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THE ROLE OF MULTINATIONAL CORPORATIONS IN THE PROTECTION OF HUMAN RIGHTS

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ABSTRACT

In the development of human rights law currently, a great deal of focus is on the role companies including multinational corporations should play in the protection of human rights. This is because it was discovered that apart from states these entities also abuse human rights. This can be accrued to the increase in companies and in particular the impact of their operations on human rights. Hence, initiatives that have emerged and emphasises that they respect, protect and fulfill human rights. It is against this background that this paper discuss the reasons it is necessary for companies particularly multinational corporations to protect human rights and examines the role they have to play in the protection of these rights. The paper argues that companies including multinational corporations has a role to play in the promotion and protection of human rights. The method of legal research this paper adopts is a combination of doctrinal and non-doctrinal approaches. The article finds out that though at the international level, this role have been identified but many states like Nigeria are yet to develop a national framework that directly relates to this role. The consequence of this is continuous infringement of human rights. It was suggested that states, Nigeria in context should take necessary actions by putting in place laws that restrict and penalise companies abusing the rights of its citizens

KEYWORDS: *Multinational Corporations, Business, Human rights, Role*

INTRODUCTION

Generally, under international human rights laws, it is the primary duty of states to protect and respect human rights which also includes the protection of the rights of individuals from being abused by third parties which includes multinational corporations. There are now arguments and debates by academics, non-governmental organisations, international organisations that this responsibility be also extended to companies and corporations. These human rights advocates are of the opinion that these entities can also abuse human rights. Their investigations and researches exposed the horrific abuse of human rights particularly by multinational corporations which is on the increase in developing countries. These countries tend to be more affected because of out dated and weak laws, corrupt governments including poor mechanisms. The recognition of the connection between these entities and human rights begin to grow as the tension of the impacts of the activities on human rights increase the more. This is also coupled with globalization which brought the social awareness on businesses' impact on human rights

to a height and also attracted the attention of the United Nations.¹ The activities of these corporations can have an impact on economic rights, social rights, labour rights of individuals and the society at large. Their presence can also have tremendous impact on the economy of the community of their operation. These problems have also contributed to the arguments that the responsibility of human rights be also accorded to these corporations and not only states.

Although some of the international instruments and treaties on human rights law may be interpreted indirectly to apply to companies and corporations², they seem to be inadequate to resolve these problems as most of the treaties exact the major responsibility on states to protect human rights. Hence, in addressing these issues, international norms began to evolve and they have served to bring some prominence to the issue on the international platform. They also identify the position of these corporations as regards respecting and fulfilling human rights recognized under international law. It is in this context that this paper focuses on multinational corporations and their role in the promotion and protection of human rights.

THE ORIGIN OF MULTINATIONAL CORPORATIONS

The concept of Multinational Corporations (MNCs) have been referred to as transnational corporation, multinational enterprise.³ They can be described as, 'private business entities inherently affecting the public interest. They constitute the nucleus of the international business world, encouraging a growing interdependence among nation-states.'⁴

Multinational corporation can also be define as;

"an aggregate of corporate entities, each holding its own juridical identity and national origin, but each in some way interconnected by a system of centralized management and control, normally, exercised from the seat of primary ownership".⁵

They have been referred to as 'very powerful actors in the current world order'.⁶ Many of these MNCs are as stronger as some states where they operate and by virtue of being in the similar position of state, they can as well abuse human rights.⁷ They

¹ J. Ruggie, 'Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises' www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf, (accessed 6 February 2014).

² David Weissbrodt, 'Un Human Rights Norms For Business', (2005) 7 *Int'l L.F. D. Int'l* 290 p 291

³ Olufemi Amao, 'Corporate social Responsibility, Human rights and the Law: Multinational Corporations in Developing Countries', (Routeledge 2011) p 6

⁴ Ratnar Kapur, 'From Human Tragedy to human rights; 10 B.C. Third World', (1990) L.J. 1, p 31-32

⁵ C.D. Wallace, 'The Multinational Enterprise and Legal Control: Host State Sovereignty of Economic Globalisation The Hague', (Martinus Nijhoff, 2002)

⁶ Alexandra Gatto, 'Multinational Enterprises and Human Rights: Obligations Under EU law and International Law', (Edward Elgar 2011), p 3

⁷ Ratnar Kapur, op cit p 2

usually consists of and have relationships with various subsidiary companies.⁸ The major aim of Multinational Corporations is solely for the purpose of profit⁹ at the lowest possible cost and in the process of accomplishing that human rights can be abused. This particular feature gave rise to MNCs and their and 'so the idea of investing in foreign land is not to better the lot of the host nation but to exploit as much as is possible in order to develop the home country'.¹⁰ The issue of abuse of human rights have been traced to history in Southern African during the time of apartheid and in the second world war where slavery was in operation by the Nazis.¹¹ This was also traced back to the colonial era where workers were exploited.¹² The characteristics of MNCs includes their large size and the fact that they have a parent company centrally controlling their worldwide activities.¹³ Most debates regarding this subject has focused on examples where multinational corporations have been accused of being directly responsible for, or being complicit in human rights abuses. These developments heightened social awareness on their impact on human rights and also attracted the attention of the United Nations¹⁴, international NGOs and the media. The implication of this is that MNCs are being held accountable for the abuse of human rights in certain cases like that of the case of Doe v Unocal¹⁵ where there was a massive leak of methyl isocyanate gas at the plant side in India.

The discussion that business entities like multinational corporations have legal obligations regarding human rights and freedoms that flow from fundamental rights identified under international law has been occurring since the 1970s.¹⁶ As the tension about the role of multinational corporations as regards human rights persisted, the United Nations had to come to the rescue and took steps to reinforce the responsibility of these business actors in the 1970s¹⁷ and it tried to draw up a code of conduct for multinationals.¹⁸ In 1973, the UN Commission on Transnational Corporations was

⁸ J. dine, Companies, International trade and Human rights, (Cambridge 2005) p 48, cited in Olufemi Amao, Corporate social Responsibility, Human rights and the Law: Multinational Corporations in Developing Countries op cit p 7

⁹ P. T. Muchlinski, 'Human Rights and Multinationals: is there a problem?' *International Affairs*, (2001) vol. 77, no. 1, p 36-37

¹⁰ Ozoigbo, B.I. & Chukuezi, C.O "The Impact of Multinational Corporations on the Nigerian Economy" *European Journal of Social Sciences* (2011). – Volume 19, Number3 cited in Osuagwu, Godwin Onyewuchi and Ezie Obumneke, 'The Multinational Corporations and the Nigerian Economy', *International Journal of Academic Research in Business and Social Sciences* April 2013, Vol. 3, No. 4 p 360 <http://www.hrmarc.com/admin/pics/1786.pdf> accessed on 22 February, 2016

¹¹ P. T. Muchlinski, 'Human Rights and Multinationals: is there a problem?' op cit, p 31

¹² Ibid.

¹³ H. Lalnunmawia, 2010 cited in Multinational Corporations: Human Rights Beyond States' Responsibility p 5 <http://sas-space.sas.ac.uk/4773/1/1040731.pdf> accessed on 24 February, 2016

¹⁴ J. Ruggie, 'Report of the Special Representative of the Secretary- General on the issue of human rights and transnational corporations and other business enterprises' www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf, (accessed 6 February 2015).

¹⁵ 248 F 3d 915 (9th Cir 2001)

¹⁶ D. Bilchitz, 'The Necessity for a Business and Human Rights Treaty' 2014, p 4 <http://ssrn.com/abstract=2562760> (accessed 21 March 2015).

¹⁷ Ibid.

¹⁸ Ibid.

founded to inquire into the impacts of these corporations in the countries in which they operate.¹⁹ Some of such impacts includes torture, gender discrimination, violation of labour rights, destruction of the environment and even death and often these corporations denies their involvement.²⁰ MNCs rather distance themselves from human rights violations that occurs and blames the State or the community.²¹ In 1976, the Commission formulated a draft of UN Code of Conduct on Transnational Corporations but by mid 80s these effort was abandoned.²² The code was later dismissed in 1992 as the president of the UN General assembly indicated in his report that no unanimous decision was reached on it.²³

There was a general belief that MNCs either participates or witness violations of human rights and they continued in these acts freely.²⁴ Thus, holding MNCs accountable under international law has been met with several problems. The frustration of human rights advocates begin to grow as a result of the lack of measures to hold these MNCs accountable.²⁵ In the 90s, this issue became perpetually embedded on the agenda of the globe as globalization grew including the rise in the activities of corporations.²⁶ In 1995, The World Trade Organisation (WTO) was founded in order to put into force the General Agreement on Tariffs and Trade (GATT). The purpose of WTO was to resolve disputes on trade among countries including putting together standards on products bought and sold internationally.²⁷ However, all this ended up being criticized as WTO and GATT so much affected and involved in the process of the making of decisions of the corporations.²⁸

After the attempt failed, other voluntary codes of conduct evolved that relates to the responsibility of corporations to human rights²⁹ like the OECD Guidelines for Multinational Enterprises, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy of the International Labour Organization (ILO); the 1998 Declaration on Fundamental Principles and Rights of Work of the ILO; the 2003 Norms

¹⁹ Patricia Feeney, 'Business and Human Rights: The Struggle For Accountability In The Un And The Future Direction Of The Advocacy Agenda', *Sur - int'l J. On Hum Rts.* 11 161 2009, p 162

²⁰ Jena Martin Amerson 'The End Of The Beginning?: A Comprehensive Look At The U.N.'S Business And Human Rights Agenda From A Bystander Perspective', (2012)17 *Fordham J. Corp. & Fin. L.* 871, p 878

²¹ Ibid.

²² Judith Richter, 'Holding Corporations Accountable Corporate Conduct, International Codes and Citizen Action', (Zed Books 2001) p10

²³ Ibid.

²⁴ Jena Martin Amerson, p. 888, (n 20)

²⁵ Ibid. P. 888

²⁶ United Nations General Assembly, 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, John Ruggie Guiding Principles on Business and Human Rights: Implementing the

United Nations "Protect, Respect and Remedy" Framework A/HRC/17/31 21 march 2011, www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf, (accessed 6 February 2015).

²⁷ Judith Richter, p12 (n 22)

²⁸ Ibid.

²⁹ D. Bilchitz, p 4 (n 16)

on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights; the Declaration on Social Justice for a Fair Globalization adopted in 2008 by the ILO; the Protect, Respect and Remedy framework developed by the Special Representative of the UN Secretary-General in 2008; and the Guiding Principles for Business and Human Rights which was adopted in 2011. Since that time, the issue of corporate responsibility begun to attract an enormous amount of attention.³⁰ The awareness of the connection between MNCs and human rights also increased due to the rapid development of the global economy. The research and reports of International NGOs and the media on the impacts of the activities of the multinational corporations released to the public contributed to this awareness. This information has drawn the attention of consumers and individuals to these impacts. As a result trade sanctions have been imposed on nations disregarding human rights and corporations causing these problems have also included codes of conduct that recognize and protect human rights.³¹ Indeed, there is hardly any fundamental right that is not relevant to MNCs.³² Often times, these corporations either abuse human rights directly or indirectly. Corporations currently do not have a clear legal duty to respect human rights.

The former Special Representative to the then Secretary General, SRSG, Kofi Anan, John Ruggie asserted that Corporations, must recognise fundamental rights. Thus where a corporation fails to do, this leads to violation of human rights and in most cases escapes any form of accountability. Moreover, in cases where the state cannot be shown to be culpable or complicit in the harm caused, no one will be legally responsible despite the fact that a violation of right has occurred.³³ There is no doubt, that many problems will arise when creating such accountability for MNCs, for example determining the extent of responsibility both corporations and States should have when MNCs have incurred in human rights violations abroad and both the home and host States have failed in preventing those violations or have been accomplices in them.

In the argument against extending human rights obligations to MNCs, some scholars are of the thought that corporations should only have the duty to obey the law which implies that they are not to protect human rights but to only enjoy the benefits of the protection of these rights.³⁴ Another point of view is that, MNCs are established for the purpose of making profits and as such they should not be concerned about matters that come up in the society of their operations.³⁵ 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. MNCs have played a strong

³⁰ Ibid. P 888

³¹ 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).

³² 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_and_Human_Rights_-_Australian_Human_Rights_Commission.html) (accessed 20 February 2015).

³³ D. Bilchitz, (n 16)

³⁴ P. T. Muchlinski, 'Human Rights and Multinationals: is there a problem?' *International Affairs*, vol. 77, no. 1, 2001, pp. 31-47, p.35.

³⁵ Ibid.

and vital role in 'the process of globalisation'³⁶ and their significant contributions to the advancement of the world is not unnoticed³⁷. Coupled with this is the influence of these corporations on the progress of the economy of the developing countries.³⁸ The operations of most of these corporations have expanded and have been extended further to other boundaries.³⁹ They either possess power similar to that of a state⁴⁰ or be more powerful than some states in which they operate⁴¹. Thus, they are capable of impacting on the rights of many people like those that consumes their products, workers, including those living in the areas where they are established.⁴² The consequences of the operations of MNCs particularly in developing countries cannot be overemphasized and have attracted the attention of the international community. It has been discovered that these corporations tend to establish their operations in countries where the domestic laws are weak and inadequate to respond to these issues. This has resulted in the abuse of human rights, rioting and protests, accusations against MNCs of joining military forces in perpetuating abuse on human rights like torture, killing people, genocide, war crimes against humanity and even violent opposition. MNCs' violations include for example complicity in the brutality of host States police and military, the use of forced, slaved and child labour, poor working conditions, suppression of rights to freedom of association and speech, violations of rights to cultural and religious practice, infringement of rights to property (including intellectual property), and gross infringements of environmental rights.⁴³ Certain impacts can also be attributed to oil production in Nigeria. such problems identified includes, flooding and coastal erosion, sedimentation and siltation, degradation and depletion of water and coastal resources, land degradation, oil pollution, health problems and low agricultural production, as well as social economic problems, lack of community participation.⁴⁴ Thus, the activities of MNCs can impact whether directly or indirectly on economic, social and cultural rights. In this regard, since national regulations cannot accommodate these problems, civil groups and international organizations advocated for strong legal regime at the international level to hold MNCs accountable for their actions. Hence, some multinationals have adopted codes of conduct.⁴⁵ A corporate code of conduct is generally a statement

³⁶ Felipe Gomez Isa, *Privatisation and Human Rights in the Age of Globalisation*, Intersentia NV 2005, p 23

³⁷ Ratnar kapur, p 4

³⁸ Ibid p 3.

³⁹ Judith Richter, p 8

⁴⁰ Ratnar kapur, p 2

⁴¹ Sarah Joseph, 'Corporations and Transnational Human rights Litigation', (Hart 2004), p 1

⁴² Ibid.

⁴³ Kinley, David and Joseph, Sarah, 'Multinational corporations and human rights: Questions about their relationship', *Alternative Law Journal*, (2002). Vol. 27, No. 1, pp. 7-11

⁴⁴ Donny Ohia, 'Multinational Companies and Human Rights in Nigeria', http://kurdweb.humanrights.de/doc_en/countries/nigeria/multinationals.html accessed on 19 February, 2016

⁴⁵ John Christopher Anderson, *Respecting Human Rights: Multinational Corporations Strike Out* U. Pa. Journal Of Labor And Employment Law [Vol. 2:3 [https://www.law.upenn.edu/journals/jbl/articles/volume2/issue3/Anderson2U.Pa.J.Lab.%26Emp.L.463\(2000\).pdf](https://www.law.upenn.edu/journals/jbl/articles/volume2/issue3/Anderson2U.Pa.J.Lab.%26Emp.L.463(2000).pdf) p 465-466

delineating a company's ethical policies.⁴⁶ To date, no federal statute exists that directly and adequately addresses this problem apart from the ATS of the United State of America. Because standards remain underdeveloped in this area of human rights law, victims of human rights abuse are forced to cope with unpredictable results.⁴⁷ Many of these MNCs have also taken up the measure of Corporate Social Responsibility (CSR) in societies where national laws are lacking.⁴⁸

One of the most visible examples of corporate human rights abuses occurred in Bhopal, India, in 1984, where the release of about forty-one tons of methyl isocyanate from the pesticide plant owned by Union Carbide Corporation occurred. This occurrence caused the death of at least 15,000 people and more than 170,000 people were disabled. Local water and soil still remain severely contaminated, and birth defects continue to be reported.⁴⁹ Corporations may violate human rights in different ways, like during periods of armed conflict, in employment of children as labourers, discrimination against employees such as union members and women, in their failure of the provision of safe and healthy working environment, in their attempt to repress independent trade unions and discourage the right to bargain collectively, and limiting the broad dissemination of appropriate technology and intellectual property.⁵⁰ These violations are also present in Nigeria. In Nigeria, there have also been reports of negative impacts on human rights mostly perpetuated by oil companies like Shell, Chevron and the violations have raised a lot of concerns not only in the country but also at the international level. For instance, the operation of Shell Petroleum Development Company (SPDC) in Ogoniland has caused land and water pollution from oil spills, air pollution by gas flares including undermining of the livelihood of the villagers through destruction of farmlands and pollution of the water preventing farmlands and fishing.

These problems persist since the government is yet to establish a legal regime that focuses on companies and corporations and in particular their role in the protection of human rights. The absence of an international regime that is enforceable in regulating MNCs have contributed to this challenge. Coupled with this is the gaps in the laws of the country and outdated laws all of which have reinforced the significance of Corporate Social Responsibility (CSR) in the country.⁵¹ Therefore, the influence MNCs have on human rights is much and as a result these entities do have a role to play when it concerns human rights. Their part cannot and should not be neglected. There is need to penalize them where they are guilty and restrict them from further violations.

⁴⁶ Ibid.

⁴⁷ Ibid, p 466

⁴⁸ Olufemi Amao, p 1

⁴⁹ Amnesty International, Union Carbide Corporation (UCC), DOW Chemicals and the Bhopal Communities in India: Amnesty International AI Index: .ASA 20/005/2005 (2005), available at <http://web.amnesty.org/library/eng-ind/reports> cited in David Weissbrodt p 58

⁵⁰ David Weissbrodt p 58.

⁵¹ Olufemi O Amao, 'Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States', *Journal of African Law*, (2008), 52, 1 89-113, p 90

INTERNATIONAL LAW ON THE ROLE OF MULTINATIONAL CORPORATIONS ON THE PROTECTION OF HUMAN RIGHTS

Over the years, there have been regulations both at the international and national level to protect human rights of individuals. the Universal Declaration of Human Rights together with the two covenants were the foremost codifications on human rights for the universe. Subsequently, other treaties were adopted to ensure adequate protection of human rights in states. These documents stipulates the legal obligation of states towards human rights. Under these laws, states are bound to prevent the violation of human rights. There are few effective mechanisms at national or international level to prevent corporate human rights abuses or to hold companies accountable. According to an author, some laws and treaties on human rights may be interpreted to apply to multinational corporations.⁵² For instance, the Universal Declaration of Human Rights principally focuses on the obligations of states and also mentions the responsibilities of individuals and of "every organ of society," which includes companies and MNCs. While the Universal Declaration discourages persons from engaging in activities that violate the human rights of others, it lacks the necessary enforcement mechanisms to effectively impose such a duty. Moreover, in practical terms, using the Universal Declaration to force corporations to respect human rights is severely limited.⁵³ According to the International Covenant on Civil and Political Rights (ICCPR) also, each state party

"undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant...."

The implication of this is that where a corporation abuse the rights of an individual, it is the duty of the State to ensure respect of human rights and to also take preventative action. There are other treaties that also express the idea that the state can ensure the respect of human rights by non-state entities. For example, Article 2(d) of the International Convention on the Elimination of All Forms of Racial Discrimination requires state parties to

"prohibit and bring to an end, by all appropriate means, including legislation ... , racial discrimination by any person, group or organization...."

Hence, states have the indirect responsibility to prevent racial discrimination by corporations.

Amongst those areas in the UN system of protections of human rights which need to be improved, there is a concern about corporate governance and business conduct.⁵⁴ However, certain voluntary codes of conduct have evolved that directly relates to issues of corporations and human rights. The emphasis of these initiatives is that companies,

⁵² David Weissbrodt , p 291

⁵³ John Christopher Anderson, op cit

⁵⁴ Denise Lima, 'Business And International Human Rights' (2009)2 *Ankara B. Rev.* 18

business enterprises, organizations, MNCs should respect, promote and fulfill human rights.

The UN Norms On The Responsibilities Of Transnational Corporations And Other Business Enterprises is one of such initiative. It 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 1998.⁵⁵ Its purpose was to draw out proposals and suggestions that relates to the activities of transnational corporations (TNCs).⁵⁶ This is to ensure that they work in line with the economic and social objectives of the countries of their location and to also promote human rights.⁵⁷ It was based on principles of the direct application of human rights norms to multinational corporations.⁵⁸ The norms impose directly on business enterprises and corporations under international law the same range of human rights duties under treaties ratified by States 'to promote, secure the fulfillment of, respect and ensure respect of and protect human rights.' The Commission declined to act on the proposal as a result of the argument it caused between the business community and human rights advocacy groups and with little support from Governments.⁵⁹ Thus, the Norms Draft till date only remains as a reference of the effort to develop a normative framework.⁶⁰

The ILO Tripartite Declaration is another of such initiative revised in 2000 that consists of guidelines for MNCs, governments and organizations.⁶¹ It relates to matters concerning employment, training, conditions of work and life and industrial relations, of which some are contained in the Universal Declaration of Human Right. Its provisions are reinforced by core and priority ILO Conventions and Recommendations. MNCs are urged by this declaration to apply its voluntary principles to the largest extent that is possible.⁶²

⁵⁵ 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.jussempor.org/Resources/Corporate%20Activity/businessandhumanrights.html>, (accessed 19 August, 2015).

⁵⁶ S. O. V. Bachmann and 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).

⁵⁷ S. O. V. Bachmann and 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': Ibid.

⁵⁸ L. C. Backer, 'On the Evolution of the United Nations' 'Protect-Respect-Remedy' Project: The State, the Corporation and Human Rights In A Global Governance Context' <http://ssrn.com/abstract=1619939> (accessed 20 February 2015).

⁵⁹ 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.

⁶⁰ de Regil (n 55).

⁶¹ D. Surya, 'Human Rights Violations by Multinational Corporations and International Law: Where from Here?' http://ssrn.com/abstract_id=637665, (accessed 20 February 2015).

⁶² *ibid.*

The United Nations Global Compact which was proposed by the 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.⁶³ The purport of this initiative is to reflect 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.⁶⁴ It consists of ten principles that concerns human rights, labour, the environment and the fight against corruption.⁶⁵ The UN Global Compact seeks to promote responsible corporate practices through a variety of engagement mechanisms, including learning, dialogue and projects.

The Organization for Economic Cooperation and Development's Guidelines for Multinational Enterprises (OECD Guidelines) is the only corporate responsibility instrument formally adopted by state governments. The OECD adopted Guidelines for Multinational Enterprises in 1976, and were most recently revised in 2011.⁶⁶ They are not binding⁶⁷ but are recommendations addressed to enterprises operating in OECD countries. However, it urges corporations to extend good practices throughout the universe. The Guidelines form part of a broader and balanced instrument of rights and obligations – the OECD Declaration on International Investment and Multinational Enterprises.⁶⁸ 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.⁶⁹ 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.⁷⁰

⁶³ 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).

⁶⁴ 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).

⁶⁵ de Regil, p. 18

⁶⁶ The Trade Union Advisory Committee, 'OECD Guidelines for Multinational Enterprises: Recommendations for Responsible Business Conduct in a Global Context' 2012,

p. 3. <http://www.tuaoecdmguidelines.org/Docs/TradeUnionGuide.pdf>, (accessed 11 September 2015)

⁶⁷ 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).

⁶⁸ L. C. Jernej, 'Corporate Responsibility for Human Rights: A Critical Analysis of the OECD Guidelines for Multinational Enterprises' 2008 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1317263&download=yes, (accessed 11 September 2015).

⁶⁹ de Regil (n 55).

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Recently, the United Nations developed the United Nations Framework For Business And Human Rights which concerns human rights and transnational corporations and also other business enterprises. This was accomplished by Professor John Ruggie who was appointed as the Special Representative to the former Secretary General Kofi Annan.⁷¹ His work was to provide concrete guidance regarding the obligations of states and responsibilities of businesses, to elaborate on the scope and content of corporate responsibility, to explore effective remedies to corporate abuses, and to continue his work in a broadly consultative manner.⁷² In May 2011, he presented to the Human Rights Council the 'Guiding Principles on Business and Human Rights. These principles implements the 'Protect, Respect and Remedy' policy framework. The Guiding Principles was adopted by the Council at its June 2011 session.⁷³ The first pillar which is on the State's "duty to protect" citizens from human rights violations by companies stipulates that States parties to human rights treaties have the duty to protect citizens against the acts of third parties which includes companies⁷⁴ that violate human rights. The second and third refers 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.⁷⁵ These are not new legal obligations but reflects existing standards and they serve as template for subsequent human rights instruments and also guide for individuals, societies and organizations.⁷⁶ The policy framework and Guiding Principles focuses 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.⁷⁷

These initiatives emphasises that corporations should recognize human rights under international law and as such be held accountable for all violations they commit. It is important to note that these initiatives are not legally binding on States. They serve as guidelines for countries, corporations and business enterprises in drawing up their regulations.

NATIONAL LAW ON THE ROLE OF MULTINATIONAL CORPORATION

In Nigeria, the protection of human rights is recognized and these rights have been codified in her laws. According to an author, there are several areas of Nigerian law that

⁷¹ Ruggie (n 1).

⁷² R. Mares Business and Human Rights After Ruggie: Foundations, the Art of Simplification and the Imperative of Cumulative Progress, <http://rwi.lu.se/app/uploads/2012/06/Business-and-human-rights-After-Ruggie.pdf> (accessed on 28 March 2015).

⁷³ Penelope Simons p 5

⁷⁴ T. Lambooy, M. A. Varner and 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).

⁷⁵ Ruggie (n 1) Para 6.

⁷⁶ Reflections on Universal Declaration of Human Rights: A Fiftieth Anniversary Anthology (Barend Heijden & Bahia Tahzib-Lie eds, 1998 cited in Dada (n 4).

⁷⁷ 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).

impact on the operations of MNCs in varying degrees. These include company law, human rights law, criminal law, tort law, labour law and anti-corruption laws.⁷⁸ The Nigerian Constitution⁷⁹ is the supreme law of the nation and it contains the rights of individuals. It protects socio-economic rights, environmental rights, civil and political rights to encompass the right to access to information, freedoms of association, torture, freedom against slavery, and forced labour. The constitution of Nigeria enshrines a number of fundamental human rights that are attributable to individuals within Nigeria. Such rights include the right to life, right to the dignity of the human person, right to personal liberty, right to fair hearing, right to private and family life, right to freedom of thought, conscience and religion, right to freedom of expression and the press, right to peaceful assembly and association, right to freedom of movement, right to freedom from discrimination and the right to acquire immoveable property. The country like many other states is yet to have a regulation that directly relates to multinational corporations and other companies and their responsibility towards human rights. Although there is no language on the protection of human rights by MNCs, some of the national laws including the constitution and those ratified and domesticated indirectly relates to the protection of human rights by MNCs and companies. These laws are those that concerns environment, land, exiraction of oil, the protection of animals in the sea. Section 20 of the 1999 Constitution enjoins the State to protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria. The National Environment Standards and Regulation Enforcement Agency (NESREA) Act of 2007⁸⁰ establishes the NESREA Act⁸¹, which came into force in 2007, created the National Environmental Standards and Regulations Enforcement Agency, hereinafter referred to as the Agency. The Agency is currently the major federal body charged with the protection of Nigeria's environment. The agency is charged with responsibility for the protection and development of the environment, biodiversity conservation and sustainable development of Nigeria's natural resources as well as environmental technology. As regards company law, Companies and Allied Matters Act (CAMA)⁸² is a law which regulates the formation, incorporation and winding up of companies in Nigeria and it is significant in the control of corporations.⁸³ There is also the Investment and Securities Act 2007, No. 29 (ISA), which is the primary legislation regulating the Nigerian capital market and the Banks and Other Financial Institutions Act⁸⁴. Other examples of legislation capable of mediating the relationship between MNCs and human rights in Nigeria includes the Land Use Act 1978 that pertains to the handling of land in Nigeria and transfers rights of land from local communities and state governments to the federal

⁷⁸ Olufemi O Amao Corporate Social Responsibility, Multinational Corporations and the Law in Nigeria: Controlling Multinationals in Host States, *Journal of African Law*, 52, 1 (2008), 89-113, p 95

⁷⁹ 1999 Constitution of the Federal Republic of Nigeria

⁸⁰ Cap N164, Laws of the Federation of Nigeria, 2004.

⁸¹ No. 25, July 30, 2007.

⁸² Cap C20, Laws of the Federation of Nigeria, 2004 (CAMA)

⁸³ Olufemi Amao Corporate Social Responsibility, Human Rights and the Law: Multinational Corporations in Developing Countries P 118

⁸⁴ Cap B3 Laws of the Federation of Nigeria, 2004 (BOFIA) which regulates the activities of banks in Nigeria

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state; the Environmental Impact Assessment Act⁸⁵ and the Harmful Waste (Special Criminal Provisions) Act⁸⁶ Gas Flaring (Prohibition and Punishment) Bill of 2009; Oil Pollution Act 1990; Trafficking in Persons (Prohibition) Law Enforcement Administration Act 2003; Trafficking in Persons (Power of Arrest, Search and Seizure) Regulations 2008; International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage 1971 (Ratification & Enforcement) Act 2006 (as amended); International Convention on Civil Liability for Oil Pollution Damage (Ratification & Enforcement) Act 2006. Some of these laws relates to the aspect of the oil sector like Oil Pipelines Act (OPA)⁸⁷; the Petroleum Drilling and Production Regulations 1969; the Petroleum Industry Bill (PIB) 2007-2012 which aims to restructure the Nigeria National Petroleum Corporation (NNPC) as regards its structure and functions⁸⁸; Niger Delta Development Commission (NDDC) Act 2000 which was created for the essence of managing oil and responding to problems caused by exploitation of resources in the Niger Delta region⁸⁹; and Nigerian National Petroleum Company (NNPC) Act of 1977. Other laws are the Child Rights Act 2003, the Nigerian Labour Act 1974, Criminal Code⁹⁰, Penal Code⁹¹, Independent Corrupt Practices & Other Related Offences Act 2000, Money Laundering Prohibition Act 2011, Nigerian Extractive Industries Transparency Initiative Act, The Oil in Navigable Waters Act⁹².

These laws governs different areas like environment, corruption, discrimination, torture, employment, land, extraction and spillage. They are not framed in human rights language which currently require companies and multinational corporations to comply with human rights standards.

RECOMMENDATION AND CONCLUSION

The role of MNCs as regards the protection of human rights have been recognized at the international level since they can also violate these rights. Thus, international standards emphasise that apart from states, MNCs should also respect and protect human rights in order to prevent violations. However, these standards are not binding but guidelines and templates for states to formulate their laws as regards the subject. In order to prevent continuous violations by these entities, it is necessary that states like Nigeria must recognize the impacts of the operations of these entities and the fact that they also play a role in the protection of human rights. In this line, the government apart from providing protection against human rights violations committed by public authorities, must also ensure adequate protection in their domestic law against human rights violations committed by companies and MNCs. The laws of the country to a large

⁸⁵ Cap E12, Laws of the Federation of Nigeria 2004
⁸⁶ Cap H1, Laws of the Federation of Nigeria 2004

⁸⁷ Cap O7 LFN 2004

⁸⁸ Roberto Cui, 'Oil Multinationals in Nigeria, Human rights-Sustainable Development and the Law', (Anchor Academy 2015), p 23

⁸⁹ Ibid.

⁹⁰ Cap.C38 LFN 2004

⁹¹ Cap.P3 LFN 2004

⁹² Cap. O6 LFN 2004

extent is not adequate in combating these violations since they do not emphasise particularly on the role of the MNCs in the protection of human rights in the states. Hence, the government must ensure it establishes a domestic law in this regards to tackle these problems adequately.