IW, 'Oil Politics and the Niger Delta Development Conundrum' (2010) *African Journal of Business Management* Vol.4 (6) 1170

Ugorji EC, 'Privatization/Commercialization of State-Owned Enterprises in Nigeria: Strategies for Improving the Performance of the Economy' (1995) *Comparative Political Studies* Vol. 27 537-560

Ukeje C, 'Oil Communities and Political Violence: The Case of Ethnic Ijaws in Nigeria's Delta Region' (2001) *Terrorism and Political Violence* Vol. 13(4) 26-27

Ukpongson M and Onu D, 'Development Efforts of Oil Companies as Perceived by Rural Households in Selected Oil Producing Communities of Rivers State, Nigeria' (2004) *Journal of Agriculture and Social Research* Vol. 4(1)47-61.

Umenweke MN and Aladegbaiye AR, 'Powers and Duties of the Corporate Affairs Commission as a Regulatory Body in Nigeria' (2011) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* Vol. 2 24-25

Utting P, 'Corporate Responsibility and the Movement of Business' (2005) *Development in Practice* Vol. 15 (3&4) 376

Vestergaard J, 'The Asian Crisis and the Shaping of 'Proper' Economies' (2004) *Cambridge Journal of Economic*s, Vol. 28, 809-827

Voon T, 'Multinational Enterprises and State Sovereignty under International Law' (1999) *21 Adelaide Law Review* 219 234-41

Waddell B, 'Corporate Influence and World War II: Resolving the New Deal Political Stalemate' (1999) *Journal of Policy History* Vol. 11(3) 223-256

Wade RH, 'US Hegemony and the World Bank: The Fight over People and Ideas' (2002) *Review of International Political Economics* Vol. 9(2) 201- 229

Wagner T, Lutz RJ and Weitz BA, 'Corporate Hypocrisy: Overcoming the Threat of Inconsistent Corporate Social Responsibility Perceptions' (2009) *Journal of Marketing* Vol. 73(1) 79

Walker A, 'The Hidden Flaw in Kiobel: Under the Alien Tort Statute, the Mens Rea Standard for Corporate Aiding and Abetting is Knowledge' (2011) *North-Western University Journal of International Human Rights* Vol. 10(2) 119

Watts M, 'Resource Curse, Governmentality, Oil and Power in the Niger Delta' (2004) *Geopolitics* Vol. 9 (1) 50-80

Online Articles and Papers

Abdul-Gafaru A, *Are Multinational Corporations Compatible with Sustainable Development? The Experience of Developing Countries* (Paper prepared for the Conference on Multinational and Sustainable Development: Strategic Tool for Competitiveness; Atlanta-Georgia, 19-20 October 2006) 18 <http://ciber.gatech.edu/papers/workingpaper/2007/001-07-08.pdf> accessed 2 May 2013

Abdussalam IK, 'Crude Oil and British Imperialism in Nigeria' (c.1903 – 1956) *Academia.edu publication* <www.academia.edu/890793/Oil_and_British_Imperialism_in_Nigeria> accessed 15 May 2013

Abiola AC, 'Chevron Ignores Demand of Women for Employment and Clean Environment' (2002) *ERA Field Report* 103, 6 <www.waado.org/environment/OilCompanies/Women/Women2002Rebellion/ERAReports/ERA-> accessed 2 July 2011

Aborisade F & Wynne A, 'Developing a Progressive Public Finance Programme to counter Neoliberalism; The Nigerian Experience' (2007) http://visar.csustan.edu/aaba/FemiNairobi.pdf accessed on 17 July, 2011

Adefulu A, 'Does the Nigerian Oil and Gas Industry Content Development Act Conflict with the Country's International Obligations? (2010) *Adefulu's Website* <www.odujinrinadefulu.com/documents> accessed on 17 June 2011

Adefulu A, 'Nigeria: National Treatment & Nigeria's New Local Content Legislation' (2010) *Mondaq Publication*, <www.mondaq.com/x/102400/international+trade+investment/National+Treatment+Nigerias+New+Local+Content+Legislation> accessed 14 November 2013

Adegbite E & Amaeshi K, 'Multiple Influences on Corporate Governance in Sub-Saharan Africa: Actors, Strategies and Implications'(2010) *CSGR Working Paper 267/10 Centre for the Study of Globalisation and Regionalisation*, Department of Politics and International Studies University of Warwick, 3 <www2.warwick.ac.uk/fac/soc/csgr/research/workingpapers/2010/26710.pdf> accessed on 14 February 2013

Adelegan OJ, 'Does Corporate Leadership Matter? Evidence from Nigeria' (2009) *African Economic Research Consortium* Paper 189 <http://dspace.africaportal.org/jspui/bitstream/123456789/32103/1/RP189.pdf?1> accessed 9 January 2015

Adeoye Y, 'CSR: ExxonMobil Invests $280 Million on Community Development' (8 March, 2010) *Vanguard Newspapers* <www.vanguardngr.com/2010/03/csr-exxonmobil-invests-280-m-on-community-development/> accessed 30 April 2012

Adoga O, 'New Frontiers for Corporate Regulations in Nigeria' (April 16, 2009) *Brooke Chambers Publication* <www.hg.org/article.asp?id=6228 and accessed on 6 May, 2012

Adun S, 'Introduction to Nigeria Company Law' (June 2007) *The Nigeria Exchange Business* <http://www.ngex.com/business/public/newsinfo.php?nid=1> accessed 4 May 2012

Aguirre D, ‘Multinational Corporations and the Realisation of Economic and Social Rights’ (2006) *Irish Centre for Human Rights Publication* <www.nuigalway.ie/sites/eu-china humanrights/seminars/ds0406c/daniel%20aguirre-eng.doc> accessed 30 April 2013

Ajayi A, ‘Nigeria: Post-Economic Crisis: Optimising Rewards For Business Performance’ (2012) *Mondaq Publishing* <www.mondaq.com/x/206188/employee+rights+labour+relations/PostEconomic+Crisis+Optimising+Rewards+For+Business+Performance> accessed 9 January 2015

Ako RT and Adedeji A A, ‘Public Participation: An Imperative to the Sustainable Development of the Nigerian Oil Industry’ (2009) <www.bhu.ac.in/...09/.../5_RT%20AKO_public_participation_1_[1].doc> accessed 20 January 2015

Ali YO, ‘The Purposeful Interpretation of the Provisions of Section 60 of CAMA in Aid of International Trade’ (2011) *Barrister Yusuf Alli’s Website* <www.yusufali.net/articles/THE_PURPOSEFUL_INTERPRETATION_OF_THE_PROVISIONS_OF_SECTION_60_OF_CAMA_IN_AID_OF_INTERNATIONAL_TRADE.pdf> accessed 14 May 2013

Aluko ME, ‘Nigeria and Her Membership of OPEC’ (2008) *African Economic Analysis* <www.africaeconomicanalysis.org/articles/gen/opec.html> accessed 15 May 2013

Amaeshi K & Amao OO, ‘Corporate Social Responsibility (CSR) in Transnational Spaces: An Institutionalist Deconstruction of MNCs’ Practices in the Nigerian Oil and Gas Sector’ (July 2008) *CSGR Working Paper 248/08, 10*, <http://wrap.warwick.ac.uk/1860/1/WRAP_Amaeshi_24808.pdf> accessed 1 May 2013

Amaeshi K, Adi BC, Ogbechie C and Amao OO, ‘Corporate Social Responsibility in Nigeria: Western Mimicry or Indigenous Influences?’ (2006) *International Centre for Corporate Social Responsibility (ICCSR)* Research Paper Series 39, 4 <http://195.130.87.21:8080/dspace/bitstream/123456789/1091/1/39-Corporate%20Social%20Responsibility%20(CSR)%20in%20Nigeria%20western%20mimicry%20or%20indigenous%20practice.pdf> accessed 13 May 2013

Amao OO and Amaeshi KM, ‘Galvanising Shareholder Activism: a Prerequisite for Effective Corporate Governance and Accountability in Nigeria’ (2007) *Social Science Research Network (SSRN)* < http://ssrn.com/abstract=982577> or <http://dx.doi.org/10.2139/ssrn.982577> accessed 13 May 2013

Ameh, MO, ‘Ownership and Control of Mineral Resources: Can the Brazilian Model be used to Douse Resource Control Agitation in Nigeria’s Oil Producing States? (2011) <www.dundee.ac.uk/cepmlp/gateway/files.php?file=CAR10...pdf> accessed 20 January 2015

Amuta, C ‘Nigerian PDP and the Road Ahead’ (29 September, 2009) *Nigerian Folks Blog* <http://www.nigerianfolks.com> accessed 10 May 2012

Anark A, ‘The Political Significance of NEPAD: A Home Grown Recipe for Neoliberalism’ (2005) *Anarkismo publication* <http://anarkismo.wsm.ie/article/691?condense_comments=true&save_prefs=true> accessed 17 September 2011

Awogbade S, Sipasi S & Iroegbunam G, ‘Getting the Deal Through-Oil Regulation: Nigeria’ (2008) *AELEX Legal Practitioners and Arbitrators*, 115 <www.gettingthedealthrough.com> accessed 27 May 2011

Bendell J, ‘Barricades and Boardrooms: A Contemporary History of the Corporate Accountability Movement’ (June, 2004) *Technology, Business and Society Programme* Paper Number 13, United Nations Research Institute for Social Development <www.unrisd.org/80256B31005Bcct9> accessed 28 June 2013

Bentham J, 'A Manual of Political Economy' (1843) *The Works of Jeremy Bentham Vol. 3, The Online Library of Liberty* <http://oll.libertyfund.org/?option=com_staticxt&staticfile=show.php%3Ftitle=1922&chapter=114388&layout=html&Itemid=27> accessed 2 April 2013

Bhatta KP, 'Executive Compensation: Review of Global Financial Crisis and the Ongoing Debate' (2012) *Lambert Academic Publishing*, Germany <http://ssrn.com/abstract=2138733> and accessed 20 April 2013

Bourdieu P, 'The Essence of Neoliberalism', (1998) *Le Monde Diplomatic* (English edition) <http://mondediplo.com/1998/12/08bourdieu> accessed on 16 February 2011

Brown W, 'Neoliberalism and the End of Liberal Democracy' (2007) *Theory and Event*, 7 <www.muse.jhu.edu/journals/theory_and_event/v007/7.1brown.html> accessed 10 November2011

Burger A, 'Shell in Nigeria: Oil, Gas, Development & Corporate Social Responsibility' (2011) *Triple Pundit*: *People, Planet, Profit* <www.triplepundit.com/2011/07/shell-nigeria-csr-corporate-social-responsibility/> accessed 28 April 2012

Burgi N and Gollub GS, 'Has Globalisation Really Made Nations Redundant? The States we are still in' (2000) *Le Monde Diplomatique* <http://mondediplo.com/2000/04/07golub> accessed 20 February 2011

Bustelo P, 'The East Asian Financial Crisis: An Analytical Survey' (1998) *ICEI Working Papers*, No. 10, 17 <http://pendientedemigracion.ucm.es/info/eid/pb/ICEIwp10.pdf> accessed 27 November 2013

Calvert AF, *Nigeria and its Tin Fields* (London: Edward Stanford, 1910) 14-15 <http://www.archive.org/stream/nigeriaitstinfie00calvrich/nigeriaitstinfie00calvrich_djvu.txt> accessed 1 May 2013

Carey CW Jnr., 'Corporations and Big Business; An Essay from Nineteenth Century US Newspaper Data Base' (2001) *Encyclopaedia of the United States in the Nineteenth Century*, Vol. 3, 4 <http://www.gale.cengage.com/pdf/whitepapers/gdc/Corporations_whtppr.pdf> accessed 25 April 2013

Chary S, 'Structural Adjustments in Africa' (1989) *Trocaire: Development Review* <http://www.trocaire.org/resources/tdr-article/structural-adjustment-africa> accessed 10 February 2014

Claessens S, 'Corporate Governance and Development' (2003) *Global Corporate Governance Forum*; Focus 1 *of the International Bank for Reconstruction and Development/The World Bank*, <www1.ifc.org/wps/wcm/connect/7fc17c0048a7e6dda8b7ef6060ad5911/Focus_1_Corp_Governance_and_Development.pdf?MOD=AJPERES> accessed 10 April 2013

Clarke T and Rama MD, 'Introduction: The Governance of Globalization' (2006) *Sage Publications* <http://www.ccg.uts.edu.au/pdfs/governance-and-globalization-intro.pdf> accessed 20 May 2013

Cornwell J, 'MacIntyre on Money' (20 October, 2010) *Prospect Magazine*, <www.prospectmagazine.co.uk/magazine/alasdair-macintyre-on-money/> accessed 27 September 2010

Craig-Smith N, 'Corporate Social Responsibility: Not Whether, But How?' (April, 2003) *Centre for Marketing (London Business School) Working Paper* No. 03-701, 2, <www.london.edu/facultyandresearch/research/docs/03-701.pdf> accessed 25 April 2013

Dare S, 'Investigating Corruption in Nigeria's Oil and Gas Industry' (2008) *News Digest International Magazine* <www.gijc2008.no/handouts/408/OIL_AND_GAS_INDUSTRY.ppt> accessed 8 May 2012

Dumenil G and Levy D, ‘The Nature and Contradictions of Neoliberalism’ (2002) <www.jourdan.ens.fr/levy/dle2002c.pdf> accessed 20 October 2013

Evans E, ‘Laissez-Faire and The Victorians’ (2006) *BBC History* <www.bbc.co.uk/history/trail/victorian_britain> accessed 01 November 2011

Faleti SA, ‘Challenges of Chevron’s GMOU Implementation in Itsekiri Communities of Western Niger Delta’ (2007) *Peace & Conflict Studies Programme, Institute of African Studies, University of Ibadan* <www.ifra-nigeria.org/IMG/pdf/Stephen_FALETI_-_Challenges_of_Chevron_GMOU_Implementation_in_Itsekiri_Communities_of_Western_Niger_Delta.pdf> accessed 12 July 2013

Friedman M, ‘The Social Responsibility of Business is to Increase its Profits’ (September 13, 1970) *The New York Times Magazine* <www.colorado.edu/studentgroups/libertarians/issues/friedman-soc-resp-business.html> accessed 22 April 2013

Gbinije B, ‘Between the Delta State Govt. and Shell’ (26 April, 2013) *Vanguard Newspapers* <www.vanguardngr.com/2013/04/between-the-delta-state-govt-and-shell/?utm_source=dlvr.it&utm_medium=twitter> accessed 1 May 2013

George S, *A Short History of Neoliberalism: Twenty Years of Elite Economics and Emerging Opportunities for Structural Change* (Paper presented in a Conference on Economic Sovereignty in a Globalising World; Bangkok 24-26 March 1999) <www.globalexchange.org/resources/econ101/neoliberalismhist> accessed 21 February 2013

Gill S, ‘Finance, Production and Panopticism: Inequality, Risk and Resistance in an Era of Disciplinary Neoliberalism’ (1997) 1-23 <www.stephengill.com/finance_production_and_panopticism.pdf> accessed 24 April 2013

Gill S, ‘New Constitutionalism and the Reconstitution of Capital’ (1999) available at <www.meijigakuin.ac.jp/~iism/pdf/nenpo_002/Gill.pdf> accessed 20 October 2013

Gill S, *The Constitution of Global Capitalism* (Paper presented to a Panel: The Capitalist World, Past and Present at the International Studies Association Annual Convention, Los Angeles, 2000) <www.uv.es/~mperezs/intpoleco/Lecturcomp/Geoeconomia%20y%20Globalizacion/Constitution%20of%20Global%20Capitalism%20S%20Gill.pdf> accessed 20 October 2013

Gillies A, ‘Reforming Corruption out of Nigerian Oil’ (2009) *CHR Michelsen Institute’s U4 Brief, Part 1: Mapping Corruption Risks in Oil Sector Governance*, 4 <www.cmi.no/publications/file/3295-reforming-corruption-out-of-nigerian-oil-part-one.pdf> accessed 27 September 2013

Gillies A, ‘Reforming Corruption out of Nigerian Oil’ (2009) *CHR Michelsen Institute’s U4 Brief, Part 2: Progress and Prospects* www.cmi.no/publications/file/3348-reforming-corruption-out-of-nigerian-oil-part-two.pdf accessed 27 September 2013

Granado J, Coady D, and Gillingham R, ‘The Unequal Benefits of Fuel Subsidies: A Review of Evidence for Developing Countries’ (2010) *IMF Working Paper* <www.imf.org/external/pubs/ft/wp/2010/wp10202.pdf> accessed 23 February 2012

Hilferding R, ‘Finance Capital: A Study of the Latest Phase of Capitalist Development’ (1910) *Marxist Internet Archive* <www.marxists.org/archive/hilferding/1910/finkap/> accessed 2 April 2013

Hirsch A and Vidal J, ‘Shell Spending Millions of Dollars on Security in Nigeria, leaked documents show’ (19 August 2012) *The Royal Dutch Shell PLC* <http://royaldutchshellplc.com/2012/08/19/shell-spending-millions-of-dollars-on-security-in-nigeria-leaked-data-shows/> accessed 6 March 2013

Idemudia U, ‘Corporate Partnerships and Community Development in the Nigerian Oil Industry’ (2007) *United Nations Research Institute for Social Development* <www.unrisd.org/80256B3C005BCCF9/(httpAuxPages)/D7737BEE64BC48B0C12572C90045372E/$file/Idemudia.pdf> accessed 30 January 2015

Igbuzor O, *Privatization in Nigeria, Critical Issues of Concern to Civil Society* (Paper presented at a Power Mapping Round Table Discussion on The Privatization Programme in Nigeria organised by the Socio-Economic Rights Initiative: Abuja, 3rd September, 2003) <www.dawodu.com/otive2.htm> accessed 7 May 2013

Iwere O, What Effect does the Ownership of Resources by the Government have on its People: A Case Study of Nigeria? (2011) University of Dundee *<www.dundee.ac.uk/cepmlp/gateway/files.php?file=CAR-11_37...pdf> accessed 20 January 2015*

Iweriebor EEG, ‘The Colonization of Africa’ (2011) *Africana Age: Schombug Centre for Research in Black Culture* <http://exhibitions.nypl.org/africanaage/essay-colonization-of-africa.html> accessed 12 May 2013

Karnani A, ‘The Case against CSR’ (2010) *The Wall Street Journal* <http://online.wsj.com/news/articles/SB10001424052748703338004575230112664504890> accessed 21 October 2013

Kawai S, ‘Trend of Reforming Corporate Governance in East Asia; A Comparative View’ (August 2006) *Economic Research Centre Discussion Paper* No.158 <www.soec.nagoya-u.ac.jp/erc/DP/paper158.pdf> accessed 20 May 2013

Keay A, ‘The Duty to Promote the Success of the Company: is it fit for Purpose?’ (August 20, 2010) *University of Leeds School of Law, Centre for Business Law and Practice Working Paper* <http://ssrn.com/abstract=1662411 or http://dx.doi.org/10.2139/ssrn.1662411> accessed 13 May 2013

Keynes JM, ‘The End of Laissez-Faire’ (1926) *Multimania Publication* <http://membres.multimania.fr/yannickperez/site/Keynes%20la%20fin%20du%20laissez%20Faire.PDF> accessed 13 November 2011

Kotz DM, *Neoliberalism and Financialization* (Paper presented in a Conference in Honour of Jane D’Arista at the Political Economy Research Institute, University of Massachusetts Amherst, May 2-3 2008) <http://people.umass.edu/dmkotz/Neolib_and_Fin_08_03.pdf> accessed 12 February 2013

Lugard FD, *Annual Colonial Reports - Northern Nigeria No. 377* (presented to both Houses of Parliament by Command of His Majesty in London, January, 1903) 14-16 <http://libsysdigi.library.illinois.edu/ilharvest/Africana/Books2011-05/3064634/3064634_1901_northern_nigeria/3064634_1901_northern_nigeria_opt.pdf> accessed 1 May 2013

McBarnet D, ‘Corporate Social Responsibility beyond the Law, Through the Law, For the Law: The New Corporate Accountability’ (2009) *University of Edinburgh School of Law Working Paper* series 2009/03 <http://ssrn.com/abstract=1369305> accessed 27 September 2013

Moraes C, ‘Consumers Won’t Boycott Apple or Google over Tax...Yet’ (May, 2013) *The Conversation* <http://theconversation.com/consumers-wont-boycott-apple-or-google-over-tax-yet-14649> accessed 22 November 2013

Morgan K, ‘Symbiosis: Trade and the British Empire’ (2006) *BBC History* <www.bbc.co.uk/history/british/empire_seapower/trade_empire_01.shtml> accessed 14 May 2012

Nwachukwu C & Bala-Gbogbo E, 'Black Hole: Nobody knows How Much Oil Nigeria sells' (29 April 2009) *Next Newspapers Publication* <www.234next.com/csp/cms/sites/Next/News/5408495-147/Black_Hole:_Nobody_knows_how_much.csp> accessed 12 May 2012,

Nwilo PC and Badejo OT, 'Impacts and Management of Oil Spill Pollution along the Nigerian Coastal Areas'(2009) *fig publications* <www.fig.net/pub/figpub/pub36/chapters/chapter_8.pdf> accessed 15 May 2013

Nwokeji GU, 'The Nigerian National Petroleum Corporation and the Development of the Nigerian Oil and Gas Industry: History, Strategies and Current Directions' (2007) *The James A. Baker III Institute for Public Policy, Rice University*, 9-10 <www.bakerinstitute.org/programs/energy-forum/publications/energy-studies/docs/NOCs/Papers/NOC_NNPC_Ugo.pdf> accessed 24 May 2013

Nyong B, 'Corporate Social Responsibility: The Exxon-Mobil Example, in Diversity and Commerce' (2013) *Business and Diversity: Where Business and Inclusion Meet Success* <http://diversityandcommerce.biz/corporate-social-responsibility-the-exxonmobil-example-p1142-170.htm> accessed 29 April 2013

Obasi NK, 'Nigeria and Oil' (2010) *Nigeria online publication* <www.onlinenigeria.com/links/adv.asp?blurb=493> accessed 2 June 2011

Obi CI, 'The Changing Forms of Identity Politics in Nigeria under Economic Adjustment: The Case of the Oil Minorities Movement of the Niger Delta' (2001) *Uppsala: Nordiska Afrikainstitutet, Research Report* No. 119, 87 <liu.diva-portal.org/smash/get/diva2:246011/FULLTEXT01> accessed 15 March 2013

Odularu GO, 'Crude Oil and the Nigerian Economic Performance' (2007) *Oil and Gas Business*, 4 <http://www.ogbus.ru/eng/authors/Odularo/Odularo_1.pdf> accessed 17 May 2013

Oguine I, 'Nigeria´s Oil Revenues and the Oil Producing Areas' (2000) *The Centre for Energy, Petroleum and Mineral Law and Policy (CEPMLP)* Vol. 4 (10) <www.dundee.ac.uk/cepmlp/journal/html/vol4/article4-10.html> accessed 23 May 2013

Ogundipe D, 'Oil Production, Corruption, and its Effects on Nigeria's Post-Colonial Economy' (2005) *African Outlook Publication* <www.africanoutlookonline.com/index.php?option=com_content&view=article&id=1916%3Anigerian-oil-production-corruption-and-its-effects-on-post-colonial-economy-of-nigerian&Itemid=53> accessed 10 May 2012

Ojakorotu V and Whetho A, 'Multinational Corporations and Human Rights Abuses: A Case Study of the Movement for the Survival of Ogoni People and Ijaw Youth Council of Nigeria' (2008) *Resistance Studies Magazine* <http://rsmag.org/wp-content/uploads/2008/06/multinational200802.html> accessed 1 March 2013

Okafor, 'Enhancing Business-Community Relations: ChevronTexaco Case Study' (2003) *New Academy of Business* <www.worldvolunteerweb.org/fileadmin/docs/old/pdf/2003/031201_EBCR_NGA_chevrontexaco.pdf> accessed 1 May 2012

Okocha C and Onabu O, 'An Open Letter on Oil Spills From The Managing Director of Shell Petroleum Development Company of Nigeria Ltd' (6 August, 2011)*THISDAY Newspapers* <www.thisdayonline.com> accessed 8 August 2011

Okoh RN, 'Conflict Management in the Niger Delta Region of Nigeria: A Participatory Approach' (2007) *Mercury Publishing* <mercury.ethz.ch/serviceengine/Files/ISN/98107/.../Chapter5.pdf> accessed 12 March 2013

Okoji O, 'Corporate Social Responsibility of Multinational Oil Corporations to Host Communities in Niger Delta Nigeria' (1997) *Niger Delta Environmental Survey* <http://readperiodicals.com/201009/2087472391.html> accessed 27 April 2012

Okorie A, 'Nigeria Oil: The Role of Multinational Oil Companies' (2005) *E297c Term Paper* <www.stanford.edu/.../Nigerian oil> accessed 12 May 2012

Onigbinde D, 'Natural Resource Management and its Implications on National and Sub-regional Security: The Case of the Niger Delta' (September 2008) *Kofi Annan International Peacekeeping Training Centre (KAIPTC)* Occasional Paper No. 22, 16 <www.kaiptc.org/Publications/Occasional-Papers/Documents/no_22.aspx> accessed 2 June 2013

Onwuchekwa O, '5400 Spills Threaten Niger Delta' (24 November, 2004) *Daily Champion Newspapers* <http://allafrica.com/stories/printable/200411240494.html> accessed 9 May 2012

Onyeonoro P, 'The Dictatorship of Neoliberalism and the Nigerian Trade Movement Struggles for Inclusive Development' (2009) *University of Montreal Working Paper* <www.cccg.umontreal.ca/RC19/PDF/Onyeonoru-I_Rc192009.pdf> accessed 28 September 2011

Onyeukwu H, 'The Incentives in the Fiscal Framework of the Nigerian MOUs with the International Oil Companies: Have the Objectives Been Achieved?' (2008) *Bepress publication* <http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=humphrey_onyeukwu&sei-redir=1#search=%22Memorandum%20Understanding%20Between%20nigerian%20government%20Oil%20Companies%22> accessed 25 July 2011

Otiotio D, 'An Overview of the Oil and Gas Industry in Nigeria' (2013) *Academia.edu Publication* <www.academia.edu/2654835/AN_OVERVIEW_OF_THE_OIL_AND_GAS_INDUSTRY_IN_NIGERIA_BY_DENNIS_OTIOTIO> accessed 10 February 2013

Palumbo A, 'When Tony Met Maggie: The Terms of the Neo-Liberal Consensus in Britain' (2004) an *Academia.edu publication* <www.academia.edu/683213/From_Thatcherism_to_Blairism._Britains_Long_March_to_the_Market> accessed 6 April 2013

Pearson SR, 'The Economic Imperialism of the Royal Niger Company' (1971) *AgEcon Search*, 69-79 <http://ageconsearch.umn.edu/bitstream/135014/2/fris-1971-10-01-278.pdf> accessed 2 May 2013

Peters M, 'Neoliberalism: Hayek and the Austrian School' (1999) *University of Auckland's Encyclopaedia of Philosophy of Education* <www.ffst.hr/ENCYCLOPAEDIA/doku.php> accessed on 01 November 2011

Polling-Vocke B, 'What is Economic Liberalism?' Briefing Paper Series <www.hockeyarenas.com/berntpv/briefingpaper/papers/13.htm> accessed 2 April 2013

Prokesch S, 'Remaking the American CEO' (January, 1987) *New York Times*, <www.nytimes.com/1987/01/25/business/remaking-the-american-ceo.html?pagewanted=all&src=pm> accessed 28 April 2013

Quigley C, *Tragedy and Hope: A History of the World in Our Time* Vol. 1 -8 (New York; The Macmillan Company, 1966) <www.wanttoknow.info/war/tragedy_and_hope_quigley_full1090pg.pdf> accessed 7 February 2014

Rice X, 'Africa: Nigerian Power Facilities Turn Private' (30 September, 2013) *The Financial Times* www.ft.com/cms/s/cc99467e-29d0-11e3-9bc6-00144feab7de,Authorised=false.html? accessed 14 November 2013

Salami O and Ayoola A, 'The "War" of Appropriate Pricing of Petroleum Products: The Discourse of Nigeria's Reform Agenda' (2010) *Linguistic on Line,* Vol. 42 <www.linguistik-online.de/42_10/salamiAyoola.html> accessed 19 May 2011

Salisu A, Employees Motivation and Profitability of Banks in Nigeria (2012) *Ahmadu Bello University Journal*, 2-3 <www.abu.edu.ng/publications/2012-04-05-155041_1156.docc> accessed 10 January 2015

Saussy D, 'Round Table: Keynes, The Laissez-Faire and Sedimentation, Part 1 by Reynaldo Miranda', (December, 2012) *Symposium: Great Books Institute Publications* <http://symposiumsa.com/keynes-the-laissez-faire-and-sedimentation-part-1-by-reynaldo-miranda/> accessed 3 April 2013

Sen Y, 'Political Economy of Corruption in Nigeria' (2000) *Gamji Publications* <www.gamji.com/article9000/NEWS9136.htm> accessed on 12 May 2012

Shah A, 'A Primer on Neoliberalism' (2010) *Global Issues* <www.globalissues.org/article/39/a-primer-on-neoliberalism> accessed 16 February 2013

Smart M, 'On Limited Liability and the Development of Capital Markets: An Historical Analysis' (June, 1996) *Social Science Research Network (SSRN)* <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1175> accessed 16 April 2013

Stauffer T, 'Natural Gas and Gulf Oil: Boon or Bane?' in Nurakhmet G, *Gas Flaring and Venting: What can Kazakhstan Learn from the Norwegian Experience?* (Dundee: *University of Dundee Website,* 2010) <www.dundee.ac.uk/cepmlp/car/html/CAR10_ARTICLE14.PDF> accessed 30 July 2011

Steyn P, 'Oil Exploration in Colonial Nigeria, C.1903-1958' (2009) *University of Stirling Publication* <https://dspace.stir.ac.uk/bitstream/1893/2735/1/Oil%20exploration%20in%20colonial%20Nigeria.pdf> accessed on 14 August 2011

Strandberg C, 'CSR Governance' (2007) *Strandberg consulting Thought Leader Study Working Paper* 3 <http://corostrandberg.com/wp-content/uploads/files/CSR-Governance-Thought-Leader-Report.pdf> accessed 21 October 2013

Sunmonu M, 'PIB: No Further Investment in Nigeria' (2010) *Business Day newspaper* <www.businessdayonline.com/index.php?option=com_content&view=article&id=9150:pib-no-further-investment-in-nigeria-say-iocs&catid=1:latest-news&Itemid=18> accessed 20 January 2015

Swanson P, 'Corporate Social Responsibility and the Oil Sector' (2002) *CEPML Internet Journal*, Vol. 11(1) <www.dundee.ac.uk/cepmlp/journal/html/vol11/article11-1.html> accessed 25 September 2011

Tawney RH, 'The Acquisitive Society' (2010) *The Project Gutenberg EBook* www.gutenberg.org/files/33741/33741-h/33741-h.htm accessed 18 February 2013

Thompson G, 'Wither the "Washington Consensus", the "Developmental State", and the "Seattle Protests": Can "Managed Free Trade and Investment" Become an Alternative Development Model?'(2002) *E-Journal*, Vol. 33(131) 221 <www.ejournal.unam.mx/pde/pde131/PDE13107.pdf> accessed 6th April 2011

Thovoethin P and Yusuf SA, 'The Nigerian State and Peace Building Mechanics in the Niger Delta Region' (2010) Journal of E-International Relations <www.e-ir.info/2010/11/28/the-nigerian-state-and-peace-building-mechanics-in-the-niger-delta-region/> accessed 10 February 2014

Treanor P, 'Neoliberalism: Origins, Theory and Definition' (2005) *Paul Treanor Website* <http://web.inter.nl.net/users/Paul.Treanor/neoliberalism.html> accessed 1 April 2013

Vanberg VJ, 'The Freiburg School: Walter Eucken and Ordo-Liberalism' (Nov. 2004) *Freiburg Discussion Papers on Constitutional Economics* 1<www.walter-eucken-institut.de/fileadmin/bilder/Publikationen/Diskussionspapiere/04_11bw.pdf> accessed 6 April 2013

Vidal J, 'Nigeria's Agony Dwarfs the Gulf Oil Spill-The US and Europe Ignore It' (Sunday 30 May, 2010) *The Observer Newspaper* <www.guardian.co.uk/world/2010/may/30/oil-spills-nigeria-niger-delta-shell> accessed 26 March 2013

Vidal J, 'Shell Oil paid Nigerian Military to Put Down Protests, Court Documents Show' (3 October, 2011) *The Guardian Newspapers UK* <www.guardian.co.uk/world/2011/oct/03/shell-oil-paid-nigerian-military> accessed 6 March 2013

Williams CA and Conley JM, 'An Emerging Third Way: The Erosion of the Anglo-American Shareholder Value Construct' (December 9, 2004) *UNC Legal Studies Research Paper* No. 04-09 <http://ssrn.com/abstract=632347 or http://dx.doi.org/10.2139/ssrn.632347> accessed 13 May 2013

Williamson J, 'Did the Washington Consensus Fail?' (2002) *Institute of International Education* <www.iie.com/publications/papers.paper.cfmResearchID=488> accessed 25 April 2011

Williamson J, 'From Reform Agenda to Damaged Brand Name: A Short History of Washington Consensus and Suggestions for What to Do Next?' [September, 2003] *Finance and Development*, Vol. 40, No.3 <www.imf.org/external/pubs/ft/fandd/2003/09/pdf/williams.pdf> accessed 12 March 2011

Williamson J, *A Short History of the Washington Consensus* (Fundación CIDOB Conference, "From the Washington Consensus towards a new Global Governance": Barcelona, September 24–25, 2004) <www.iie.com/publications/papers/williamson0904-2.pdf> accessed 12 March 2011

Woods EM, 'Capitalism and Social Rights' (2009) *Solidarity* <www.solidarity-us.org/site/node/2150> accessed 15 February 2013

Wurthmann G, 'Ways of Using the African Oil Boom for Sustainable Development' (March, 2006) *African Development Bank, Economic Research Working Paper Series*, No. 84 <www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/00806226-EN-ERWP-84.PDF> accessed 6 April 2013

Documents from International and Regional Organizations

____ AfDB/OECD, 'Chapter Report on Nigeria' (2006) *African Economic Outlook* <www.oecd.org/dev/36912403.pdf> accessed 14 November 2013

____Amnesty International, 'Nigeria: Petroleum, Pollution and Poverty in the Niger Delta' (2009) *Amnesty International Publication* <www.amnesty.org/en/library/asset/AFR44/017/2009/en/e2415061-da5c-44f8-a73c-a7a4766ee21d/afr440172009en.pdf> accessed 19 November 2013

____Amnesty International, 'Shell's False Claims on Niger Delta Oil Spills Exposed' (November, 2013) *Amnesty International Publication* <www.amnesty.org/en/news/shell-s-false-claims-niger-delta-oil-spills-exposed-2013-11-07> accessed 10 February 2013

____Amnesty International, *Petroleum, Pollution and Poverty in the Niger Delta* (London, Amnesty International Publications: 2009) <www.amnesty.org.uk/uploads/documents/doc_19492.pdf> accessed 1 March 2013

____Colonial Office, *Memorandum on Colonial Mining Policy No 206* (London: H. M. S. O. 1964)

____DFID Website available at www.dfid.gov.uk/countries/africa/nigeria.asp accessed 10 February 2011

____Environmental Rights Action/ Friends of the Earth, 'Fact Sheet: Harmful Gas Flaring In Nigeria' (2008) <www.foe.org/pdf/GasFlaringNigeria_FS.pdf> accessed 31 July 2011.

____European Bank for Reconstruction and Development <www.ebrd.com/pages/sector/legal/securities/standards.shtml> accessed 17 February 2011

____European Commission, 'Corporate Social Responsibility' (2011) *Enterprise and Industry* <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm> accessed 10 February 2014

____European Environmental Agency, 'Energy Subsidies in the European Union: A Brief Overview' (2004) *Technical report No 1/2004* <http://reports.eea.europa.eu/technical_report_2004_1/en/Energy_FINAL_web.pdf.> accessed 23 February 2012

____Financial Stability Board, 'History' <www.financialstabilityboard.org/about/history.htm> accessed 24 April 2013

____International Monetary Fund, 'Financial Crisis – Causes and Indicators' (May 1998) *World Economic Outlook*, 3 <www.imf.org/external/pubs/cat/longres.aspx?sk=2535> accessed 10 February 2014

____International Monetary Fund, Crisis in Asia: Regional and Global Implications (December, 1997) IMF World Economic Outlook: Interim Assessment, 12-13 <www.imf.org/external/pubs/FT/Weo/weo1297/index.htm> accessed 26 November 2013

____Joint United Nations Development Programme/World Bank Energy Sector Management Assistance Programme (ESMAP), Taxation and State Participation in Nigeria's Oil and Gas Sector, August, 2004, 20 <www.esmap.org/filez/pubs/05704NigeriaTaxationMcPherson.pdf> accessed 26 July 2011

____OAU Document, Lagos Action Plan (OAU, 1981:7) <www.nepadst.org/doclibrary/pdfs/lagos_plan.pdf> accessed 14 November 2013

____OAU Report: African Priority Programme for Economic Recovery and Development 1986-1990 (APPER), OAU/ECM/2xv, Rev. 2 (Addis Ababa, Ethiopia 31 March 1986)

____OECD Principles of Corporate Governance, <www.oecd.org/document/49/0,3343,en_2649_34813_31530865_1_1_1_1,00.html> accessed 20 April 2013

____Principle 2 of the UN Rio Declaration <www.unesco.org/education/nfsunesco/pdf/RIO_E.PDF> accessed 20 January 2015 ; for other international instruments vesting ownership of natural resources on states, see the UNGA Permanent Sovereignty over Natural Resources Resolution No 2158 (XXI) (1966) <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/004/61/IMG/NR000461.pdf?OpenElement> accessed 20 January 2015

____Proceedings and Documents of United Nations Monetary and Fiscal Conference, Bretton Woods, N.H.,1-22, July, 1947, Vol. I, 1117-1118 (1947) <http://fraser.stlouisfed.org/docs/publications/books/1948_state_bwood_v1.pdf> accessed 24 April 2013

____Report on the Observance of Standards and Codes (ROSC) Nigeria- Accounting and Auditing (6 June, 2011) <www.worldbank.org/ifa/rosc_aa_nigeria_2011.pdf> accessed 20 May 2013

____Report on the Observance of Standards and Codes (ROSC) Nigeria- Accounting and Auditing (6 June, 2011) www.worldbank.org/ifa/rosc_aa_nigeria_2011.pdf accessed 20 May 2013

____Report on the Observance of Standards and Codes (ROSC) Nigeria -Accounting and Auditing (17 June, 2004) <www.worldbank.org/ifa/rosc_aa_nga.pdf> accessed 20 May 2013

____The World Bank Groups, Reports on the Observance of Standards and Codes <www.worldbank.org/ifa/rosc_cg.html> accessed 15 February 2013

____Transparency International, Corruption Perception Index (2012) <http://cpi.transparency.org/cpi2012/results/> accessed 20 May 2013

____UN General Assembly, Permanent Sovereignty over Natural Resources' (1962) <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/193/11/PDF/NR019311.pdf?OpenElement> accessed 20 January 2015

____UN Resolution on the Charter of Economic Rights and Duties of States (Resolution 3281 (XXIX) of 12 December 1974) < http://www.un-documents.net/a29r3281.htm> accessed 20 January 2015

____UNCTAD Bilateral Investment Treaties in the Mid-1990s, (New York and Geneva: United Nations Pub 1998)

____UNCTAD, National Treatment UNCTAD series on Issues in International Investment Agreement (New York & Geneva: United Nations Pub 1999)

____United Nations Development Programme (UNDP), 'Niger Delta Human Development Report' (2006) <http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/name,3368,en.html> accessed 1 March 2013

____United Nations Division for Sustainable Development (UNDSD), 'Indicators of Sustainable Development: Guidelines and Methodologies' (2007) *National Sustainable Development Strategies <www.un.org/esa/sustdev/natlinfo/indicators/guidelines.pdf*> accessed 28 January 2015

____United Nations Programme of Action for African Recovery and Development 1986-1990 (UN-PAAERD) 1986-1990 (New York: United Nations Pub 1986)

____World Bank, 'Report on Nigeria' <http://data.worldbank.org/indicator/SI.POV.2DAY5> accessed 10 February 2011

____World Bank, *Annual Review of Development Effectiveness* (Washington DC: World Bank Pub. 1999)

____World Bank, *Sub-Saharan Africa-From Crisis to sustainable Growth: A Long-Term Study* (Washington DC: The World Bank 1989)

Other Internet Sources

___ 'An Open Letter on Oil Spills from the Managing Director of The Shell Petroleum Development Company of Nigeria Limited' <www.shell.com.ng/aboutshell/media-centre/news-and-media-releases/2011/open-letter-04082011.html> accessed 2 May 2013

___‘Corporate America: The Arsenal of Democracy’, a publication of the National WWII Memorial, Washington DC <www.wwiimemorial.com/?page=funding.asp&subpage=corpsfdns> accessed 28 April 2013

____ ‘Corruption Perceptions Index’ (2011) *Transparency International* <http://cpi.transparency.org/cpi2011/results/> accessed 10 May 2012

____Gas Flaring Reduction Partnership Website <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/EXTGGFR/0,,menuPK:578075~pagePK:64168427~piPK:64168435~theSitePK:578069,00.html> accessed 30 July 2011

____Global Gas Flaring Reduction Initiative; Report on Consultations with Stakeholders, the World Bank, and the Government of Norway <www wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/2004/08/06/000112742_20040806103736/Rendered/PDF/272750global1g1tiative0Report0no.01.pdf> accessed 28 July 2011

____Guide to Business in Nigeria <www.nigeria-law.org/BusinessInNigeria.htm> accessed 12 May 2013

____NAPIM’s website <www.napims.com/aboutus.html> accessed 25 May 2013

____National Petroleum Investment Management Services (NAPIMS), Nigeria Dynamic Fiscal Regime, 2011 <www.napims.com/dynamic.html> accessed 24 July 2011

____Niger Delta Set to Pipe Ogbele Gas to NLNG in Nigeria Oil and Gas Intelligence <www.nigeriaoilandgasintelligence.com/niger-delta-set-to-pipe-ogbele-gas-to-nlng/> accessed 24 May 2013

____Nigerian Conservation Foundation, WWF UK and International Union for Conservation of Nature (IUCN), Commission on Environmental, Economic and Social Policy, with Federal Ministry of Environment (Abuja), “Niger Delta Natural Resources Damage Assessment and Restoration Project Scoping Report”, May, 2000, contained in United Nations Development Programme (UNDP), Niger Delta Human Development Report, 2006 <http://hdr.undp.org/en/reports/nationalreports/africa/nigeria/name,3368,en.html> accessed 1 March 2013

____Nigerian National Bureau of Statistics, ‘Nigeria Population 2013’ (2 December, 2013) World Population Review <http://worldpopulationreview.com/countries/nigeria-population/> accessed 10 February 2014

____Nigerian National Petroleum Corporation (NNPC) Annual Statistical Bulletin, 2008 <www.nnpcgroup.com/Portals/0/Monthly%20Performance/2008%20ASB%201st%20Edition%20Web.pdf> accessed 19 November 2013

____Nigerian National Petroleum Corporation Website <www.nnpcgroup.com/development.htm> accessed 31 July 2011

____NNPC Annual Statistical Bulletin, 2010 <www.nnpcgroup.com/Portals/0/Monthly%20Performance/2010%20ASB%201st%20edition.pdf> accessed 19 November 2013

____ NNPC Annual Statistical Bulletin, 2012, <www.nnpcgroup.com/Portals/0/Monthly%20Performance/2012%20ASB%201st%20edition.pdf> accessed 19 November, 2013

____Ogoni Bill Of Rights www.mosop.org/ogoni_bill_of_rights.html accessed 14 March 2013

____Petroleum Industry Draft Bill, 2009 <www.nnpcgroup.com/Portals/0/pdf/PIBDrapftBill2008.pdf> accessed 23 May 2013

____ Risk Management & Corporate Governance, 41, Report Prepared for the OECD, <www.oecd.org/corporate/ca/corporategovernanceprinciples/42670210.pdf> accessed 22 April 2013

____Shell and Human Rights <www.shell.com/global/environment-society/society/human-rights/respecting.html> accessed 12 April 2013

____Shell in Nigeria – Working in a Complex Environment (21 July, 2011) a Shell Interactive Session <www.shelldialogues.com/sites/default/files/Nigeria%20Webchat%20-%20July%202011%20-%20Session%201.pdf> accessed 10 February 2014

____Special Report, 'Milton Friedman; a Heavy Weight Champ at Five Foot Two: The Legacy of Milton Freedman, a Giant Among Economists' (November 23, 2006) *The Economist*, <www.economist.com/node/8313925> accessed 6 April 2013

____The BBC News website profiles Diepreye Alamieyeseigha, the Nigerian governor who is under investigation after jumping bail in the UK, (6 December, 2005) BBC News <http://news.bbc.co.uk/1/hi/world/africa/4499962.stm> accessed 10 May 2012

____The Economist, Corruption in Nigerian: Hard Graft, (29th April, 2012) The Economist <www.economist.com/blogs/baobab/2012/04/corruption-nigeria> accessed 10 May 2012

____The Environmental Assessment of Ogoni Land (2011) UNEP's Report, 1-246 <http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf> accessed 2 May 2013

____The Oil and Gas Journal (22 December, 2010) <www.ogj.com/articles/2010/12/halliburton-agrees.html> accessed 25 September 2011

____The Price of Oil: Corporate Social Responsibility and Human Rights Violations (January, 1999) 148, A Human Rights Watch Publication <www.hrw.org/legacy/reports/1999/nigeria/nigeria0199.pdf> accessed 12 April 2013

____The Sun Reporter, Private Power Firms to Nigeria: We Owe you 100 Days of Light (2 October, 2013) The Sun Newspaper <http://sunnewsonline.com/new/specials/abuja-metro/private-power-firms-to-nigeria-we-owe-you-100-days-of-light/> accessed 14 November 2013

____Top 7 Suppliers of Oil to the US' (30 July, 2010) *Global Post Publication* <www.globalpost.com/dispatch/100726/top-7-us-oil-importers> accessed 15 May 2013

____Understanding Sudan, Fact Sheet Six: Nigeria <http://understandingsudan.org> accessed 2 June 2011

____US Energy Information Administration on Nigeria (16 October, 2012) <www.eia.gov/countries/analysisbriefs/Nigeria/nigeria.pdf> accessed 15 May 2013