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List of Contributors

JUSTIFYING GENETICS AS A POSSIBLE LEGAL DEFENCE TO CRIMINAL RESPONSIBILITY IN NIGERIA
OLUWATOMI A. AJAYI & IKENGA K.E. ORAEGBUNAM

RELEVANCE OF INTERNATIONAL HUMANITARIAN LAW TO THE DEPLOYMENT OF MULTINATIONAL FORCES: A FOCUS ON NORTH-EASTERN NIGERIA
IKPONMWONSA O. OMORUYI & ALERO I. FENEMIGHO

INFORMATIONAL PRIVACY AND SECURITY AMID GROWING ACTIVITIES ON ELECTRONIC PLATFORMS IN NIGERIA: A CASE FOR DATA PROTECTION LAW
DANIEL U. NNAM

THE INTERNATIONAL CRIMINAL COURT (ICC): JURISDICTIONAL BASIS AND STATUS
AHMED ISAU

ACCOUNTABILITY FOR INTERNATIONAL CRIMES THROUGH ALTERNATIVES TO PROSECUTION
ELIZABETH AMA OJI

JURISDICTIONAL CHALLENGES IN FIGHTING CYBERCRIMES: ANY PANACEA FROM INTERNATIONAL LAW?
IKENGA K. E. ORAEGBUNAM

THE RIGHT TO SELF-DETERMINATION UNDER INTERNATIONAL LAW: THE CURRENT BIAFRA STRUGGLE
K.O. MRABURE

RETHINKING DISPLACEMENT AND THE PROTECTION OF FEMALE ASYLUM SEEKERS IN NIGERIA
OBINNA O. MBANUGO, BONIFACE E. EWULUM & JUDE O. EZEANOKWASA

THE LEGAL REGIME FOR THE PROTECTION OF ASYLUM SEEKERS AND REFUGEES: AN OVERVIEW OF THE GENEVA CONVENTION 1951
AKINTUNDE ABIDEMI ADEBAYO

A CRITICAL EXAMINATION OF THE IMPACT OF ARMED CONFLICT ON CHILDREN: A CASE STUDY OF UGANDA
MARIA OMOZELE EDEKO & FELICIA ANYOGU

LEGAL RESPONSE TO HUMAN RIGHTS CHALLENGES OF MULTINATIONAL CORPORATIONS IN NIGERIA
OLUWATOSIN BUSAYO IGBAYILOYE, HAMEENAT BUKOLA OJIBARA & ANTHONIA OMOSEFE UGOWE

UNITED NATIONS CONVENTION ON THE RIGHTS OF A CHILD: IMPLEMENTATION OF LEGAL AND ADMINISTRATIVE MEASURES IN NIGERIA
B.N OKPALAOBI & C.O EKWUEME

XENOPHOBIA: A CRIME AGAINST HUMANITY AND ITS ATTENDANT IMPLICATIONS ON HUMAN RIGHTS
SIMON-PETER AYOO LUWA ST. EMMANUEL

THE 2014 REVISED JUDICIAL DISCIPLINE REGULATIONS OF THE NATIONAL JUDICIAL COUNCIL: A CLOG IN THE FIGHT AGAINST JUDICIAL CORRUPTION IN NIGERIA
C.J. UBANYIONWU

RELEVANCE OF THE TORT OF NUISANCE IN REDRESSING DAMAGE FROM OIL AND GAS POLLUTION IN NIGERIA
AMAKA G. EZE

RIGHT TO LIFE UNDER LEGAL AND JURISPRUDENTIAL STANDARDS: IMPLICATIONS FOR NIGERIA
CHIGOZIE M. ONUGBULAM

CIVILIANS IN NON-INTERNATIONAL ARMED CONFLICTS: THE CONTEMPORARY NIGERIAN EXPERIENCE
NNAMDI IKPEZE

PROTECTING NON STANDARD WORKERS' RIGHT TO FREEDOM OF ASSOCIATION AND TRADE UNIONISM
CHINEZE SOPHIA IBEKWE

DECISIONS MADE ON BEHALF OF THOSE WHO LACK CAPACITY (IN THE MEDICAL CONTEXT) UNDER THE ENGLISH AND NIGERIAN LEGAL SYSTEMS
C. N. ARINZE-UMOBI

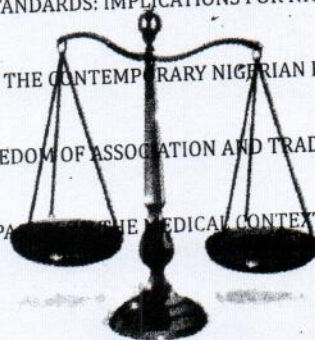


TABLE OF CONTENTS

<i>JUSTIFYING GENETICS AS A POSSIBLE LEGAL DEFENCE TO CRIMINAL RESPONSIBILITY IN NIGERIA</i> OLUWATOMI A. AJAYI & IKENGA K.E. ORAEBUNAM	1
<i>RELEVANCE OF INTERNATIONAL HUMANITARIAN LAW TO THE DEPLOYMENT OF MULTINATIONAL FORCES: A FOCUS ON NORTH-EASTERN NIGERIA</i> IKPONMWONSA O. OMORUYI & ALERO I. FENEMIGHO	17
<i>INFORMATIONAL PRIVACY AND SECURITY AMID GROWING ACTIVITIES ON ELECTRONIC PLATFORMS IN NIGERIA: A CASE FOR DATA PROTECTION LAW</i> DANIEL U. NNAM	27
<i>THE INTERNATIONAL CRIMINAL COURT (ICC): JURISDICTIONAL BASIS AND STATUS</i> AHMED ISAU	34
<i>ACCOUNTABILITY FOR INTERNATIONAL CRIMES THROUGH ALTERNATIVES TO PROSECUTION</i> ELIZABETH AMA OJI	50
<i>JURISDICTIONAL CHALLENGES IN FIGHTING CYBERCRIMES: ANY PANACEA FROM INTERNATIONAL LAW?</i> IKENGA K. E. ORAEBUNAM	57
<i>THE RIGHT TO SELF-DETERMINATION UNDER INTERNATIONAL LAW: THE CURRENT BIAFRA STRUGGLE</i> K.O. MRABURE	66
<i>RETHINKING DISPLACEMENT AND THE PROTECTION OF FEMALE ASYLUM SEEKERS IN NIGERIA</i> OBINNA O. MBANUGO, BONIFACE E. EWULUM & JUDE O. EZEANOKWASA	75
<i>THE LEGAL REGIME FOR THE PROTECTION OF ASYLUM SEEKERS AND REFUGEES: AN OVERVIEW OF THE GENEVA CONVENTION 1951</i> AKINTUNDE ABIDEMI ADEBAYO	83
<i>A CRITICAL EXAMINATION OF THE IMPACT OF ARMED CONFLICT ON CHILDREN: A CASE STUDY OF UGANDA</i> MARIA OMOZELE EDEKO & FELICIA ANYOGU	92
<i>LEGAL RESPONSE TO HUMAN RIGHTS CHALLENGES OF MULTINATIONAL CORPORATIONS IN NIGERIA</i> OLUWATOSIN BUSAYO IGBAYILOYE, HAMEENAT BUKOLA OJIBARA & ANTHONIA OMOSEFE UGOWE	106
<i>UNITED NATIONS CONVENTION ON THE RIGHTS OF A CHILD: IMPLEMENTATION OF LEGAL AND ADMINISTRATIVE MEASURES IN NIGERIA</i> B.N OKPALAOBI & C.O EKWUEME	120

LEGAL RESPONSE TO HUMAN RIGHTS CHALLENGES OF MULTINATIONAL CORPORATIONS IN NIGERIA

Abstract

The duty to protect human rights is no longer the sole duty of states but also that of other parties like the multinational corporations, companies and business enterprises which are all part of the private sector. This is because it has been observed that this sector, particularly multinational corporations also violate human rights as their operations have an effect whether positive or negative on the rights of a group of people which includes employees, customers and communities in which they operate. Hence, the subject matter of business and human rights is a trending issue at the international level. This paper discusses the problems posed by the private sector, specifically the multinationals, and how they violate human rights in Nigeria vis-a-vis the response by the government. The paper finds that the response is poor and the consequence is the increase in violation of human rights in the country. The study recommends that actions be taken to strengthen the laws and develop measures that directly relate to business and human rights. Having examined what is obtainable in other jurisdictions like South Africa and Australia, the study equally recommends that the government follow in their good footsteps.

Key words: *Business, Human rights, Multinational Corporations, business enterprise*

1. Introduction

In the past decades, international human rights laws imposed on States the responsibility to protect and respect human rights. Hence, States were under the obligation to protect the rights of individuals from being abused by other parties including business enterprises and multinational corporations (MNCs). These laws have been embedded in certain treaties such as the Universal Declaration of Human Rights (UNDHR) 1948, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights which are referred to as the International Bill of Human Rights¹ and other conventions. The protection of human rights is also embedded in most national constitutions as a recognition and part fulfilment of the international obligation of the State to take joint and separate action in cooperation with the United Nations to achieve a universal respect for, and observance of, human rights and fundamental freedoms.² Recently, this obligation has been extended to business enterprises particularly corporations because of their impact on human rights. MNCs are mainly businesses oriented with a major aim to make and maximise profit. Some scholars are of the opinion that corporations are persons that engage in lawful private activities and their main responsibility is to obey the law.³ This position has been challenged by the revolutionary of the international system and so there is now a debate in reference to the duty of business corporations as regards human rights. The implication of this, is that, MNCs are now being held accountable for the

*By Oluwatosin Busayo IGBAYILOYE, LL.B, LL.M (University of Ilorin), Lecturer, Department of Jurisprudence & International Law, Faculty of Law, University of Ilorin, Nigeria. 08038076514, Email address is olutos2003@yahoo.com; Hameenat Bukola OJIBARA, LLB (Ilorin), BL (Abuja), LLM (Portsmouth), Lecturer, Department of Private & Property Law, Faculty of Law, University of Ilorin, Nigeria. 08058043475, Email address is hameenat05@yahoo.com; and Anthonia Omosefe UGOWE LLB (Ilorin), LLM (Manchester), Lecturer, Department of Public Law, Faculty of Law, University of Ilorin, Nigeria, Email addresses ugowe.ao@unilorin.edu.ng and anthonia_ugo@yahoo.com

¹ R. Hamman & C. Schild, 'Business and Human Rights in South Africa: Context and Recommendations for Pro-active Engagement' (2008) *Summary of a report commissioned by the National Business Initiative*, <http://www.nbi.org.za/Lists/Publications/Attachments/69/Business_Human_Rights_in_SA.pdf> accessed 20 February 2015.

² J. A. Dada, 'Human Rights under the Nigerian Constitution: Issues and Problems' (2012) *International Journal of Humanities and Social Science*, 2 No. 12, p. 33.

³ P. T. Muchlinski, 'Human Rights and Multinationals: is there a problem?' (2001) *International Affairs*, 77, no. 1 35.

abuse of human rights through the Alien Tort Statute (ATS)⁴ as applied in the case of *Doe v Unocal*⁵ which was eventually settled.

Corporations by their activities have an impact on economic and social rights; and labour rights, which all together affect the economic welfare of a State.⁶ However, with the increased recognition of the link between business and human rights,⁷ international standards addressing business and human rights have begun to emerge recently to tackle the challenges caused by MNCs. Even though the issue that business enterprises, particularly MNCs, be accorded the responsibility to promote human rights have attracted attention at global level, the response in Nigeria is poor.⁸ In view of the above, the paper discusses the relationship between MNCs and human rights and also gives an overview of the international standards that control them. It considers the impacts of the activities of MNCs on the rights of the citizens particularly that of the communities in which they are located, and examines government response to these challenges. The paper equally assesses the response of other countries like South Africa and Australia with a view to drawing recommendations for Nigeria.

2. The Relationship between Multinational Corporations and Human Rights

Human rights refer to inalienable rights which all human beings possess and also basic standards which are for the purpose of ensuring dignity and equality for all.⁹ According to Eze, "human rights represent demands or claims which individuals or groups make on society, some of which are protected by law and have become part of *lex lata* while others remain aspirations to be attained in the future".¹⁰ Thus, human rights constitute rights and obligations under international law which States are obliged to respect, protect and fulfil. The implication of this is that States are not to interfere with the promotion of human rights, and are to protect individuals and groups from the abuse of their rights.¹¹ The first code of human rights in modern times was the UDHR of 10 December 1948.¹² Afterwards, the two covenants, namely, ICCPR- civil and political rights and ICESCR- economic, social and cultural rights, became adopted by the UN General Assembly in 1966¹³, designed to become legal legally binding on the UN's Member States¹⁴. In addition to these are special agreements like International Labour Organisation (ILO) which addresses the rights of workers and employment conditions, Convention on the Rights of the Child 1989, Convention against Torture and Other Cruel Punishment of the Crime of Apartheid 1973. There are also regional agreements like the European Convention on Human Rights and Fundamental Freedom (ECHR), the American Declaration of the Rights and Duties of Man (ADR), The American Convention on Human Rights (AMR), The African Charter on Human and People's Rights (AFR). The major regional initiative applicable in Africa is the African Charter on Human and Peoples' Rights adopted in 1981 by the Organisation of African Unity.¹⁵

⁴ Alien Torts Claims Act 1789 28 U.S.C. 1350

⁵ 248 F 3d 915 (9th Cir 2001), J.G. Ruggie, *Just Business: Multinational Corporations and Human Rights*, (1st Ed, W.W. Norton 2013), p xxxii-xxxiii

⁶ P. T. Muchlinski, (n 3) p. 43.

⁷ Office of the United Nations High Commissioner for Human Rights, 'Business and Human Rights: A Progress Report', (2000) Geneva, <<http://www.ohchr.org/Documents/Publications/BusinessHRen.pdf>> accessed 18 February 2015.

⁸ Amnesty International, *Corporate Accountability*, <amnesty.org/en/what-we-do/corporate-accountability> accessed 15 February 2015

⁹ Human Rights Translated: A Business Reference Guide, Castan Centre for Human Rights Law, Faculty of Law, Monash University, Clayton VIC 3800, Melbourne, Australia <hrbdf.org/doc/human_rights_translated.pdf> accessed on 20 August 2014

¹⁰ O. C. Eze, *Human Rights in Africa: Some Selected Problems*, Lagos, (1984) The Nigerian Institute of International Affairs, p. 5.

¹¹ United Nations Human Rights, 'What Are Human Rights?', <<http://www.ohchr.org/EN/Issues/Pages/WhatAreHumanRights.aspx>> accessed 18 February 2015

¹² P. Sieghart, *The International Law of Human Right* (New York, Oxford University Press, 1983) p. 17.

¹³ T. Hillier, *Sourcebook on Public International Law*, (Cavendish Publishing Limited, 1998) p. 311.

¹⁴ P. Sieghart (n 12) p. 25.

¹⁵ United Nations Human Rights, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' New York & Geneva, 2011,

Due to the development of the global economy, there has been an increase in the awareness of the impact of MNCs on human rights. This is attributable to the attention international NGOs and the media have drawn to these impacts. As a result, there are trade sanctions on States disregarding human rights. International principles have also emerged as regards the subject matter. Thus, corporations are beginning to include codes that protect the rights of its employees.¹⁶ The impact of a corporation's operations on a group of people or the society as a whole can either be positive or negative. One significant negative impact is violation of peoples' rights, which people include employees, customers, suppliers, and communities where corporations operate. Indeed, there is hardly any fundamental right that is not relevant to MNCs.¹⁷ Some of these rights are right to life, health, right to a safe and secure workplace, right to housing and invariably air and land to include the land of the indigenous people of the communities in which these corporations are situated. Thus, where a violation occurs and a cause of action is established, the law and authority applicable are the appropriate domestic laws and domestic authorities. It is difficult to apply international law directly based on the principles of conflicts of laws and the need for ratification and domestication. It is however important to note that consequent upon new free trade rules and diversity in the nature of trade, most companies especially MNCs have outgrown its national laws. Still, victims are first expected to seek redress in their national courts. This occurs where there is a weak national regulation¹⁸ and because of this, the abuse of human rights continues to rise. The former Special Representative to the then Secretary General (SRSG) Kofi Anan, John Ruggie asserted that Corporations, must recognise fundamental rights. Thus, failure of a corporation to do this leads to violation of human rights. The weak regulation causes corporations to escape any form of accountability. Moreover, in cases where the state cannot be shown to be culpable or complicit in the harm caused, there will be no-one who will be legally responsible despite the fact that a violation of rights has occurred.¹⁹ Most debates regarding this issue has focused on examples where multinational corporations have been accused of being directly responsible for, or being complicit in, human rights abuses. The implication of this is the emergence of international standards that address business and human rights which in most cases are not binding. United Nations has not wavered in its commitment to the protection of human rights and as such has contributed immensely to the development of these principles.

3. International Human Rights Standards on Business and Human Rights

These standards are initiatives and guidelines on the prevention of violation of human rights by corporations. This part gives a synopsis of these International human rights standards.

3.1 United Nations Norms on the Responsibilities of Transnational Corporations and other Business Enterprises

This law was prepared by a working group by the Sub-Commission on the Promotion and Protection of Human Rights of the Economic and Social Council (ECOSOC), in a resolution dating back to 1998.²⁰ Its mandate was to make recommendations and proposals concerning the working methods and activities of transnational corporations (TNCs), in order to ensure a correlation with the economic and

http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf, accessed 25 February 2015.

¹⁶ University of Minnesota: Human Rights Library, 'Global Business Responsibility Resource Center: Human Rights', <<https://www1.umn.edu/humanrts/links/gbrhumanrts.html>> accessed 27 February 2015

¹⁷ Business and Human rights, Australian Human Rights Commission, <[file:///accounts/1000/shared/downloads/Business and Human Rights - Australian Human Rights Commission.html](file:///accounts/1000/shared/downloads/Business%20and%20Human%20Rights%20-%20Australian%20Human%20Rights%20Commission.html)> accessed 20 February 2015.

¹⁸ Beyond Voluntarism: Human rights and the developing international legal obligations of companies, (2002) *International Council on Human Rights Policy*, Versoix, Switzerland.

¹⁹ D. Bilchitz, 'The Necessity for a Business and Human Rights Treaty' (2014), <<http://ssrn.com/abstract=2562760>> accessed 21 March 2015

²⁰ Á. J. de Regil, 'Business and Human Rights Towards a New Paradigm of True Democracy and the Sustainability of People and Planet or Rhetoric Rights in a Sea of Deception and Posturing: The good old formula of changing so that everything remains the same...!', <<http://www.jussempere.org/Resources/Corporate%20Activity/businessandhumanrights.html>> accessed 19 August, 2015

social objectives of their host countries and promote human rights.²¹ Fundamentally, these norms are imposed directly on companies under international law and have the same range of human rights duties under treaties they have ratified by States 'to promote, secure the fulfillment of, respect and ensure respect of and protect human rights.' This proposal triggered a deeply divisive debate between the business community and human rights advocacy groups while evoking little support from governments. The Commission declined to act on the proposal.²² Thus, the Norms Draft till date only remains as a reference of the effort to develop a normative framework.²³

3.2 The ILO Tripartite Declaration

The Tripartite Declaration lays down guidelines for MNCs, governments, employers' organizations, and workers' organizations.²⁴ This declaration which was recently revised in 2000, consists of a set of principles intended to guide MNCs regarding employment, training, conditions of work and life and industrial relations, some of which are inspired in the Universal Declaration of Human Rights.²⁵ Though most of the guidelines deal with labour rights in areas such as employment, training, industrial relations, conditions of work and life, nevertheless, paragraph eight makes specific reference to human rights, providing that all of the parties concerned "should respect the Universal Declaration of Human Rights and the corresponding International Covenants adopted by the General Assembly."²⁶ Its provisions are reinforced by core and priority ILO Conventions and Recommendations. The Declaration urges MNCs to apply its voluntary principles to the greatest extent possible.²⁷

3.3 The United Nations Global Compact

The Global Compact was proposed by the UN Secretary General in 2000 and launched at the World Economic Forum "not as a regulatory instrument or code of conduct, but a value-based platform designed to promote institutional learning."²⁸ The standards aim is to reflect the norms as laid out in the Universal Declaration of Human Rights, the ILO's Tripartite Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention against Corruption.²⁹ The standards originally had nine principles in the areas of human rights, labour, and the environment, to which the principle to fight corruption was later added.³⁰ The UN Global Compact seeks to promote responsible corporate practices through a variety of engagement mechanisms, including learning, dialogue and projects. It can be perceived that the United Nations is eager to ensure that the Compact is not interpreted as anything more than a highly public effort to support a form of global corporate citizenship and based on concepts of enlightened self-interest, public accountability and transparency.³¹

²¹ S. O. V. Bachmann & P. P. Miretski, 'Global Business and Human Rights - The UN 'Norms on the Responsibility of Transnational Corporations and other Business Enterprises with Regard to Human Rights: A Requiem' <<http://ssrn.com/abstract=1958537>> accessed 18 April 2015

²² Human Rights Council Seventeenth Session, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises A/HRC/17/31 21 March 2003 www.ohchr.org/EN/Issues/TransnationalCorporations/Pages/Reports.aspx accessed on 02 June, 2014.

²³ de Regil (n 20).

²⁴ D. Surya, 'Human Rights Violations by Multinational Corporations and International Law: Where from Here?' <http://ssrn.com/abstract_id=637665> accessed 20 February 2015

²⁵ de Regil (n 20).

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ The UN Global Compact Office and The OECD, 'The UN Global Compact and the OECD Guidelines for Multinational Enterprises: Complementarities and Distinctive Contributions 2005' <<http://www.Oecd.Org/Corporate/Mne/34873731.Pdf>> accessed 1 January, 2015

²⁹ J. Nolan, 'The United Nations' Compact With Business: Hindering or Helping the Protection of Human Rights?' 2005 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1003702> accessed 11 September 2015

³⁰ de Regil, (n 20) p.18

³¹ Nolan (n 29).

3.4 The OECD Guidelines for Multinational Enterprises

The Organization for Economic Cooperation and Development's Guidelines for Multinational Enterprises adopted in 1976 and revised in 2011, is the only corporate responsibility instrument formally adopted by state governments. The OECD Guidelines are recommendations addressed to enterprises operating in OECD countries. Standing out in this framework are the National Contact Points (NCPs), which are considered part of the responsibility of the member States, to set them up for undertaking promotional activities, handling inquiries and contributing to the solution of problems which may arise in this regard.³² The Guidelines provide "nonbinding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognized standards".³³ The Guidelines consist of a series of principles and norms for responsible business conduct in the areas of HR, transparency, corruption, taxes, labour and environmental relations and consumer protection, on a strictly voluntary basis.³⁴ They establish an investigatory procedure that allows the 'National Contact Points' in OECD countries to investigate allegations that companies have breached the Guidelines.³⁵

3.5 The United Nations Framework for Business and Human Rights

The Guiding Principles were the culmination of efforts by Professor John Ruggie,³⁶ in which he presented the 'Protect, Respect, Remedy' Framework. The first pillar puts emphasis upon the State's "duty to protect" citizens from human rights violations by companies drawing greatly on international human rights law.³⁷ The second and third refer to the "corporate responsibility to respect" human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address adverse impacts and enhance "access to remedy" for victims with which they are involved.³⁸ The Guiding Principles do not create new legal obligations but represent a clarification and elaboration of the existing standards. The policy framework and Guiding Principles focus on addressing the regulatory gaps in relation to the human rights impacts of business activity, and in particular business activity in so-called 'Third World' states.³⁹ It is important to note that these initiatives are not legally binding on States but serve as guidelines.

4. Response to Issues on Human Rights involving Multinational Corporations in South Africa and Australia

This section gives an analysis into what obtains in some jurisdictions, particularly South Africa and Australia, which have designed internal laws in relation to business and human rights.

4.1 South Africa

The supreme law of South Africa is the 1996 Constitution of the Republic. The Constitution gives effects to certain International laws especially the Bill of Rights, in which it requires the government to enact relevant legislation and establish institutions for the protection of its citizens. The Bill of Rights is applicable to state organs as well as juristic persons or businesses.⁴⁰ It protects socio-economic rights, environmental rights, civil and political rights to encompass the right to access to information, freedom of association, picket and petition,

³² de Regil (n 20).

³³ The Trade Union Advisory Committee, 'OECD Guidelines for Multinational Enterprises: Recommendations for Responsible Business Conduct in a Global Context' (2012), <<http://www.tuacocedmneguidelines.org/Docs/TradeUnionGuide.pdf>> p. 3.

³⁴ de Regil (n 20).

³⁵ J. Bonnitcha, 'The UN Guiding Principles on Business and Human Rights: the implications for enterprises and their lawyers' <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2165221> (accessed 11 September 2015).

³⁶ United Nations Human Rights (n 15).

³⁷ T. Lambooy, M. A. Varner & A. Argyrou, 'The Corporate Responsibility To Remedy (3rd Pillar Ruggie Framework) Analysis of the corporate responses in three major oil spill cases: Shell - Nigeria; BP - US (the Gulf); Chevron - Ecuador' (2011), <http://ssrn.com/abstract=1953190>, <accessed 9 July 2015>.

³⁸ United Nations Human Rights (n 15).

³⁹ P. C. Simons, 'International law's invisible hand and the future of corporate accountability for violations of human rights' <papers.ssrn.com/sol3/papers.cfm?abstract_id=1933426>, (accessed 20 February 2015).

⁴⁰ Sections 7 to 39 and Section 8 (2).

freedom against slavery, and forced labour. Also, some of the institutions include the Office of the Public Protector, the Commission on Gender Equality, the Human Rights Commission and the Commission for the Protection of the rights of Cultural, Religious and Linguistic Communities.⁴¹

The domestic legislation enacted to date in South Africa is the National Environmental Management Act (NEMA). This law does not particularly use the language of business and human rights but it engages the Government in the regulation of companies through the promotion of business principles that enhance sustainable development.⁴² This places a duty of care and remediation of environmental damage upon businesses, referred to as juristic persons, and vests the department of Environmental Affairs and Tourism with the power to compel businesses to remedy any negative environmental effects.⁴³ It also reserves the right of workers to refuse to perform any environmentally hazardous work,⁴⁴ and also authorises anyone to approach a court for relief in respect of a breach of any of its provisions (including by a juristic person), on behalf of affected persons or the public.⁴⁵

Other examples of legislation capable of mediating the relationship between MNCs and human rights in South Africa include⁴⁶ the 1965 Atmospheric Pollution Prevention Act, the 1996 Land Reform Act, the 1996 National Education Policy Act, the 1996 South African Schools Act, the National Health Act, the 1997 National Housing Act, the 1998 Prevention of Illegal Eviction and Unlawful Occupation of Land Act, the 1994 Public Services Act, the Domestic Violence Act, the 1997 Extension of Security of Land Tenure Act, the 2000 Promotion of Equality and Prevention of Unfair Discrimination Act, the 2005 Children's Act, the 2008 Child Justice Act, the 1997 Basic Conditions of Employment Act, the 1998 Employment Equity Act, the 1993 Occupational Health and Safety Act, the 1995 Labour Relations Act, the 1998 Competition Act, the 2000 Promotion of Administrative Justice Act, the 2000 Promotion of Access to Information Act, the 2003 Broad Based Black Economic Employment Act, the 2004 National Gambling Act, the 2009 Films and Publications Act and the Prohibition of Mercenary Activities in Country of Armed Conflict Act.⁴⁷

There is also the Kings III Code on Corporate Governance which is an instrument that encourages businesses to generate profits for their shareholders in a manner that takes social, environmental and governance issues into consideration and gives effect to the 2008 Companies Act. Also, the Companies Regulations adopted in April 2011 includes a chapter on "Enhanced Accountability and Transparency", which, among other provisions, requires companies to establish social and ethics committees for the purpose of monitoring company activities, including with respect to the UN Global Compact principles, OECD recommendations concerning corruption and International Labour Organization standards, among others.⁴⁸ There is the 2011 Code for Responsible Investment in South Africa (CRISA) for the private sector, launched by the Institute of Directors of Southern Africa. The voluntary code offers guidance to institutional investors on investing according to sound governance and social and environmental principles⁴⁹ and is supported by the Financial Services Board (FSB) and the Johannesburg Stock Exchange (JSE).

⁴¹ South Africa Institute for Human Rights and Business (IHRB), <<http://www.ihrb.org/pdf/UPR/South-Africa-UPR2011-IHRB-final.pdf>>, accessed 18 February 2015

⁴² Section 1(xxviii) NEMA Act 1998.

⁴³ Section 28 (1) and (4).

⁴⁴ Section 29.

⁴⁵ Section 32 (1) and Section 33.

⁴⁶ South Africa Institute for Human Rights and Business (IHRB) (n 41)

⁴⁷ *ibid.*

⁴⁸ *ibid.*

⁴⁹ *ibid.*

The South African Human Rights Commission on the issue of business and human rights hosts various discussions around business and human rights at a national and provincial level.⁵⁰ The purpose of these discussions was to create awareness around the issue of business and human rights, and the associated implications for business, individuals and communities in South Africa. It also works in conjunction with the Office of the High Commissioner for Human Rights at the United Nations⁵¹ on issues affecting non-nationals. From these discussions and findings, the Commission could identify the challenges as regards business and human rights in the country and proffer solutions to them. For instance, the Commission identified that there is a need for a comprehension overview of the status of human rights and business in South Africa, concentrating on developments over the past decade.

4.2 Australia

Certain Australian laws which currently require companies to comply with human rights standards are not framed in human rights language. This is a similar attribute with the South African laws. However, Australian laws are mainly in accordance with the Australia's international human rights obligations.⁵² In Australia, there are laws that govern employment at both state and federal levels. These laws cover minimum terms and conditions, work health and safety, privacy, discrimination, superannuation, long service leave and other matters.⁵³ The Anti-Discrimination laws prohibit discrimination and inequality at both the federal and state levels. Such laws include the Racial Discrimination Act 1975, Sex Discrimination Act 1984, Disability Discrimination Act 1992 and Age Discrimination Act 2004.⁵⁴ These laws prevent discrimination and harassment in the workplace and employers are required to provide equal employment opportunities.⁵⁵

Also, there is the law on Native Title referred to as Native Title Act 1993 (NTA).⁵⁶ This law addresses economic, social and cultural rights including property rights, which are set out in various international human rights treaties or declarations including the International Covenant on Economic, Social and Cultural Rights and the Declaration on the Rights of Indigenous Peoples. Native Title Act recognises a set of rights and interests over land or waters where Aboriginal and Torres Strait Islander groups practise traditional laws and customs prior to sovereignty.⁵⁷ It is a property right that concerns relationship to land which is the very foundation of Indigenous religion, culture and well-being.⁵⁸ In 1998, the NTA was extensively amended, with further amendments in 2007 and also in 2009. The native title's non-discriminatory protection is a recognised human right provision.⁵⁹

Companies in Australia also include the human rights standards they must comply with under Australian law. In addition, some Australian companies go beyond domestic legal requirements and participate in voluntary initiatives on CSR and human rights, including the United Nations Global Compact and the

⁵⁰ Business & Human Rights Resource Centre, <<http://business-humanrights.org/en/south-africa-0>> accessed 23 March 2015

⁵¹ The Chairperson, Advocate Lawrence M Mushwana, hosted a 2-day workshop on Business and Human Rights on issues of affecting non-nationals on the 8 and 9 December 2014, in conjunction with the Office of the High Commissioner for Human Rights at the United Nations. At this time, the report of this workshop is yet to be published. Business & Human Rights Resource Centre <<http://business-humanrights.org/en/south-africa-0>> accessed 23 March 2015

⁵² Business and human Rights, Australian Human Rights Commission, (n 17)

⁵³ Australian Human Rights Commission, <<https://www.humanrights.gov.au/publications/right-discrimination-free-workplace>>, accessed 19 April 2015

⁵⁴ *ibid.*

⁵⁵ Business and human Rights, Australian Human Rights Commission (n 17)

⁵⁶ The Aurora Project, 'What IS Native Title?', <http://www.auroraproject.com.au/what_is_native_title> accessed 19 April 2015

⁵⁷ *ibid.*

⁵⁸ Australian Human Rights Commission <<https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/native-title>> accessed 19 April 2015

⁵⁹ *ibid.*

Global Reporting Initiative.⁶⁰ Furthermore, the Australian Human Rights Commission takes part in research and consultation, providing resources and guidelines, and advocating for activities that also involves the business community to improve human rights. It also facilitated a national dialogue on business and human rights on 30 July 2014 where the Australian Human Rights Commission and Global Compact Network Australia (GCNA) met with around 100 representatives of a number of Australia's biggest companies, NGOs, government departments, investors and academia to discuss ways in which corporate strategies can be shaped with human rights objectives which was supported by the United Nations Working Group on Business and Human Rights, mandated by the United Nations to disseminate and implement leading guidelines in this area. The Dialogue which involved 27 experts, deliberated on topics ranging from corporate responsibility to respect human rights, the role of government, access to remedy and grievance mechanisms, bringing a human rights lens to Indigenous engagement and human rights in the supply chain.⁶¹

5. Challenges Posed by Multinational Corporations in Nigeria

The upheaval caused by these companies, particularly the MNCs, in relation to human rights can be adequately examined and discussed through the notorious case of the Royal Dutch/Shell and the Ogoni people of the Niger Delta part of Nigeria. The challenges faced in Nigeria are similar to those experienced in other jurisdictions particularly the developing nations. Notable examples similar to Shell in the Niger Delta are Chevron-Texaco in Ecuador, Unocal in Burma,⁶² Union Carbide in Bhopal, Texaco. Victims in these cases have suffered long judicial tussle with little or no remedy while some are still waiting for remedy and compensation.

In Nigeria, there have been accusations of atrocities like the use of slave labour, cultural genocide, ethnic discrimination, violations to the right to a healthy environment and culpable environmental disaster, the criminalisation of social protest, widespread intimidation and murder/death, extra-judicial killings, kidnapping, unlawful detention,⁶³ disappearances and torture of employees and activists, and willful lack of observance for safety norms in the workplace.⁶⁴ The oil industry has engaged in operations for more than fifty years in Ogoniland and it involves both 'upstream (exploration, production) and downstream (processing and distribution) operations'⁶⁵ which according to the Environmental Assessment of Ogoniland (the Report or the UNEP Report) have violated their rights to water, food, health, environment, and to maintain a traditional way of living and culture.⁶⁶ They are exposed to petroleum hydrocarbons that evaporate into the air and inhaled while breathing or penetrating the skin and are absorbed from drinking, washing, and cooking with contaminated ground or surface water, consumption of sea food or accidental touch of soil or sediment that is contaminated with oil.⁶⁷ On the other hand, farmers and fishermen also suffer work hazards through exposure to hydrocarbons as they carry out work on contaminated soil, fishing activities and in the process get

⁶⁰ Australian Human Rights Commission, <https://www.humanrights.gov.au/publications/corporate-social-responsibility-human->, accessed 19 April 2015

⁶¹ Business and human Rights, Australian Human Rights Commission file:///accounts/1000/shared/downloads/Business and Human Rights_ Australian Human Rights Commission.html (accessed 25 April 2015).

⁶² R. Chambers, 'The Unocal Settlement: Implications for the Developing Law on Corporate Complicity in Human Rights Abuses' (2005) *Human Rights Brief*, 13, no. 14, p.14-16.

⁶³ Human Rights Watch, 'Nigeria: The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria' (1995) 7, no.5; A. Shinsato, 'Increasing the Accountability of Transactional Corporations for Environmental Harms: The Petroleum Industry in Nigeria' *Journal of International Human Rights*, (2005) 4, no. 1, p. 190.

⁶⁴ S. Khoury & D. Whyte, 'New Mechanisms of Accountability for Corporate Violations of Human Rights, University of Liverpool, <<http://business-humanrights.org/sites/default/files/documents/New%20Mechanisms%20for%20Accountability.pdf>> accessed April, 2015

⁶⁵ United Nations Environment Programme, 'Background to Environmental Degradation in Ogoniland' (UNEP) <http://postconflict.unep.ch/publications/OEA/02_ch02_UNEP_OEA.pdf> p.43, accessed 20 February 2015.

⁶⁶ *ibid.*

⁶⁷ *ibid.*, p.39.

Global Reporting Initiative.⁶⁰ Furthermore, the Australian Human Rights Commission takes part in research and consultation, providing resources and guidelines, and advocating for activities that also involves the business community to improve human rights. It also facilitated a national dialogue on business and human rights on 30 July 2014 where the Australian Human Rights Commission and Global Compact Network Australia (GCNA) met with around 100 representatives of a number of Australia's biggest companies, NGOs, government departments, investors and academia to discuss ways in which corporate strategies can be shaped with human rights objectives which was supported by the United Nations Working Group on Business and Human Rights, mandated by the United Nations to disseminate and implement leading guidelines in this area. The Dialogue which involved 27 experts, deliberated on topics ranging from corporate responsibility to respect human rights, the role of government, access to remedy and grievance mechanisms, bringing a human rights lens to Indigenous engagement and human rights in the supply chain.⁶¹

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⁶⁰ Australian Human Rights Commission, <https://www.humanrights.gov.au/publications/corporate-social-responsibility-human->, accessed 19 April 2015

⁶¹ Business and human Rights, Australian Human Rights Commission file:///accounts/1000/shared/downloads/Business and Human Rights_Australian Human Rights Commission.html (accessed 25 April 2015).

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⁶³ Human Rights Watch, 'Nigeria: The Ogoni Crisis: A Case-Study of Military Repression in Southeastern Nigeria' (1995) 7, no.5; A. Shinsato, 'Increasing the Accountability of Transactional Corporations for Environmental Harms: The Petroleum Industry in Nigeria' *Journal of International Human Rights*, (2005) 4, no. 1, p. 190.

⁶⁴ S. Khoury & D. Whyte, 'New Mechanisms of Accountability for Corporate Violations of Human Rights, University of Liverpool, <<http://business-humanrights.org/sites/default/files/documents/New%20Mechanisms%20for%20Accountability.pdf>> accessed April, 2015

⁶⁵ United Nations Environment Programme, 'Background to Environmental Degradation in Ogoniland' (UNEP) <http://postconflict.unep.ch/publications/OEA/02_ch02_UNEP_OEA.pdf> p.43, accessed 20 February 2015.

⁶⁶ *ibid.*

⁶⁷ *ibid.*, p.39.

exposed to petroleum (drink, bathe or collect shellfish in contaminated water), or if they come into contact with or accidentally ingest contaminated sediment while engaged in any of these activities.⁶⁸ Petroleum hydrocarbons in the UNEP Report are thus naturally occurring hydrocarbon substances and, depending on the length of the carbon chain, can occur in gas, liquid or solid form.⁶⁹

One major challenge is the weak rule of law and high level of corruption in the country.⁷⁰ The legal framework regulating multinational companies still remains poor despite the enormous growth and expansion of these companies and trade in line with globalization. And so there is usually no domestic law to serve as the basis for claims. These loopholes in rules are sometimes due to desperation or constraints in the bid to compete internationally for investments making the rules flexible and overly accommodating to encourage foreign investment and boost Foreign Direct Investment (FDI).

There are also legal and jurisdictional problems. Some have argued that parent companies should be held responsible for actions committed abroad by subsidiaries. Parent company and its subsidiary are seen as distinct legal entities and so it is not liable for wrongs committed by its subsidiary unless it is under close operation or supervision by the parent. This usually raises the issue of forum and so it is difficult to allege cases abroad.⁷¹ The laws applied are the international law, law of the state where the events occurred or law of the forum state. In *Wiwa v Royal Dutch Petroleum Co.*,⁷² on 17th April 2013 the Supreme Court handed down its decision finding that ATCA⁷³ does not apply to conducts outside of the United States. Access to formal judicial systems is difficult and judicial mechanisms are usually underequipped to provide effective remedy for victims. States lack technical resources to effectively regulate companies and monitor compliance and lack of institutional capacity to enforce laws. In other words, the courts are slow, expensive and uncertain. It also shows that the government lacks an adequate analysis of impact assessment and institutional remedy.⁷⁴

6. Legal Response by the Nigerian Government

State has a duty to protect its citizens in accordance with the rights stated in the Constitution. A number of related rights include the rights to work, education, health, environment, life, liberty, fair hearing.⁷⁵ It is also the duty of the state to ensure there are effective regulatory systems for the protection and promotion of human rights goals in order to establish a basis for human rights violation or a breach.⁷⁶ Nigeria is party to a number of United Nations treaties and has ratified and domesticated some of the major human right treaties which are still very much effective till date.⁷⁷ They include the 1966 International Covenant on Civil and Political Rights, the 1969 Convention on the Elimination of All Forms of Racial Discrimination, the 1985 Convention on the Elimination of all Forms of Discrimination against Women, the 1991 Convention on the Rights of the Child, 1966 International Covenant on

⁶⁸ *ibid.*

⁶⁹ *ibid.*, p. 36.

⁷⁰ Oil for Nothing: Multinational Corporations, Environmental Destruction, Death and Impunity in the Niger Delta, A U.S. Non-Governmental Delegation Trip Report, September 6-20, 1999, change, Section Three, January 25, (2000) <http://www.essentialaction.org/shellFinal_Report.pdf> accessed 4 March 2015

⁷¹ *Conelly v RTZ Corporation Plc and Others*, (1998), AC, 854; *Owu v Jackson* (2005), ECR-I-1283; *Lube v Cape PLC* (2000), 4, All ER, 268.

⁷² 226, F.3d 88, 105 and 12, 2d Cir. 2000. See also, K. Saro-Wiwa, 'Nigeria in crisis: Nigeria, oil and the Ogoni' *African Political Economy*, (1995) 22, no. 64,, p. 244-246.

⁷³ Alien Torts Claims Act (the ATCA) 1789 s28.

⁷⁴ Environmental Rights Action, Friends of the Earth Nigeria, Center for Environmental Education and Development (CEED), 'Dominion Farms' Land Grab in Nigeria' 2015, <http://www.grain.org/article/entries/5126-dominion-farm-s-land-grab-in-nigeria>, (accessed 5 April 2015). Farmers in Nigeria's Taraba State are being forced off lands to make way for US company Dominion Farms to establish a 30,000 ha rice plantation. A project is backed by the Nigerian government and the G8's New Alliance for Food Security and Nutrition in Africa.

⁷⁵ 1999 Constitution of the Federal Republic of Nigeria.

⁷⁶ Muchlinski (n 3) p. 45.

⁷⁷ O. O. Osunmuyiwa, 'Transnational Corporations And Corporate responsibility: Environmental Law And Human Rights Damage In Nigeria' (2012) < i-rep.emu.edu.tr:8080/jspui/bitstream/11129/314/1/Osunmuyiwa.pdf>, accessed 28 March 2015

Economic, Social and Cultural Right, the 2000 Optional Protocol to the Convention on the Rights of the Child on the involvement of Children in Armed Conflict, also in 2000 the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, and finally the 2001 Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

Also, Nigeria is a signatory to the African Charter on Human and Peoples' Rights, which has been incorporated into its domestic law through the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act⁷⁸ and its provisions including economic, social and cultural rights are justiciable and can be enforced through the procedure provided under the Nigerian constitution.⁷⁹ This was implemented by the Nigerian Supreme Court in *Abacha v Fawehinmi*⁸⁰ where the court held that "... the African Charter, which is incorporated into our municipal law, becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the courts". Multinational corporations operate in countries where the government seldom regulates their activities that results in the violation of human rights of its citizens.⁸¹ Nigeria is a good example in which the severe impact of the activities of multinational corporations in the communities where they are located and claims against them by people of such communities is evidence of human rights violations in the country and a laxity in its laws. This is a basis to review local laws and probably enact laws to adequately respond to the abuse of human right by corporations.

1999 Constitution⁸² grants certain political, economic, social, and educational rights⁸³. These rights are contained in its chapter II under the heading "Fundamental Objectives and Directive Principles of State Policy". It also provides in section 20 that "the Nigerian state shall ensure the protection and improvement of the environment, safeguard the air, land and water, with forest and wild life inclusive." The rights provided in section 20 are unenforceable by reason of Section 6(6) (c) of the same constitution which makes it unjusticiable except with the discretion of a judge in related proceedings.⁸⁴ Section 12 also establishes, though impliedly, that international treaties ratified by the National Assembly should be implemented as law in Nigeria.

Human rights and environmental issues mainly go hand in hand and it is often a herculean task to separate the two especially as regards the subject matter of this article. However, some other major laws have been enacted whether as a response to environmental issues or in the bid the address human rights issues as regards the activities of these companies.⁸⁵ The National Environment Standards and

⁷⁸ Cap A9 LFN 2004.

⁷⁹ *Agbakoba v Director State Security Services*, 1994, 6, NWLR, 475; O. O. Amao, 'Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals In Host States', *Journal of African Law*, (2008) 52, no. 1, <http://www.researchgate.net/publication/228295192_Corporate_Social_Responsibility_Multinational_Corporations_and_the_Law_in_Nigeria_Controlling_Multinationals_in_Host_States> accessed 28 March 2015

⁸⁰ *Abacha v Fawehinmi*, 2000, 6, NWLR, Pt 600, 228.

⁸¹ C. Albin-Lackey, 'Without Rules: A Failed Approach to Corporate Accountability' <<http://m.hrw.org/world-report/2013/essays/112459>> accessed 4 March 2015

⁸² Constitution of Federal Republic of Nigeria 1999 (CFRN).

⁸³ Ibid sections 15-18

⁸⁴ Osunmuyiwa (n 77).

⁸⁵ Some of such laws and policies adopted include the Oil Pipeline Act 1965 (now CAP 07, LFN 2004), the Minerals Oil (Safety) Regulation of 1963, the Petroleum Act of 1969 with amendments in 1973, 1979, 1995 and 1996, the Nigeria National Petroleum Corporation (NNPC) Act of 1977, the National Environmental Standards and Regulations Enforcement Agency Act of 2007, the Environmental Impact Assessment Act, CAP E12, LFN 2004, the Harmful Waste (Special Criminal Provisions) Act, CAP H1, LFN 2004, Petroleum Products And Distribution Act, CAP P12, LFN 2004, the National Oil Spill Detection and Response Agency Act of 2006, the Nigerian Criminal Code Act CAP C38 Laws of the Federation of Nigeria 2004, and the Nigeria Extractive Industries Transparency Initiative (NEITI) Act of 2007S, Gas Re-Injection Act amongst several others. See D. Kamga & O. O. Ajoku, 'Reflections on How to Address the Violations of Human Rights by Extractive Industries

Regulation Enforcement Agency (NESREA) Act of 2007 which replaced the Federal Environmental Protection Agency (FEPA) Act consists of laws and regulations directed at the protection and sustainable development of the environment and its natural resources. An Environmental Impact Assessment (EIA) involves the considerations of the potential impacts whether positive or negative, of a proposed project, public and private on the natural environment. The Petroleum Act of 1969 was the first Act to deal with problems associated with the production of oil including the environmental perils that result from such activity.⁸⁶ Associated Gas Re-Injection Act No. 99 addresses the issue of gas flaring and directs oil producing companies to mandated that oil companies "re-inject gas into the earth's crust and/or submit detailed plans for gas utilization."⁸⁷ Oil Pipelines Act and its Regulations direct oil activities and create a civil liability on the person who owns or is in charge of an oil pipeline. Such a person is liable to pay compensation to anyone who suffers physical or economic injury as a result of a break or leak in his pipelines.⁸⁸ It also makes provision that the grant of licenses are subject to regulations concerning public safety and prevention of land and water pollution.⁸⁹ Petroleum Drilling and Production Regulations place restrictions on licensees from using land within fifty yards of any building, dam, reservoir, public road, etc.⁹⁰ It also prohibits the cut down of trees in forest reserves without lawful permission⁹¹ and establishes that reasonable measures be taken to prevent water pollution and to end it, if it occurs⁹².

Laws which protect wildlife and water habitats includes Sea Fisheries Act, Cap S4, LFN 2004 The Endangered Species Act, Cap E9, LFN 2004 And Inland Fisheries Act, Cap I10, LFN 2004. For instance, The Sea Fisheries Act makes it illegal to take or harm fishes within Nigerian waters by use of explosives, poisonous or noxious substances. Petroleum Refining Regulation requires the Manager of a refinery to take measures to prevent and control pollution of the environment⁹³ and also makes any contravention punishable with a fine of N100 or an imprisonment term of six months⁹⁴. Mineral Oil Safety Regulations, and Crude Oil Transportation and Shipment Regulations prescribe precautions to be taken in the production, loading, transfer and storage of petroleum products to prevent environmental pollution. Criminal Code also contains provisions for the prevention of public health hazards and for environmental protection. Sections 245-248 deal with offences ranging from water fouling to the use of noxious substances. Petroleum Products and Distribution Act provides that the offence of sabotage which could result in environmental pollution is punishable with a death sentence or an imprisonment term not exceeding 21 years.

Thus, despite the array of laws, it is still inadequate in solving most of these human right infringements by the business corporations. A close look at some of the laws exposes some loopholes or deficiency. An example is the Nigerian National Petroleum Company (NNPC) Act of 1977 which hinders effective legal action against the corporation. It provides that no action can be instituted against the corporation without one month's prior notice of intention to sue and served by the intending petitioner or his/her representative. In addition, members of the board and employees of the corporation cannot be sued for their action and negligence before a period of twelve (12) months after the commission has expired, before the act or the neglect.⁹⁵ The stipulated penalty especially for imprisonment provided by some laws is not commensurate with the offence committed. Hence, some of these laws need to be reviewed.

in Africa: A Comparative Analysis of Nigeria and South Africa' (2014) <<http://www.saflii.org/za/journals/PER/2014/7.html>>, accessed 6 March 2015

⁸⁶ E. Ukala, 'Gas Flaring in Nigeria's Niger Delta: Failed Promises and Reviving Community Voices' *Washington and Lee Journal of Energy, Climate, and the Environment*, (2011) 2, no. 1, p. 104.

⁸⁷ *ibid*.

⁸⁸ section 11 (5).

⁸⁹ section 17 (4).

⁹⁰ section 17 (1) (b).

⁹¹ section 23 and 27.

⁹² section 25.

⁹³ section 43 (3).

⁹⁴ section 45.

⁹⁵ S.12 of the Nigeria National Petroleum Corporation (NNPC) Act 1977; Kamga, & Ajoku (n.85).

The issue of gas flaring is still practiced by some oil companies like Shell despite the provision against it and this shows a lapse in enforcement by the petroleum ministry.

According to Amao, Nigerian laws like company, human rights, criminal, torts, labour and anti-corruption laws can control and impact on the activities of companies like the multinational corporations.⁹⁶ More emphasis was on company law which according to him has more potential in controlling the operations of multinational corporations but eventually concluded that it has not been effective. In *Attorney General of Ondo State v Attorney General of the Federation and 35 others*⁹⁷, the court held that the fundamental rights under chapter II may be enforceable under certain circumstances. Cases against MNCs are usually established on the ground of torts particularly negligence which involves claims for compensation by victims, reinstating them to their previous positions and to prevent the wrongful act in future. According to Meeran, "tort litigation provides a practically valuable route to achieving the key objectives of MNCs' accountability for human rights violations in developing countries"⁹⁸

Victims of human rights violations by businesses and particularly multinational corporations are usually reluctant to institute actions in law courts in Nigeria due to insufficient fund. In the past, affected persons instituted actions under the Alien Tort Statute 1789 (ATS) in the United States. The ATS is a domestic legislation which gives the courts of the United States (US), jurisdiction over cases in which international human rights violations are alleged.⁹⁹ Examples of such cases from Nigeria instituted under this statute includes *Kiobel v. Royal Dutch Petroleum Co.*,¹⁰⁰ *Wiwa v Royal Dutch Shell*¹⁰¹, *Social and Economic Rights Action Centre ("SERAC") and The Centre for Economic and Social Rights v Nigeria*¹⁰². Unfortunately, it has been discovered that the ATS is not efficient in putting an end to international human rights violations though scholars and lawyers are captivated by it.¹⁰³ In *Kiobel v. Royal Dutch Petroleum Co.*, it was held that the jurisdiction granted by the ATS does not extend to civil actions brought against corporations.¹⁰⁴ The aim of the statute is to provide a medium for judicial relief to offended foreign officials in the United States. In this case as all relevant acts took place outside the United States, the Court held that the plaintiffs' claims do not exist under the statute.¹⁰⁵

Despite this problem, the recent decision in *Gbemre v Shell* raised the possibility of using human rights provisions for the purpose of controlling MNCs in Nigeria¹⁰⁶. In the case, the court held that the rights protected under the constitution include rights to a clean, poison-free, pollution-free environment and that the actions of Shell in continuing to flare gas in the course of its oil exploration and production activities in the plaintiffs' community violated their right to life and/or the dignity of the human person under the constitution and the African Charter. Even though there is no apparent justiciable right to a "clean poison-free, pollution-free and healthy environment" under the Nigerian constitution, the court relied on a cumulative use of constitutional provisions with the provisions of the African Charter (especially article 24) to recognize and apply a fundamental right to a "clean poison-free, pollution-free and healthy environment".¹⁰⁷ One of the arguments was that the Associated Gas Re-Injection Act that permits gas flaring is inconsistent with Section 33(1) (right to life) and 34(1) (dignity of persons)

⁹⁶ Amao (n 79).

⁹⁷ (2002), 6, SC, pt 1, 1.

⁹⁸ R. Meeran, 'Tort Litigation against Multinational Corporations for Violation of Human Rights: An Overview of the Position outside The United States' *City University of Hong Kong Law Review*, (2011) 3, no. 1, p. 1-41, p.23.

⁹⁹ Meeran (n 98) p. 2.

¹⁰⁰ 133, S. Ct., 1659, 2013.

¹⁰¹ *ibid*.

¹⁰² 2001, communication no 155/96, (African Commission on Human and Peoples' Rights).

¹⁰³ R. P. Alford, 'The Future of Human Rights Litigation After Kiobel', Notre Dame Law School, 2014. Scholarly Works. Paper 1063. <http://scholarship.law.nd.edu/law_faculty_scholarship/1063>, assessed 25 April 2015

¹⁰⁴ *Kiobel v Royal Dutch Petroleum Co* 642 F 3d 379 (2d Cir 2011); Meeran (n 98).

¹⁰⁵ Alford (n 103).

¹⁰⁶ *Jonah Gbemre v Shell Petroleum Development Corporation of Nigeria Ltd and Ors*, FHC/B/CS/53/05, Federal High Court, Benin Judicial Division, 14 November, 2005; Amao (n 89).

¹⁰⁷ *ibid*.

1999 Constitution and should then be deemed void. It was then held by the court that the legislation that permits flaring of gas in Nigeria, with or without permission, is unconstitutional because it is inconsistent with the Nigerian constitution. Likewise, the Attorney General of the Federation and the Minister of Justice were directed to take steps towards amending relevant legislation in relation to gas flaring so that such laws can be in line with the provisions on fundamental rights under the Nigerian constitution.¹⁰⁸

The implication of the Associated Gas Re-Injection Act is that gas flaring is permitted in Nigeria since it is subject to the discretion of the Minister and that the company pays a particular sum according to a particular form by the federal government, notwithstanding that it violates the rights of its citizens. This is made easy for the companies that engage in gas flaring because they are just to make the required payment but at the expense of peoples' lives. Considering the impact of gas flaring with the effects discussed above, this section definitely is inconsistent with the provision of the constitution. It is very important that the constitution which is the supreme law of the land be thoroughly considered before laws are promulgated. Likewise, it is paramount to also consider the human rights to avoid depriving citizens of the enjoyment of their rights. Also, it has been indicated that in the case of *Kiobel v. Royal Dutch Petroleum Co.*, for instance, the plaintiffs could have alleged human rights violations under Nigerian law because human rights treaties and customary international law form part of Nigerian law.¹⁰⁹

The government also created institutions like the National Commission on Human Rights (NHRC) established by the National Human Rights Act 1995¹¹⁰ (as amended by the NHRC Act, 2010) based on a resolution of the General Assembly of the United Nations.¹¹¹ The Commission recognises, promotes, protects and enforces the human rights of the citizens while exploring extra judicial mechanisms. The Commission carries out investigations on human right issues by setting up a panel and then the report of the panel are registered for enforcement with the Federal High Court.¹¹² By virtue of Ss 5 & 6 of the NHRC Act, 2010 (as amended), the rules of human rights law under the constitution and other relevant laws, supplement international humanitarian law and remains applicable in the theatres of conflict and remains applicable outside the theatres. The Commission partners with a number of organizations and bodies, for example the Economic Community of West African States (ECOWAS) Court and so refers to case law of the ECOWAS Courts as persuasive authority.¹¹³

7. Recommendations and Conclusion

The foregoing discussions show that Nigeria has enjoyed regional and international publicity, responses and initiatives as regards human rights. Most countries with adequate framework on business and human right issues have used the United Nations 'Initiatives on Business and Human Rights' as a guide and more recently focused on the 'Guiding Principles on Business and Human Rights' developed by Ruggie. This paper demonstrates the fact that even though the States are the major actors in protecting the rights of its citizens, other corporate bodies, organizations and civil societies have the duty to respect, protect and fulfill human rights. The States in addition are directed to prevent violations by these businesses and provide a reliable forum for seeking redress.

There are no legislation in Nigeria with a direct language on business and human rights even though there are some laws which are relevant to an extent. However, due to the serious impact through the operations of businesses, particularly multinational corporations in Nigeria, the Nigerian government

¹⁰⁸ *ibid.*

¹⁰⁹ Alford (n 103).

¹¹⁰ Cap N46 LFN 2004 Vol. II.

¹¹¹ National Human Rights Commission (NHRC) <http://www.nigeriarights.gov.ng/the-commission> accessed 4th April, 2015.

¹¹² Panel Report on public enquiry by the NHRC on the alleged killings of squatters at Apo/Gudu District, complaint no C/2013/7908/HQ in *RE: Global Rights & 3 Ors v. FRN & 3 Ors*.

¹¹³ National Human Rights Commission (NHRC) <<http://www.nigeriarights.gov.ng/the-commission>> accessed 4th April, 2015.

should review existing legislation in the light of international standards and enact a direct law on business and human rights. A review in this plight will enable victims to establish cases against businesses in Nigerian courts effectually rather than instituting certain actions overseas, and also grant such victims adequate remedy and invariably justice.

There is a need to intensify sensitization. Ad hoc workshops and trainings should be organized to involve the major stakeholders of business and related organizations. The government can also organize a platform with the semblance of the UN Working Group on Business and Human Rights in the country. This will increase awareness on business and human rights in the country and as such individuals and communities will be aware that businesses are under obligation to protect human rights. In line with this, the NHRC can also facilitate dialogue with businesses located in the country including investors on business and assemble an overview of the status of business and human rights in the country to help improve on human rights and to advocate for change. NGOs and other bodies could also be involved as they can provide shadow reports on the issue.

In the long run, the government should issue a policy to serve as a direct framework on business and human rights by using the international standards as a guide to reflect the expectations of the government as it regards the protection of human rights by business entities in the country. In addition, business enterprises should make a policy commitment to respect human rights in the country.