



# The challenge of MNCs and development: oil extraction, CSR, Nigeria and corruption

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**Abstract:** Globalisation has led to a shift in world order with the rise of the corporate non-state actor. This rise has led to an assumption that multi-national corporations (MNCs) must assume responsibilities beyond profit maximisation for shareholders. With the rise of the MNC as a corporate non-state actor there have been discussions around the role of business with regard to human rights.

This article looks at the case of oil extraction in Nigeria. Focusing on the historical dependency of Nigeria and the evolution of the state into a resource-dependent country, it looks at the limitations of existing human rights obligations as they relate to business. This article proposes that corporate social responsibility (CSR) policies of MNCs can act as a preliminary stage in the quest for wider human rights protections. It is in motivating MNCs to design and implement effective CSR policies in dependent states like Nigeria that the challenge lies.

**Keywords:** business, human rights, development, Nigeria, oil, CSR

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## Introduction

International media reports on oil, corruption and scandal all suggest it is business as usual in Nigeria, a resource-rich region notorious for ill-repute. With increased globalisation, there is an increasingly wider demographic scrutinising the actions and activities of the Nigerian government, ministries and multi-national businesses operating within Nigerian borders (particularly within the extractive industries). Much has been written on globalisation and the broader paradigm shift from government to governance.<sup>2</sup> With the rise of the corporate non-state actor, the role of multi-national corporations (MNCs) – both in Nigeria and on a broader scale – within the economy and society has changed. This ‘new’ addition to their job description, encompassing societal development and, increasingly, in respecting human rights, might be at odds with the design of their company which, ultimately, must make a profit in order to remain economically viable. To date, the response of business has been to engage more dynamically with the promise of Corporate Social Responsibility (CSR) policy and practice, going beyond profit, to incorporate people and planet

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2 John Morison, ‘Government – Voluntary Sector Compacts: governance, governmentality and civil society’, *Journal of Law and Society* 27 (2000): 98; G. Ross Stephens and Nelson Wikstrom. *Metropolitan Government and Governance: Theoretical Perspectives, Empirical Analysis, and the Future* (New York: Oxford University Press, 2000); Cris Shore, “European governance” or governmentality? The European Commission and the future of democratic government’, *European Law Journal* 17 (2011): 287. Government in this article refers to the control and administration of public policy in a political unit, whereas governance has a much wider capture, incorporating geopolitical, corporate and socio-political actors.

in business decisions.<sup>3</sup> The extent to which this is a concentrated attempt to change how we view business or simply a means to tick a box is as yet undecided. Nevertheless, there is an almost global trend towards this more divergent approach to business and a move beyond the bottom line of profit maximisation.

Corporate Social Responsibility has become something of a global phenomenon, increasingly recognised as a means of developing regions in which a corporation operates and legitimises the actions of said corporations. It has not received much guidance from legal and quasi-legal instruments but recently the role of business and human rights has gained some traction. Developing from the United Nations Declaration of Human Rights, recent understandings of the interactions of business respecting human rights has been the domain of first the Norms on the Responsibilities of Transnational Corporations and associated business enterprises (hereafter, the 2003 Norms)<sup>4</sup> and, more so now, the United Nations Guiding Principles on Business and Human Rights (the 'Ruggie' Principles, as they have become known).<sup>5</sup> Given the manner in which the Guiding Principles have compromised on the language used, the role of CSR in fostering human rights protections is still an important one.

This article focuses on the relationship between development and human rights, business and CSR, together with how they all intersect. By using the Nigerian Land Tenure System as a case in point, and the challenges that besiege the governance structures relating to corporate endeavours in Nigeria, the piece focuses on how Business and Human Rights mechanisms (and by extension, CSR) can be used to alleviate some of the concerns arising from property ownership relationships in Nigeria.

### Insights into development: Nigeria and dependency

Nigeria was a British colony until 1960. As an emergent state, great attention was paid to Nigeria's approach to land tenure, focusing specifically on how this approach had compromised capacity for economic development.<sup>6</sup> The existing system concentrated on a customary tenure system, which, it was argued, was at odds with economic development. Reimagining the system of land tenure became part of national development planning. This eventually led to the Land Use Decree 1978.<sup>7</sup>

#### *The Land Use Decree 1978*

Section 1 of this decree held that 'all land' was 'vested in the governor of the state'.<sup>8</sup> Section 2 distinguishes between urban and non-urban land, with the former under the control of the governor<sup>9</sup> and the latter under the control of appropriate local government.<sup>10</sup> Existing tenure was replaced with 'rights of occupancy' which seem to replace all previous forms of title<sup>11</sup> - there are two types of rights, statutory and customary and these can be revoked if deemed to be within the public interest. There is a certain ambiguity with the Decree, in particular on the customary rights of occupation, something that has not been subsequently teased out and remains an issue today.<sup>12</sup> The impact of the act is that, legally, land no longer has a market value and ownership is vested in the state. The prospective borrower is left to make any improvements on the land. Also, mortgages require the approval of local government. Instead of developing the area, what it introduced appears to be uncertainty, insecurity and conflict. This then has implications when corporations move into the area searching for oil or other minerals.

3 John Elkington, *Cannibals with Forks: The Triple Bottom Line of 21st Century*, (Cambridge: Capstone, 1999); Ronald K. Mitchell, Bradley R. Agle and Donna Wood, 'Toward a theory of stakeholder identification and salience: defining the principle of who and what really counts', *Academy of Management Review* 22 (1997): 853. This has, to an extent, been reflected in some legislation both at state-level constituency statutes in the US and more recently in the UK with s.172 of Companies Act 2006 (particularly s. 172 (1) (d)). However, the impact of s.172 has been considerably less than originally anticipated. Deryn Fisher, 'The enlightened shareholder: leaving stakeholders in the dark: will Section 172 (1) of the Companies Act 2006 make directors consider the impact of their decisions on third parties?', *International Company and Commercial Law Review* 20 (2009): 10.

4 Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, UN doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003) (hereafter, the 2003 Norms).

5 United Nations Guiding Principles on Business and Human Rights, available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) (accessed 26 Jan. 2016) (hereafter the 'Ruggie' Principles).

6 Pauline E. Peters, 'Inequality and social conflict over land in Africa', *Journal of Agrarian Change* 4 (2004): 269; Victor C. Uchendu, 'State, land, and society in Nigeria: a critical assessment of Land Use Decree (1978)', *Journal of African Studies* 6 (1979): 62; Rufus Adegboye, 'The need for land reform in Nigeria', *Nigerian Journal of Economic and Social Studies* 9 (1967): 339; H.A. Oluwasanmi, *Agriculture and Nigerian Economic Development* (Ibadan: Oxford University Press, 1966).

7 Land Use Decree 1978 (now part of the Land Use Act 1990 (chapter 202)), available at: <http://www.nigeria-law.org/Land%20Use%20Act.htm> (accessed 21 Jan. 2015).

8 *Ibid.*, Section 1.

9 s.2 (1).

10 s.2 (2).

11 s.5 (1).

12 Uchendu, 'State, land, and society in Nigeria: a critical assessment of Land Use Decree (1978)': 62.

Although this is perhaps an extreme example, problems with ‘development’ were commonplace as colonised countries were nationalised in the 1950s and 60s. Many countries had been coerced into European frameworks around economy, society, law and culture and as such interpreting national laws in the shadow of colonised laws and customary laws was a challenge. This problem was recognised by theorists who talked about the challenge of developing these regions.<sup>13</sup> As well as issues around land, Nigeria, in gaining independence, had to compete on the world stage for trade and investment. The national economy was significantly underdeveloped; aside from agriculture where trade in a number of goods flourished; particularly cocoa and rubber.<sup>14</sup> Dependency is one of the means by which the relationship between the legacy of colonisation and the promise of independence is understood.

### Dependency

Dependency is a branch of development theory which emerged in an attempt to explain how newly independent regions (post-colonisation), particularly in Latin America and Sub-Saharan Africa, were not developing at the expected rate – thus marking a departure from, as well as an alternative to and a critique of Rostow’s ‘stages of growth’.<sup>15</sup> This phenomenon was explained using development theory through a focus on relationships, specifically the historically unequal relationships between newly independent states and their traditional trading partners. Suggesting the existence of a core of wealthy ‘developed’ states and a periphery of poorer ‘underdeveloped’ states, dependency proposes that core wealthy countries tend to be the colonisers (e.g. Britain) with the poorer peripheral regions being the colonised (e.g. Nigeria). Therefore a newly decolonised country such as Nigeria (as it was in 1960), had historical trade relationships with Britain. However, the relationship was unequal due to Nigeria’s status as a former colony of the British Empire, and the relationship also influenced trading partnerships.

Dependency, and by association, underdevelopment in the case of Nigeria were the symptoms of being *forced* to ‘develop’ according to Britain’s needs and requirements. To bolster and sustain economic growth in the ‘core’ (Britain), resources are extracted from the periphery (Nigeria - in the case above, goods including but not limited to rubber and cocoa). As the core develops (through increased economic growth at the expense of the periphery’s resources) the periphery underdevelops (its resources having been given to the ‘core’), leading to a widening inequality gap.<sup>16</sup> Issues around exploitation and inequality are abundant in literature on dependency.<sup>17</sup> Although the theory was in disuse by the 1980s, it can still be used to explain the relationship between multinational organisations and national economies today.

The basic hypothesis of the theory is that ‘development and underdevelopment are partial, interdependent structures of one global system’.<sup>18</sup> Dos Santos considers it as ‘a conditioning situation in which the economies of one group of countries (usually referred to as peripheral countries) are conditioned by the development and expansions of others (core countries)’.<sup>19</sup> He continues by noting that dependent relationships exist ‘when some countries expand through self-impulsion, while others, being in a dependent position, can only expand as a reflection of the expansion of the dominant countries which may have positive or negative effects on their immediate development’.<sup>20</sup> ‘The relations of dependence, to which these countries are subjected, conform to a type of international and internal structure which leads to underdevelopment or, more precisely, to a dependent structure that deepens and aggravates the fundamental problems of their peoples’.<sup>21</sup>

An underdeveloped region *will* experience some artificial development, as it is linked to the region importing the goods. So, for example, with Nigeria, a country which has an abundance of cocoa, colonised by a developed country that wanted the cocoa – the lesser-developed country (in this case Nigeria) would experience some development in

13 Andres G. Frank, *Capitalism and Underdevelopment in Latin America* (New York: Monthly Review Press, 1967); Frank, *The Development of Underdevelopment* (New York: Monthly Review Press, 1966); Frank, *The Underdevelopment of Development*, (Stockholm: Bethany Books, 1991).

14 William Morgan, ‘The influence of European contacts on the landscape of southern Nigeria’, *The Geographical Journal* 125 (1959): 48.

15 Walt W. Rostow, *The Stages of Economic Growth: A Non-Communist Manifesto* (Cambridge: Cambridge University Press, 1960); Harold Bernstein, ‘Modernization theory and the sociological study of development’, *Journal of Development Studies* 7 (1971): 141. For a general overview of the area, see Colin Leys, *The Rise and Fall of the Development Theory* (London, James Currey, 1996).

16 Theodore Dos Santos, ‘The structure of dependence’, *American Economic Review* 60 (1970): 231; Andres G Frank, (1974) ‘Dependence is dead, long live dependence and the class struggle: an answer to critics’, *Latin American Perspectives* 1 (1974): 87; Frank, *Capitalism and Underdevelopment in Latin America*; Frank, *The Development of Underdevelopment*; Frank, *The Underdevelopment of Development*.

17 Ibid.

18 Philip O’Brien, ‘A critique of Latin American theories of dependence’, in *Beyond the Sociology of Development: Economy and Society in Latin America and Africa*, ed. Ivar Oxaal, Tony Barnett and David Booth (London: Routledge and Kegan Paul, 1975): 7.

19 Theodore Dos Santos, ‘The crisis of development theory and the problem of dependence in Latin America’, in *Underdevelopment and Development*, ed. Harold Bernstein. (Harmondsworth: Penguin, 1973): 57.

20 Ibid.

21 Ibid. For a deeper analysis, see Ciara Hackett, ‘The re-birth of dependency – offering an alternative understanding of financial crisis’, *International Journal of Law and Management* 56 (2014): 121.

terms of infrastructure, education and agriculture, but only insofar as it would help the developed region to gain access to the cocoa. So, for example, the lesser-developed region would get an education to understand the process of cocoa farming, as well as better infrastructures and regulations to ensure more efficient and effective cocoa farming, and better roads and ports to transport the cocoa and other products. In this way, the lesser-developed region's development is conditioned by the requirements of the cocoa-importing region.

Narrowing the theory, in order to identify key principles the following conditions can be noted which would be useful in applying the dependency theory:

- Development is economic, political, cultural and social advancement, which is independent of development in another state
- 'Developed' is the utopia – when full development has been achieved – put simply, all states are equally developed in all aspects
- Underdeveloped suggests that development in a region is conditioned by the needs of another region – prompting an unequal development trajectory. True 'development' and being 'developed' are impossible in a capitalist society where inequality is a symptom of engaging with the system

This does provide some insight into the relationships between states and the challenges that faced/face a newly nationalised/independent state. In applying these identified conditions, together with the broad themes of dependency, to the corporate non-state actor and its interactions with government, an interesting story emerges.

#### *Modified dependency*

Can dependency be useful today as an alternative lens to view the global market system and, by extension, assist in our understanding of development in the context of market governance? Dependency emerged prior to the expansion of MNCs and increased globalisation of the market, but it still, subject to modifications, can offer guidance on our understanding of the inequalities within capitalism. These modifications must deal with the problems that inhibited the capacity of dependency in its original form. While still respecting the broad ideologies of the theory together with the key conditions identified above, two main problems can be identified: one, the failure to define the key typologies, and two, the focus of the theory on nation-state relations. Modifications can be achieved by recognising the power shifts in the global market (and incorporating the aforementioned shift from government to governance). If *capital* becomes the core (particularly capital created by MNCs), all nation-states to varying extents become peripheral and by extension, dependent insofar as they are all reliant to varying extents on capital investment for development. Of course, in recognising the historical aspect of original dependency, a state's or region's past will be a factor in considering just *how* dependent that state is, thereby respecting the neo-Marxist underpinnings of the original theory and the importance of 'history' in understanding relationships within the market system.<sup>22</sup> In simply reimagining the actors in dependency, and incorporating recognition of the shift toward a more governance-orientated society, the value of this theory as a unit of analysis becomes clear. Modified dependency has a wider, possibly universal application. Refining a modified dependency and utilising the quotations from Dos Santos outlined above, we can stipulate that:

- *Modified* dependency theory is a conditioning situation in which the economies of countries and trading blocs are conditioned by the development and expansion of *capital accumulation via MNCs*
- This accumulation may manifest as *investment within countries and trading blocs providing employment and services to the population*
- A relationship of modified dependence *exists when MNCs expand through self-impulsion while countries and trading blocs can only expand as a reflection of the MNCs investment in their region, which may have a positive or negative effect on their immediate and long-term development.* This development may be economic, political or social<sup>23</sup>

<sup>22</sup> Leys, *The Rise and Fall of the Development Theory*

<sup>23</sup> See Hackett, 'The rebirth of dependence'.

The structures which underpin global trade have changed since the inception of development theories generally, and dependency in particular. What have not changed are the unequal relationships that permeate the fabric of capitalism.<sup>24</sup> In understanding development, it is important to acknowledge that development in capitalism will always be unequal – such is the nature of the system, thus tying in with one of the key conditions of the theory outlined above. With inequalities existing as a structural symptom of capitalism, the struggle for companies is to ensure ‘development’ which, although not necessarily achieving equality, at the least alleviates some of the conditions of capitalism, particularly when examined while considering dependency. If the new core is capital generated by MNCs, and these MNCs are tasked with a greater governance role in society, how can societal and cultural development occur? This is always going to be a) conditioned by economic development of the MNC, and b) unequal and dependent on the relationship between capital and the government in a particular state. This does have long-reaching implications for interactions between companies and development, as well as business and human rights.

The above theory provides an insightful understanding into the Nigerian economy. Nigeria is dependent, given both its history as a colony of the British Empire and its export-orientated, resource-dependent market today. Looking back at the Land Use Act 1978, the theory becomes even more relevant, especially when considering the discovery of oil in the 1970s and the emerging mining economy in the region. With land ownership in the hands of the government post 1978 Decree, there are implications for the unequal relationship between government and the MNCs involved in the mining and oil industries in particular. With a state that is overly dependent on oil-revenue for economic development, the ability of the government to campaign for a particular development agenda within an MNC’s CSR strategy is constrained. Even when engaging with the oil companies in pushing for economic development problems such as corruption emerge.

### Corruption

‘Corruption is the abuse of entrusted power for private gain. It hurts everyone who depends on the integrity of people in a position of authority’.<sup>25</sup> Corruption in Nigeria has been well documented, with its presence being described as a ‘shared national flaw’<sup>26</sup> and of ‘Nigerians [being] participants in a process [corruption] where they are simultaneously the main victims and the loudest critics’.<sup>27</sup> Smith, focusing on small-scale examples of corruption (paying police to let one through a checkpoint) notes that these types of transactions really reflect post-colonial Nigeria, where relationships of moral, political and economic insecurity have evolved, suggesting that it is in navigating these insecurities that access to the resources of the state may be granted.<sup>28</sup> Alternatively, Shaxon offers two ways of thinking about corruption with one being the abuse of the wider good by narrow interests, and the other being that whatever abuses the public good and undermines public faith in the integrity of rules, systems and institutions is corrupting; perhaps examples of abuse in this case are a lack of effective governance, law and order issues and questions around the legitimacy of the government.<sup>29</sup> Although both theories are applicable here, it is probably the undermining of public faith in the integrity of the system that has contributed to the uncertainty today – thus having the more far-reaching consequences covered by this article.<sup>30</sup>

Although seemingly a part of the Nigerian political culture, the discovery of oil and the processes of extraction have contributed to the embedding of corruption and the idea that ‘oil and corruption go together’,<sup>31</sup> with Ades and Di Tella noting that ‘Nigeria’s oil income created extraordinary opportunities for corruption’.<sup>32</sup> The argument that oil and mineral dependence breeds and/or encourages corruption seems to be well established.<sup>33</sup> Shaxon uses a particularly illuminating example to explain the system; he compares a state that is reliant on agriculture and a state reliant on oil money.<sup>34</sup> With the oil money, the amount awarded is a given: it is dependent on oil prices globally and on contracts among other factors.<sup>35</sup> Say for example, for argument’s sake, £1 million is awarded for the oil, the question then

24 Ibid.

25 Transparency International: <http://www.transparency.org/whatwedo> (accessed 22 Jan. 2015).

26 Daniel Smith, *A Culture of Corruption: Everyday Deception and Popular Discontent in Nigeria* (Princeton, Princeton University Press, 2007): xii.

27 Ibid. Ciaran O’Kelly and Mel Dubnick offer an alternative approach to corruption, namely that it is in the eye of the beholder. See O’Kelly and Dubnick, ‘Getting away with it: corruption, moral indignation and the limits of legal accountability’ (2014).

28 Smith, *A Culture of Corruption*, 6–10.

29 Nicholas Shaxon, ‘Oil corruption and the resource curse’, *Africa and Security* 83 (2007): 1123, 1132. Also, reflecting Smith, cases where the people are both the victims and critics of corruption.

30 Also in line with O’Kelly and Dubnick, ‘Getting away with it’.

31 *The Economist*, 4 Aug. 1984 c. fn. 26.

32 Alberto Ades and Rafael Di Tella, ‘Rents, competition and corruption’, *The American Economic Review* 89 (1999): 982, 982. Smith, *A Culture of Corruption*.

33 Carlos Leite and Jens Weidmann, ‘Does Mother Nature corrupt? Natural resources, corruption and economic growth’, *IMF Working Paper* 99/85, July 1999.

34 Shaxon, ‘Oil corruption’, 1127. He talks about Petroland (oil dependent) and Agricola (agriculture dependent).

35 Ibid.

becomes ‘how do you distribute this wealth?’ If you divide it equally between the regions, with the north and south each receiving half, then you create the possibility of the south-west and south-east fighting for their share, and so it would continue until it becomes local communities fighting over who gets a piece of the ‘pie’.<sup>36</sup> After independence Nigeria initially split into four regions; however, today there are 36 of them and one federal capital authority.<sup>37</sup> These are further subdivided into 774 Local Government Areas.<sup>38</sup> Many of these (regional) splits are attributable to divide and rule; communities and regions looking for their ‘fair share’.<sup>39</sup> This has the effect of creating more and more minorities, *more* corruption and *less* trust. This, Shaxon argues, leads to political instability, social fragmentation and polarisation.<sup>40</sup>

Thinking about corruption from a governance-orientated perspective, and the land-ownership structure in Nigeria,<sup>41</sup> what emerges is a system where the State is both principal (citizens) and agent (government as a representative of state).<sup>42</sup> The government is mandated to act in the interests of the state. In this case, the government is the *agent* of the state; however, the government is comprised of political parties. When acting as an agent of the state, the challenge is to ensure that they do so in a way which is in its best interest and not in that of the party to which they belong.<sup>43</sup> Of course, the government itself could become the principal, with its civil service acting as agents, spiralling into a system of self-interest. Usually, the challenge of principal-agent abuse is solved (or at least alleviated) by the use of gatekeepers within the governance system.<sup>44</sup> Gatekeepers exist as a check, ensuring that the agent is not acting in self-interest but is instead making decisions as a *steward* of the principal.<sup>45</sup> In this case, the government owns the land.<sup>46</sup> The government is also responsible for issuing extraction licences.<sup>47</sup> The gatekeepers here, in this case civil servants, may themselves be besieged with self-interest. Corruption may still exist and indeed ‘reinforce the patronage politics so prevalent in Africa’.<sup>48</sup> In addition, given the historical dependence of Nigeria, its relative youth in terms of independence, the structures that can assist in the prevention of corruption, or indeed gatekeeping generally, may not yet exist or may still be in their infancy.<sup>49</sup> The implication may be that whereas the licence is granted to the borrower, the state gets the money – the latter is blinkered by short-termism and, as a result, limited long-term environmental measures are put in place, or indeed any means to develop the area.<sup>50</sup> The land is not developed.

As a result, the question becomes whether the MNC, as a dominant actor within the governance system, can act as a gatekeeper on government in the absence of strong accountability from the state. The MNC is no longer simply an actor within the government transaction, but a partner and a stakeholder with the power to influence. This may be greater than that which the government has to influence MNC activities.<sup>51</sup> However, if the MNC is acquiring a resource – in this case oil – then the nature of the transaction should be that the state benefits. Although fiscal benefit is the standard economic response, the nature of the MNCs role in society in this example now goes beyond the economic to encompass more societal benefits.<sup>52</sup> Today, this is mostly understood via the corporation’s CSR policy as well as external obligations, most recently in the form of the UN’s ‘Ruggie’ Principles.

36 Ibid.

37 Federal Republic of Nigeria, <http://www.nigeria.gov.ng/index.php#> (accessed 28 Jan. 2015).

38 Shaxon, ‘Oil corruption’.

39 Shaxon, ‘Oil corruption’, 1127.

40 Ibid.

41 Specifically the implications of the Land Use Decree 1978.

42 See generally, Kathleen Eisenhardt, ‘Agency theory: an assessment and review’, *Academy of Management Review* 14 (1989): 57. Of specific interest here, David Van Slyke, ‘Agents or stewards: using theory to understand the government – non profit social service contracting relationship’, *Journal of Public Administration, Research and Theory* 17 (2007): 157.

43 This is Shaxon’s first definition of corruption.

44 John Coffee, ‘Gatekeeper failure and reform: the challenge of fashioning relevant reforms’, *Boston University Law Review* 84 (2004): 301.

45 James Davis, F. David Schoorman and Lex Donaldson, ‘Towards a stewardship theory of management’ (1997): 22(1), *Academy of Management Review* 22 (1997): 20.

46 ss 1& 2, Land Use Decree 1978.

47 With oil, it is either the Oil Prospecting License or the Oil Mining License. Note the Petroleum Industry Bill (2012), which aims to increase transparency and accountability but ultimately seems to be courting the same issues that already abound within the system.

48 Shaxon, ‘Oil corruption’.

49 Shaxon’s second definition of corruption. Another potential problem here is the fact that the government is taxing companies, not citizens. This has implications for the relationship between the government and the state – is this lack of taxation representation actually fuelling corruption and the idea of ‘patronage politics’? See Michael Ross, ‘Does taxation lead to representation?’, *British Journal of Political Science* 34 (2004): 229.

50 Some proposed requirements around Environmental Quality Management have been put forward in the Petrol Industries Bill 2012.

51 Mitchell et al., ‘Toward a theory of stakeholder identification and salience’.

52 Noting the shift from the firm’s shareholder-orientated model to the stakeholder-orientated model, i.e. from Milton Friedman, ‘The social responsibility of business is to increase its profits’ (1970), *The New York Times Magazine*, available at: <http://www.umich.edu/~thecore/doc/Friedman.pdf> (accessed 13 Dec. 2014), to Richard E. Freeman, *Strategic Management: A Stakeholder Theory of the Firm* (Cambridge: Cambridge University Press, 1984).

## Business and human rights: from law to ‘moral’ obligation

### Human rights protections

The transnational profile of the MNC is increasingly documented.<sup>53</sup> In keeping with the theme of this article, and the idea that MNCs as actors within the governance framework are assuming duties beyond profit maximisation, this section explores the human rights obligations of MNCs as directed by legally binding instruments as well as their own initiatives via their CSR policies. The role of business and human rights is one of the duties of MNCs increasingly embedded within soft-law initiatives. At the international level, attempts to regulate MNC behaviour in this area have gained some traction, first with the UN 2003 Norms<sup>54</sup> and more recently still the ‘Ruggie’ Principles.<sup>55</sup> Their role within human rights protections and breaches however, was recognised much earlier.<sup>56</sup>

Today, it is the idea of MNCs as ‘organs of society’ that has been developed further with the preamble of the 2003 Norms, ‘[r]ecognizing [sic] that even though States have the primary responsibility to promote, secure the fulfilment of, respect, ensure respect of and protect human rights, transnational corporations and other business enterprises, as organs of society, are also responsible for promoting and securing the human rights set forth in the Universal Declaration of Human Rights’.<sup>57</sup> Support from the business community was not forthcoming, prompting the Secretary General’s Special Representative on Business and Human Rights (SRSG), to declare that the Norms were not legally binding.

Although experiencing a backlash from the business community in particular, the Norms did highlight the limitations of the legal responsibility of MNCs within international law as it relates to business and human rights. Beyond the industry and multilateral standards, and the self-regulation of the companies themselves (via CSR), nothing truly existed which reflected the role of business within the governance framework and in developing the regions in which they operate. Scandals over the years have suggested that perhaps some additional overarching legal obligation, beyond existing protections, is required as the promise of CSR has not always been realised.<sup>58</sup> Within the context of Nigeria, industry standards are in place but there are limited means of holding the corporation to account should they fail to meet their responsibilities as outlined in the industry standards. With the Land Use Act, it would appear that as long as payment is received for the ‘licence’ of the land, improvements and so on, as well as the impact of activities on the land, are not explored. The legacy of dependency has created a lacuna of protections for the state from the MNCs’ activities as the promise of capital still outweighs the long-term potential of a robust state-level legal framework on these issues.

In apparent recognition of the dearth of protections in this area, the ‘Ruggie’ Principles emerged,<sup>59</sup> which seem to have compromised on the aspects of the Norms that proved distasteful to the business community.<sup>60</sup> They advocate a three-pillar approach: 1) protecting human rights;<sup>61</sup> 2) respecting human rights;<sup>62</sup> and 3) remedies.<sup>63</sup> In promoting this approach there is an attempt to compromise between corporate responsibilities and state obligations. However, this compromise has diluted the strength of the principles, and is exemplified by the shift in the language used from,

53 Leslie Sklair, *The Transnational Capitalist Class* (Wiley and Sons, 2001); Linda Basch, Nina Schiller, and Christina Blanc, *Nations Unbound, Transnational Projects, Post-Colonial Predicaments, and Deterritorialized Nation States* (London, Routledge, 2005).

54 UN doc E/CN.4/Sub.2/2003/12/Rev.2.

55 UN doc E/CN.4/Sub.2/2003/12/Rev.2.

56 Andrew Clapham, *The Rights and Responsibilities of Armed Non-State Actors: The Legal Landscape and Issues Surrounding Engagement*, (Geneva Academy of International Humanitarian Law and Human Rights 2010), 24. See, for example, the UDHR: ‘(n)ow, therefore the general assembly proclaims this universal declaration of human rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction’. Preamble, The Universal Declaration of Human Rights, available at: <http://www.un.org/en/documents/udhr/> (accessed 23 Jan. 2015 (emphasis added). Also of note here: the 1969 International Convention on Civil Liability for Oil Pollution Damage and the 1971 International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage.

57 Preamble, the 2003 Norms, UN doc E/CN.4/Sub.2/2003/12/Rev.2.

58 For scandals see: *Re Deepwater Horizon II* 739, F. 3d. 790, 795 (5th Cir. 2014) (*Deepwater Horizon II*); *Re Deepwater Horizon III* No.13 – 30315 (5th Cir. 2014). Media outlets have been highly critical of the BP response, particularly in the aftermath of the January and March 2014 litigation, e.g. Young, ‘BP and the real state of the Gulf – Pollution Report for 8 and 9 April 2014’, *The Legal Examiner*, 10 April 2014. The BP scandal is illustrative here, but also of interest is the Niger Delta generally. Criticism has been levied at the Nigerian government for its lack of response to the ongoing issues in Ogoniland and the surrounding areas, see United Nations Environment Programme, Environmental Assessment of Ogoniland (2011). For case law see, for example, *SERAP v the Federal Republic of Nigeria*, Judgment no. ECW/JUD/18/12, 14 Dec. 2012, paras.113–21; *The Bodo Community v Shell*, claim no.HQ11X01280.

59 ‘Ruggie’ Principles.

60 Also other Norms issues were apparently amended, such as a failure to recognise how complex the interactions with state and MNC can be, especially given the shifts in the global order towards a more governance-orientated system.

61 The State duty to protect.

62 The Corporate responsibility to respect.

63 The provision of remedies where businesses have not met their responsibilities or where states have failed in their duty to protect human rights.

...transnational corporations and other business enterprises, as organs of society, *are responsible for promoting and securing the human rights set forth in the UN Declaration...*<sup>64</sup>

to ...[b]usiness enterprises *should* respect human rights. This means that they *should avoid infringing on the human rights* of others and *should* address adverse human rights impacts with which they are involved.<sup>65</sup>

The demotion of corporate responsibilities from 'are' to 'should' have ensured that the protection and respect of human rights have been downgraded to market language. Creating a situation where MNCs become the 'winners' of the 'Ruggie' Principles, with the 'losers' being those that rely on these Guidelines to protect their interests.

In the case of Nigeria, the state is already weak and is dependent under the framework discussed above: on the British Empire for prosperity and growth, and later on in respect of oil and increasingly mineral deposits. This dependence is also combined with the land tenure system, the idea that the prospective borrower of the land is responsible for any improvements to be made to the land, leading to negative results. Issues of corruption need to be included as well, and what emerges is a country where development becomes increasingly *underdeveloped*. Multi-national corporations are relatively free from obligations (beyond the voluntary requirements of 'Ruggie' and industry standards), and the threat of reputation damage is relatively toothless in a regime where MNCs' fiscal benefit from oil exploration overrides other potential benefits, and a culture of corruption is not only the norm but an accepted part of business practice.

With the existing human rights framework, as it relates to MNCs, lacking at an international level, and in the case of Nigeria relatively non-existent at state level,<sup>66</sup> it is the MNC's own self-regulation that may hold the key to developing the areas in Nigeria in which it is based, as well as having a positive impact in relation to corruption, trust and transparency – thereby fulfilling a more socio-political role within the governance infrastructure.

#### *CSR in the oil extraction industry*

The extent of scandals within the extraction industry generally – and particularly within Nigeria – questions the effectiveness of the CSR agenda and whether it simply provides the MNC with a 'conscience clause' or a means of 'managing perceptions' when it suits the corporation. That is not to say that CSR has not had some impact, even if it is only at a superficial level. Codes of conduct and international CSR initiatives (such as the Global Compact) have led to companies engaging more than in the past.<sup>67</sup> The oil industry has itself been an important test case for the credibility of meaningful CSR.<sup>68</sup> When examining the countries typically dependent on oil extraction for development and the challenge of corruption, it is clear why this is the case. Frynas and Wood note when considering Angola, that at times 'social giving' has been seen as just another way of getting money to government officials.<sup>69</sup> Within these areas, intense media commentary and scandal may be less effective in coercing the company to act, than in other countries/states.

The challenge of effective CSR in an area where there are deeper historical, political, social and cultural issues/problems is without question. As previously examined, Shaxon commented on the fight for a 'piece of the pie';<sup>70</sup> applying this idea with the stakeholder theory,<sup>71</sup> and where everyone's voice has a *value*, questions arise:<sup>72</sup> 'who are the stakeholders?', 'how *valuable* are they?', 'how *do you interact with all stakeholders equally* given the social and political fragmentation within the area?', and 'how is this to be carried out in a culture besieged with corruption?' Perhaps it is in building trust within the industry and the local communities that CSR can progress in an effective manner.

There appears to be a drive to encourage more transparency within the extraction sector – with the emergence of the Extractive Industries Transparency Initiative (EITI), described as 'a global coalition of governments, companies and civil society working together to improve openness and *accountable* management of revenues from natural

64 Preamble, the 2003 Norms, UN Doc E/CN.4/Sub.2/2003/12/Rev.2 (emphasis added).

65 Principle 11, 'Ruggie' Principles (emphasis added).

66 Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria does have human rights enshrined within it. Looking at MNCs in the oil-extraction industry, in particular, the Environmental Assessment Act 2004 does place an implied obligation on MNCs. Also of note is the Harmful Waste (Special Criminal Provisions) Act 2004; Companies and Allied Matters Act (CAMA) 2004; International Fund for Compensation for Oil Pollution Damage 1971 (Ratification and Enforcement) Act 2006 (as amended); and the International Convention on Civil Liability for Oil Pollution Damage (Ratification and Enforcement) Act 2004.

67 Ibid.

68 Matthew Yeomans, *Oil: Anatomy of an Industry* (New York: New Press, 2004); and Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (New York: Free Press, 2004). Some initiatives are proving quite interesting. In the case of CSR promoting development, we can point to Shell's GMoU strategy. See: <https://www.shell.com/ng/environment-society/shell-in-the-society/gmou.html> (accessed 24 March 2015).

69 Jędrzej Frynas and Geoffrey Wood, 'Oil and war in Angola', *Review of African Political Economy* 28 (2001): 586.

70 Shaxon, 'Oil corruption', 1123.

71 Freeman, *Strategic Management*.

72 Mitchell et al., 'Toward a theory of stakeholder identification'.



resources'.<sup>73</sup> Although the argument could be made that enhanced transparency leads to enhanced responsibility, which, in turn, leads eventually to enhanced accountability mechanisms, the reality is that the idea of perception and of participation, together with the fragmentation of civil society and the role of the public within the initiative suggest that the limitations of the EITI outweigh the prospects.<sup>74</sup> These problems seem to manifest in countries that require more from EITI, with Save the Children noting that, 'revenues from extractive industries have also frequently fuelled corruption, exacerbated conflict and weakened economic development with devastating impact on children's lives'.<sup>75</sup> This all suggests that CSR is not without flaws; however, in the absence of robust requirements in respect of international obligations for business and human rights it may be the best means, at present, for developing countries such as Nigeria.

### *CSR as a tool for development*

This section considers CSR's role within the broader development discourse. Dependence on capital has an impact on CSR; typically, 'CSR is offered predominately *via* the market to problems that often originate *in* the market'.<sup>76</sup> For now, the market is larger than the mechanisms used to control, implement and enforce behaviour. Despite its flaws however, the promise of CSR benefits both the corporation and the community in which the corporation operates by contributing to social as well as economic development. This leads to the situation whereby a corporation is responsible for its own CSR policies *and* for ensuring that these are implemented and enforced. Nonetheless, until the business and human rights framework becomes more robust, CSR offers some hope (albeit conditioned by capital accumulation) in fostering development generally, and ensuring a protection of, and a respect for, human rights. In creating a culture of human rights recognition, CSR can enable a discussion around and development of human rights protections in the future.

In Nigeria much trepidation exists around MNC oil exploration and corruption at local, regional and state levels. The Land Use Act serves as one example of how corruption can manifest (in the granting of licences) and how, in line with corruption, human rights abuses can occur (degradation of the environment and the resultant impact on the right to water, health and more). In the use of pay-offs for licences the recovery of a payment seems more important at a bureaucratic level than conditioning licence grants with environmental quality management.<sup>77</sup>

Therefore, it is the responsibility of the MNC, within its wider role as a non-state actor in the governance framework, to engage with anti-corruption measures and to incorporate sustainable oil extraction into its CSR strategy.<sup>78</sup> Motivating capital to engage with CSR may become difficult and CSR may then become an exercise conditioned by profit accumulation. Human rights protections, on the other hand, have been mostly the task of nation-states collectively.<sup>79</sup> As the shift in language between the Norms and the 'Ruggie' principles suggest, fear of alienating capital seems to have led to compromise. Sweeping guidelines, such as those outlined in 'Ruggie', may actually have a detrimental effect, in that they limit the potential of CSR while still limiting the accountability of capital should it fail to act in a responsible manner.<sup>80</sup>

In searching for a compromise and recognising the relationship between business – especially CSR – and human rights, it is useful to think of CSR as the preliminary stage, providing the framework by which human rights protections can operate effectively within the region, and creating a culture of human rights recognition to facilitate a more embedded practice in future. By recognising that a relationship can exist but that it is not necessarily initially an equal relationship, the disconnect discussed throughout this article can be overcome, and the end result may lead to development, which in turn can alleviate the conditions of the region's dependent relationship on capital generated by MNCs.

For an MNC involved in extraction and operating in Nigeria, the business case for CSR at its most basic can be understood as:

73 EITI, [www.eiti.org](http://www.eiti.org) (accessed 26 Jan. 2016).

74 Susan Aaronson, 'Limited partnership: business, government, civil society and the public in the Extractive Industries Transparency Initiative', *Public Administration and Development* 31 (2011): 50.

75 Deborah Doane and Alison Holder, *Why Corporate Social Responsibility is Failing Children*, Save the Children (2007), at 6.

76 Aurora Voiculescu, 'Human rights, corporate social responsibility and international economics law – strong answers to strong questions', in *Socio Legal Approaches to International Economics Law*, ed. Amanda Perry-Kessaris (London: Routledge, 2013): 223.

77 C. fn. 48.

78 For example, Shell has listed extensive social and environmental policies on its website. However, there are also links to 'spills' and how these are related to sabotage among other issues. Whether or not this is the case, the language in this report does not suggest community engagement based on mutual respect and seems more like an exercise in avoiding accountability rather than assuming responsibility. See for more: 'Spills' (*Shell*), available at: <http://reports.shell.com/sustainability-report/2013/our-performance/environmental/spills.html> (accessed 2 Feb. 2015).

79 This is in recognition of the UN's EU-wide human rights reports, declarations and so on.

80 Voiculescu, 'Human rights, corporate social responsibility and international economics law'.

- maintaining a competitive advantage within the industry
- having a healthy workforce<sup>81</sup>
- having a safe working environment for that workforce<sup>82</sup>
- managing perceptions<sup>83</sup>
- maintaining good relations with the local communities and with the government

However, within the context of dependency, to be truly effective this business case, and particularly the final point regarding relationships with local communities, needs to be implemented in stages. A crude summary of these steps (with grounding in Rostow's stages of development, albeit used in an entirely different format)<sup>84</sup> follows:

### **Stage one**

An MNC within the oil extraction industry operates in an area; in moving into this area they are providing some jobs and an improved infrastructure. In so doing, and through dialogue, they can build a relationship of trust with the local community, which is considered a preliminary stage. In initiating good relationships with local communities, the MNC can build the foundations for developing the region. The challenge for the MNC within the oil extraction industry is in developing good relationships with community without falling into the corruption-orientated culture. This break with the past may initially create hostility, especially considering the idea of 'corruption in the eye of the beholder';<sup>85</sup> for example, if local communities do not see payments as corruption, but rather as 'social giving',<sup>86</sup> it is understandable that hostilities will arise.

### **Stage two**

This stage is to be used as a tailored identification of stakeholders within that community; at this stage, it may be useful for the MNC to consider internal and external stakeholders as well as the power, legitimacy and urgency of their stake.<sup>87</sup> The challenge here is the social fragmentation in Nigeria, the number of regions, and meeting the demands of all the minorities.<sup>88</sup> Using the legitimacy, urgency and power concept, this may provide the MNC with a useful, if not definitive, framework by which to categorise stakeholders.

### **Stage three**

This stage involves meeting with stakeholders as outlined in stage two and *listening*; the MNC's job will be to listen to stakeholder concerns, both current and future.<sup>89</sup> It is important at this stage to outline the importance to the assembled stakeholders of going beyond philanthropy and financial donations.<sup>90</sup> In particularly underdeveloped areas, this may require MNCs to condition donations with education and training opportunities. This has not always been the case in oil-producing regions, including Nigeria, with reports of marketing distortion and hospitals being built (almost under duress) with no electricity, running water or other amenities.<sup>91</sup> This stage will also require MNCs to consider, with the stakeholders, the importance of the long-term social, cultural and environmental impact of their operations in the area. Again, this educates the stakeholders, enabling them to think beyond the initial economic benefit of MNC activity in the region creating an environment within which more embedded business and human rights practice can flourish.

81 Mary Robinson talks about the idea that 'human rights' is good for business and business is good for human rights. She notes that workers who are not afraid of being kidnapped, the possibility of genocide and other dangers will work better. For more see <http://www.ohchr.org/Documents/Publications/BusinessHREn.pdf> (accessed 28 Jan. 2015).

82 Ibid.

83 Note that managing perceptions may change. Reputation may not be as important when extracting the resource as when selling the end product.

84 Rostow, *The Stages of Economic Growth*.

85 O'Kelly and Dubnick, 'Getting away with it'.

86 Frynas and Wood, 'Oil and war in Angola'.

87 Mitchell et al., 'Toward a theory of stakeholder identification'.

88 Shaxon, 'Oil corruption'.

89 Recognising the importance of sustainable development, Shaxon, 'Oil corruption', 1127.

90 Frynas and Wood, 'Oil and war in Angola'.

91 Ibid. Frynas here focuses on the 'pitfalls' of CSR initiatives relating to oil companies.

**Stage four**

At this stage, *and only at this stage* (and after listening to and engaging with stakeholders) the MNC, along with stakeholder consultation, should be designing, delivering and evaluating their CSR initiatives (incorporating concerns and education on the access to rights, issues around corruption and any environmental concerns).<sup>92</sup>

If necessary, it is imperative that the MNC revisit stage two and modify the stakeholders (i.e. based on the urgency, power and legitimacy of their claim).<sup>93</sup> It is then advised that the MNC should continue with stages three and four. This cycle should be continued until there is a change of attitude in relation to the issue at hand (such as environmental degradation and impact on water, health and associated human rights). When the change of attitudes is evident at local level, the MNC should adjust its focus (by once again revisiting stage two) to a regional level and continue with stages two to four inclusive. When the regional level has been developed with regard to this issue, it must be continued to state level.

It is only when this has been achieved that international state obligations can be engaged effectively. And it is only when the change of attitude has been achieved at local, regional and state levels, and when there is sufficient education on the issue to provide access to rights, that the next level can be consciously achieved. It is imperative that an environment of rights' recognition is created before protection of rights is developed within CSR and business and human rights activities. It is at this point that state interpretation of the UN principles can be realised. However, the MNC still has a role to play; stages two to four should continue to be used as a means of implementing and enforcing human rights obligations. By this stage, the processes are sufficiently in place that they need not require a lot of additional work, thereby allowing for more innovations at a local level for CSR. It must be recognised that a conscientious engagement with human rights obligations cannot be achieved until there is a change of attitudes at ground level; and this change may take years. However, although a slow process, it is having the side-effect of developing the region, (on an economic, social, political and cultural level), which should certainly be encouraged. The challenge here for Nigeria is overcoming the culture of corruption, but perhaps in the long-term nature of the CSR policies and the engagement with local communities, fears of capital alienation due to accountability measures may be alleviated.

The above analysis is a crude interpretation of the role and value of CSR and human rights (using the example of 'Ruggie') in fostering development. This suggests that corporations will always willingly engage with stakeholders and advance a viable CSR initiative. However, it fails to discuss what happens when the MNC does not engage or engages ineffectively with the local community. It is important to consider the role that international law plays in holding corporations accountable when they fail to act responsibly. Shifts in the global system have ensured that nation-state relations lack sufficient power individually to hold MNCs accountable. However, a collection of nation-states may hold sufficient power (and consumer base) to act as an effective enforcer. To do so requires them to think of the collective needs and not of the nation-state's individual need.<sup>94</sup> This in itself will be difficult to monitor, especially given that states within a group such as the UN are at different stages of development and therefore have different relationships with MNCs and experience different levels of inequalities in their relationships with them.

The states in most need of CSR are the states least likely to require it as a condition for capital investment, preferring instead to rely on international mechanisms as a means of holding MNCs to account. Nigeria falls neatly within this category; CSR could benefit Nigeria more if carried out effectively at ground level to help facilitate development, as well as environmental and associated human rights protections. However, should the MNC fail to instigate effective development, the state is limited – capital without sustainable development is still better than no capital. The value of human rights obligations as a lead on from CSR is diminished if CSR is not initially effective (at state level). Also, the power of states to enforce obligations is limited if they are not thinking/acting collectively (at international/inter-state level).

Therefore, the concept of CSR contributing to development which results in sustainable development is conditioned on the MNC doing the 'right thing'. Unless that provides profit/value for MNCs it is unlikely to happen (as the primary obligation has to be to the shareholder), and this leads to further underdevelopment. Single-issue CSR policies seem to be different – they can be used as a branding exercise for the region and are easier to promote within the community (and on a global scale) than a more complex set of policies focused on development more generally. This a huge responsibility for an entity with no loyalty to person, culture or state (rather a loyalty to capital), with limited accountability; such is the nature of capitalism. This engagement with a system that promotes inequality as a natural result of the market begs the question of how fair it is to rely on a market-driven ideology to solve/alleviate the burdens of inequality. However, the embedding of the MNC within the governance framework may provide the tools by which

92 Incorporating here, for example, education on holding government to account.

93 Mitchell et al., 'Toward a theory of stakeholder identification'.

94 See Christian List and Philip Pettit, *Group Agency: The Possibility, Design and Status of Corporate Agents* (Oxford: University Press, 2011).

to encourage more responsible behaviour. Expectations of the MNC now go beyond the economic spectrum, and it is perhaps within this shift that some hope exists that CSR may instigate a development which can then be furthered by human rights mechanisms. Within Nigeria, this development has to come initially from MNCs and must then filter through to international law. Only *after* this process can state law develop accordingly.

## Conclusion

The Nigerian state is dependent on capital generated by MNCs in the extraction sector. Given the legacy of dependency (under both traditional and modified connotations of the term), it is underdeveloped. Practices, such as those created by the Land Use Act, have created a lacuna by which economic development is maintained (albeit dependent), but environmental, social and cultural development is relatively stagnant. With no incentive to develop land (as they cannot *own* it), local communities are left fighting over 'bits of the pie' due in part to the legacy of distrust and corruption within the region.

The state is not necessarily without help; globalisation has triggered shifts leading to the rise of corporate non-state actors in the governance system and MNCs' global expectations now go beyond the economic. With the oil/extraction industry in Nigeria, MNCs are seeking control over oil fields and mines (among other things) for competitive advantage. However, that advantage is no longer enough. On an international level, the broader role of the MNC within society is explored through its relationship with human rights via the Norms and more recently the 'Ruggie' principles. The latter are something of a compromise (and a disappointment for activists), but nonetheless reflect this idea that MNCs need to go beyond profit maximisation. Regardless of *what* they reflect they are toothless, meaning that the CSR policies of MNCs in many states (where the state is unable to implement stringent human rights protections) are key to promoting development strategies. In waiting for business and human rights protections to offer a more dynamic framework of responsibility and accountability, maximising the potential of CSR could be the only feasible solution for now.

In Nigeria there is no effective or current pressure on MNCs to be socially responsible.<sup>95</sup> The legacy of corruption has created an environment of distrust; the fragmentation of the country has led to people looking for their share of the short-term economic benefits.<sup>96</sup> Therefore, an effective CSR policy is at the discretion of the MNC. There are, of course, persuasive reasons for engaging with local communities; in terms of the broader governance shift, if a more embedded role in society is commonplace elsewhere, it may become established practice for an MNC to act in a particular way.<sup>97</sup> The MNC also has further considerations; for example, the potential for extraction in Nigeria is huge. In providing a safer working environment and other incentives that create a happier workforce and local community, as well as, for example, education around corruption and the value of land improvements (for example), the corporation could be benefiting the economic potential of the MNC in the long term. This is currently the only incentive – however, in building trust from local community to *state* level, there is an opportunity for the MNC to work with the state in combating the corruption culture, which stymies the potential for development beyond the economic. Referring to the Land Use Act example which has been discussed throughout this article, encouraging local communities to think about land as *more* than an economic entitlement, as something sustainable, and to carry out improvements (even if the act does not allow for this), it can lead to a better landscape for business and society.

Whether this is possible remains to be seen. Scandals around the environmental degradation of the Niger Delta are well documented.<sup>98</sup> With the limitations of the Land Use Act, MNCs were not necessarily incentivised to prevent this kind of activity. This is not protecting the MNC but rather, considering the profit-orientated ideology of the corporation, within their business-led understandings. However, whereas reputation does not seem to be a factor *within* Nigeria, the media commentary on recent decisions may have an impact *globally* on the brand, which incentivises

95 The proposed Petroleum Industry Bill 2012 does make some inroads here, particularly with the proposed introduction of an environmental quality management plan and the petroleum host communities' fund. These provide some scope for a more embedded regulation of CSR 'style' rights but this bill has been noted for the failure of the government to implement and also has been viewed more as a means of increasing taxation than regulating environmental impact. See, Eleanor Whitehead, 'Nigeria Petroleum Bill: still causing consternation', *Financial Times*, 2013 (blog), available at: <http://blogs.ft.com/beyond-brics/2013/11/21/nigeria-petroleum-bill-still-causing-consternation/> (accessed 2 Feb. 2015).

96 Shaxon, 'Oil corruption'.

97 Allowing them to 'get ahead of the game' in Nigeria. See for example: George Monbiot, 'A world turned upside down', *The Guardian*, 20 Sept. 2005, available at: <http://www.monbiot.com/2005/09/20/a-world-turned-upside-down/> (accessed 11 April 2014).

98 See 'Nigeria: long-awaited victory as Shell finally pays out £55million over Niger Delta oil spills', *Amnesty*, Jan. 2015, available at: <http://www.amnesty.org/en/news/nigeria-long-awaited-victory-small-comfort-shell-pays-out-over-niger-delta-oil-spills-2015-01-0> (accessed 2 Feb. 2015); 'Shell's Nigeria investments at risk from corruption scandal, investors warned', *Global Witness*, May 2014, available at: <http://www.globalwitness.org/library/shell-s-nigeria-investments-risk-corruption-scandal-investors-warned> (accessed 2 Feb. 2015); Owolabi and Okwechime, 'Oil and security in Nigeria: the Niger Delta crisis' (2007) 32 (1), *Africa Development* 1.

MNCs to engage more dynamically with robust CSR activities for the sake of the business case.<sup>99</sup> Only once the right 'mix' of economic, social, political, cultural and environmental benefits are achieved can CSR's potential be truly understood. This will then result in long-term implications for business engagement with human rights.

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<sup>99</sup> 'Nigeria: long-awaited victory as Shell finally pays out £55million over Niger Delta oil spills'.