



**Consideration of Ethical and Legal Aspects of
Corporate Social Responsibility:
The Issue of Multi-National Corporations and Sustainable Development**

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1 Introduction

Trend of events over the last ten years have shown that the world has witnessed widespread business failures and even collapses.¹ These failures and collapses have been devastating and tragic to the global economy.² Within this period, corporations have claimed to promote Corporate Social Responsibility (CSR) and be committed to sustainable development, while at the same time perpetrating harmful business practices in the communities in which they operate.³ Unethical behaviour and illegal practices (such as cheating, greed and deceit) on the part of the executives of the corporations are the major causes of these crashes.⁴ The primary motivating factor to cheat in the business world is financial gain. However, cheating in any sense, be it greed, deceit, unethical conduct, acts of illegality or illegal practices, though detrimental to the sustainable development of the communities in which corporations operate their businesses, eventually in some occasions end up causing the executives of these multi-national corporations (MNCs) problems.⁵

The issue is topical, because CSR continues to be one of the most important and controversial aspects of global business - receiving much attention from all circles – business managers, lawyers, government leaders and academics in different fields. While continuing to increase in prominence, there are many aspects and many approaches evolving surrounding this global phenomenon. CSR of business is actually impacting on the people at this point-in-time, locally, nationally, regionally and globally. The financial crisis has provided a number of examples of firms that have engaged in practices that create systemic risk to the economy, but the issue is not confined to the financial sector. Virtually all firms are deemed to be sufficiently strategic in their undertakings in the local,

¹ For example, besides Enron and Andersen debacle, there have been collapses of other global companies - Allco Finance Group in Nov. 2008, EBS International a Digital Media in Nov. 2008, Environinvest Agribusinesses in Sept. 2008, GMC a manufacturing power tool maker Global Machinery Company Dec. 2008, Mida in Jan. 2009, and Lehman Brothers, available at <http://www.smartcompany.com.au/strategy/20090212-25-corporate-collapses-and-the-lessons-learnt.html> (10/04/2011).

² For example, see Maniam, B., & Teetz, H. (2005). Current Realities of Ethical Issues in Corporate America: How does ethics effect the financial arena: *Journal of Legal, Ethical and Regulatory Issues*, Vol. 8, No. 2.

³ See *McDonald's Corporation CSR information*, available at <http://www.mcdonalds.com/usa/good/report.html> (19/12/10).

⁴ For example a one-year probe into the collapse of Lehman Brothers found credible evidence that top executives, including the former chief Dick Fuld, approved misleading financial statements and used an accounting gimmick and manipulation to flatter results. There is also further and enough evidence that Ernst & Young, Lehnam's auditors, failed to question and challenge improper or inadequate disclosures in the firm's result, see Guerrero, F., Bullock, N., & Sender, H. (2010). *Lehman Report Blames Top Executive* at www.FT.Com

⁵ See Maniam, B., & Teetz, H. (2005) supra. Lehman and Enron cases are very instructive here. The 'Bear Streamns' Hedge Fund Collapse convinces us on how deadly mix of greed and leverage cost investors millions.

national, regional and global community. Actions desired by the society may differ from those undertaken by the firm in order to make reasonable profits in their business. Thus, firms may adopt different (positive or/and negative) strategies to maximise impact on society for their benefit. However, business strategy also affects the likelihood of harm to the society as a whole (though, with the level of impact differing on developed and developing societies).⁶ It is argued that CSR initiatives of MNCs are all about cover-up and pretence.⁷ Most of the legal authoritative works on CSR, which analyse company CSR, primarily focus on developed areas, and therefore overlook or discuss only briefly the CSR situations in developing countries that more clearly demonstrate the box-ticking mentality of companies.⁸ The few works that focus on developing areas reveal that in developing countries almost all the corporations are involved in box-ticking; as this paper will demonstrate.

In light of the harm caused by firms globally, the hypothesis of this paper is that the undertakings or business activities of most large global firms (i.e. MNCs) must have impacted heavily on the sustainable development of the society, particularly the communities where they operate their businesses and, especially in the developing countries. *It is therefore important for this paper to consider the ethical and legal aspects of CSR of MNCs and their business impact on sustainable development of the wider community. This paper primarily examines the contribution of CSR of MNCs to the sustainable development of the communities in which the corporations operate their businesses; this is approached from the context of practice argued through the three chosen empirical cases,⁹ and supported with theoretical analysis.*

This paper provides a separate sub-section for the consideration of various definitions or/and meaning of CSR.¹⁰ However, the working definition for the purpose of this paper is that CSR is about

⁶ For example the impact of environmental damage because of the oil spillage of the Shell British Petroleum in the US and Nigeria is not the same; equally the response and attention given to these oil-spillages in these societies are different.

⁷ Many companies used CSR as a kind of corporate PR or make-believe rather than as genuine attempt or practical move to change the way they intermingle with the society. Instead of addressing the real issue at stake, CSR merely put up camouflage, thereby distracting public attention away from the corporate ills. CSR never tells the audience what happened behind the scene, i.e. what is really going on inside the company; see Ying, F. (2005). *Ethical Branding and Corporate Reputation*, available at <http://www.emeraldinsight.com/researchregister> (12/04/10).

⁸ Horrigan's (2010) work for example that highlights among other things, the major recent global developments in corporate social responsibility already this century, focus especially on Europe, the UK, North America, and Australasia.

⁹ As stated earlier, this paper uses three giant multinational corporations in three different legal regimes for brief empirical illustrations: Enron in the United States of America, MacDonald's in the United Kingdom and Shell B.P in Nigeria (Africa).

¹⁰ This paper also provides brief explanations of the important concepts in understanding CSR that will be helpful in the analysis, such as sustainable development, social responsibility, corporate governance, corporate citizenship, and corporate accountability.

the sensitivity of an organisation to ethical and legal practices, and beneficial responsiveness that promote sustainable development in the community. Thus, while this paper recognises the importance of the success of business activities regarding what goes inside the corporations (i.e. internality-the inner circle), it is more concerned on the impacts of the activities of corporations on the communities or environments in which they operate their businesses (i.e. externality-the outer circle). This focus is on how CSR of an organisation contributes to the sustainable development of the wider community.

Section 2 primarily looks at the various definitions or/and meaning attached to the term CSR, and briefly explains the central concepts helpful in the understanding of CSR as used in this paper, such as sustainable development, social responsibility, corporate governance, corporate citizenship, corporate accountability, triple-bottom-line, and box-ticking mentality; as well as looks at the difference between ethics and legality. Section 3 presents the three empirical case studies identified; these are Enron, North America (USA); MacDonald's, UK (Europe); and Shell, Nigeria (Africa); it also made comparative remarks of CSR in UK (Europe), North America (USA), and Nigeria (Africa). The empirical cases form the basis of analysis in the other sections of this paper within the framework of the contribution of CSR of MNCs in the sustainable development of the communities in which they operate their businesses. This includes: consideration of the ongoing heated debate within the academic circles whether CSR is voluntary or mandatory (section 4); the issue of box-ticking and its implementation on a practical level (section 5); it concludes in section 6 that the neglect of the ethical and legal aspects of CSR, though detrimental to the sustainable development of the communities in which corporations operate their businesses, eventually in some occasions end up in causing the executives of these multinationals or/and the corporations problem.

2 Central Concepts

2.1 Definition and Meaning Attached to CSR

One of the inevitable questions about CSR, is what it means?¹¹ It is therefore necessary to consider some of the definitions and meanings of CSR, as well as briefly look at the central concepts helpful in understanding it.

There are many definitions rendered by scholars and institutions on the meaning of Corporate Social Responsibility (CSR).¹² The European Commission Green Paper (ECGP of 2001), which has one of the

¹¹ Though the working definition for this paper is that CSR is about the sensitivity of an organisation to ethical and legal practices, and beneficial responsiveness that promotes sustainable development in the community; it is helpful to consider other different CSR definitions and their conceptual meaning.

most frequently cited definitions on CSR, for example, defined CSR as “a concept whereby companies decide voluntarily to contribute to a better society and a cleaner environment”.¹³ Lazear defines CSR as a company’s voluntary commitment to address the ethical, social, and environmental factors associated with all aspects of its operations.¹⁴ In Ward’s view “CSR or CR are about maximising the positive impacts or contributions of business activity to society, while minimising the negatives. In this broad sense, both agendas are sometimes understood as synonymous with business and sustainable development agenda, which incorporates recognition of a need to balance economic, social and environmental considerations”.¹⁵ While CSR according to DTI in its 2001 document, summarily is associated with reputation, competitiveness and risk.¹⁶ CSR has also been viewed as a concept that suggests that commercial corporations have a duty of care to all of their stakeholders in all aspects of their business operations. It is basically the notion that business has a symbiotic relationship to society, which is firmly entrenched and extends beyond the economic criteria.¹⁷ Holme and Watts defined CSR as “the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as the local community and society at large”.¹⁸

Most of these definitions emphasise the voluntary nature of CSR, although a few others suggest that CSR is mandatory.¹⁹ This has caused heated debate in academic circles on whether CSR is mandatory or voluntary. Before considering the debated positions or views that will help address the research question of this paper, other central concepts helpful to understanding CSR will be explained and the empirical case studies that will assist the analysis in this paper, will be presented.

¹² Due to such divergent views in the meaning, it has also become a common issue whether CSR can still really be considered as a mere voluntary act or not; this has incited a debate in the academic circles.

¹³ Commission (2001). *Promoting a European Framework for Corporate Social Responsibility*. Green Paper COM (2001) 366 Final, Luxembourg: OOPEC, p. 5.

¹⁴ Lazear, E. (2009). *The Global Society: Content and Limits of Corporate Social Responsibility*: Global Economic Symposium.

¹⁵ See Ward, H. (2005). *Corporate Social Responsibility and the Business of Law*. GLOBALT ASSVAR, Swedish Partnership for Global Responsibility, p.2

¹⁶ See DTI, in Deakin, S. and Hobbs, R. (2006). *False Dawn for CSR? Shift in Regulation Policy and the Response of the Corporate and Financial Sectors in Britain*. Centre for Business Research: University of Cambridge Working Paper No. 333.

¹⁷ See Prandtl, L. (2008). *A Briefing Paper on Corporate Social Responsibility: Mandatory or Voluntary?* <http://www.mydd.com/users/louisprandtl/posts/a-briefing-paper-on-corporate-social-responsibility> (11/05/2011).

¹⁸ Holme, L. and Watts, R. (2000). ‘*Making Good Business Sense*’. World Business Council for Sustainable Development, p.1.

¹⁹ For example, while the ECGP (2001) and Lazear (2009) see CSR from the voluntary context, Prandtl (2008) and Holm and Watts (2000) suggest the mandatory CSR. These works are cited above.

2.2 Definition of the central concepts related to CSR as employed in this paper

Sustainable development: Sustainable development is an elusive and widely contested concept, with vast array of different conceptualizations and definitions.²⁰ Within the context of this paper, it refers to development that addresses social problems such as poverty, crime, environmental protection, equal rights, human rights, public health and improving education as a result of the socially responsible acts of MNCs in the communities in which the corporations operate their businesses.

Social responsibility: This concept reflects the ethical aspect that an entity (in this paper, MNCs) has an ethical (rather than legal) obligation to act responsibly by providing sustainable development benefits within the communities in which they operate.²¹

Corporate citizenship: This concept is used to describe a company's role in, or responsibilities towards society,²² and here relates to the role of MNCs in taking socially responsible action aimed towards ensuring the sustainable development of the communities in which they operate.

Corporate governance: This concept broadly refers to the rules, processes, or laws by which businesses are operated, regulated, and controlled. In this paper, it refers to the rules that guide or regulate the business operation of MNCs in order to enforce or structure their CSR activities for the sustainable development benefits of communities in which they operate.²³

Corporate accountability: This is the obligation of MNCs to account for, accept responsibility for, and disclose the results of their CSR activities in a transparent manner that will help to contribute to the sustainable development of the communities in which they operate.

Triple bottom line: triple bottom line (TBL), which is also known as 'people, planet, and profit or the three pillars' is a wide spectrum or an expanded range of values and criteria for measuring MNCs success and commitment to CSR by way of contributing to the sustainable development of the communities in which they operate.

²⁰ For example, the more general definition of the concept is that rendered by the WCED, as development that 'meets the needs of the present without compromising the ability for the future generations to meet their own needs' – see the World Commission on Environment and Development (1987). *Our Common Future*. Oxford University Press, P9.

²¹ In the context of this paper the issue remains whether most corporations see the ethical notion of providing sustainable development benefits to communities in which they operate their businesses as obligation – in other words are MNCs social responsible to the communities they carry on businesses.

²² Based on this, corporate citizenship may be used interchangeably with the more common concept 'corporate social responsibility'; in reality, many companies such as Noavarities, Microsoft, Pfizer, and IBM etc have used it in this way to describe their social initiatives, see Matten, D. Crane, A. and Chapple, W. (2003). 'Behind the Mask: Revealing the True Face of Corporate Citizenship' *Journal of Business Ethics*, 45, 1 / 2: 109-120.

²³ That is by adhering to accepted ethical standards and best practices, as well as to formal laws that will lead to CSR of MNCs contribution to sustainable development.

Box ticking mentality: This is fake willingness or pretence by most companies to be ethical and legal responsible, in order to promote sustainable development of the communities in which they operate. However, in reality or practice, the activities of most corporations seem not to make this profound impact on the communities.²⁴

2.3 Difference between Ethical and Legal

There is a case for the more influence of laws (as differs to that of ethics) on CSR regarding responsiveness or sensitivity to contribute in the sustainable development of communities. The yardstick established by laws, obligatory rules and regulations, whereas they may not instantaneously be turned into action in any real sense of global organisational practice, have a particularly strong influence on establishing social expectations about responsible corporate behaviour, as opposed to ethics. The social expectations (that involve contribution to development activities) subsequently act as a hub upon which corporations organise their behaviour in the communities where they operate their businesses.²⁵

The enacted laws and policies promulgated by governments as well convey an effective warning sign about the crucial nature of a matter; a warning indication, as regards CSR, is augmented by the business culture in the country, consumers' interests, institutional investors' actions, the corporate governance regime, NGOs' effectiveness and civil society's conducts.²⁶ Whereas, these laws serve as a regulatory framework over the corporations' activities, they also provide a sense of direction and confidence to the corporations on the direction they could operate. More so, once the social expectation is created as a result of the criteria laid down by law, a number of other forces, including consumer demands, institutional investor demands, NGO demands and particularly community demands interact to create incentives for corporations to meet the standards set out in the law, whether 'enforcement' is a realistic cause or a mere threat,²⁷ depends on whether it is purely ethical or legal.

The ethics of CSR is equally crucial, particularly in ensuring corporations' responsiveness to sustainable development of the community – when CSR is infused with ethics, it helps to guide corporate activities, and practically goes on to maintain a moral course that favours the larger public.

²⁴ Only quite a minority communicate a clear sense of the values that differentiate them from their competitors – the Co-operative Bank, Cadbury, Schweppes are good cases to mention.

²⁵ McAdams, R. and Nadler, J. (2005). Testing the focal point theory of legal compliance: The effect of third-party expression in an experimental hawk/dove game. *Journal of Empirical Legal Studies*, 87-123.

²⁶ Williams, C. and Aguilera (2007). *Corporate Social Responsibility in Comparative Perspective*. Spi Publishers Delhi.

²⁷ See Kagan, R., Gunningham, N. and Thornton, D. (2003). Explaining Corporate Environmental Performance: How does regulation matter? *Law and Society Review*, 37: 51-90.

This is particularly important during times of change and intense pressure when often no just range is in place to regulate and direct corporations through complex conflicts about what is right or wrong.²⁸

It is therefore relevant to consider the difference between ethics and legality.

Ethical simply means – moral, principled, right, fair, decent or just. It is derived from the term ‘ethics’, which generally refers to moral rules or principles of behaviour for deciding what is right and wrong.²⁹ Legality means – lawful, officially permitted or authorised. It is derived from the concept ‘law’, which refers to codified principles and regulations that describe how people (including corporations) are required to act.³⁰ Ethics is a very complex subject; for example it is different from legality, but at the same time it is difficult to distinguish between ethics and legality, and ethical values vary between individuals and organisations, and between different cultures; and they are changing over time.³¹

Corporations for example, may face legal action for failing to adhere to the ethics incorporated in its CSR. Ethics incorporated in CSR could be viewed as a promise protected by legal contract. Corporations can be subjected to suit for breach of contract for failure to comply with any promise it made (that is the failure for complying with the ethics inbuilt in its CSR). Thus, the gap between stated corporate ethos and actual practice has crucial legal, as well as ethical implications;³² so there is a philosophical issue involved in understanding ethical conduct. According to Orsini and McDouglas, ‘ethics is a broad and murky area and the workplace is full of ethical dilemmas and issues’.³³ Or as Treviño and Nelson put it, ethics is where ‘values are in conflict’.³⁴ And as Harvard Professor Lynn Sharp Paine notes earlier, ‘what is ethical problem today may become a legal problem tomorrow’.³⁵

²⁸ See Wallace, D. and Pikel, J. (of the Twin Cities-based Fulcrum Group), available at <http://www.managementhelp.org/ethics> (18/03/2010).

²⁹ See the Thesaurus Free English Dictionary (online) www.macmillandictionary.com/ (7/03/2010).

³⁰ See the Thesaurus Free English Dictionary (online), Ibid.

³¹ Berg, J. (1991). Moral Rights: A Legal, Historical and Anthropological Perspective, *Intellectual Property Journal*, Vol. 6, September.

³² Drake, B. and Drake, E. (1988). Ethical and Legal Aspects of Managing Corporate Cultures. *California Management Review*, Vol. 16, pp107-123.

³³ Orsini, B. and McDouglas, D. (1999). *Fraudbusting Ethics*, CMA Management, cited in Maniam, B. and Teetz, H. (2005), supra p. 83.

³⁴ Treviño, L. and Nelson, K. (2007). *Managing Business Ethics; straight talk about how to do it right*, Wiley & Sons: New York, p.3

³⁵ See Paine, L. (1994). ‘Law Ethics and Managerial Judgement’: *The Journal of Legal Studies in Education*, Vol. 12. No.2, 155, 165, 167.

Really, ethical standards appear to be confused or muddled with what legal requirements are governing the situation at any point in time. Being ethical is more than obeying the law and avoiding harm. There are codified principles and regulations that describe how people or corporations are required to act legally, but these legal stipulations cover behaviours or activities not necessary covered by ethical standards and values.³⁶ The ethics of a particular act of corporation is many times determined independently of the legality of the conduct. In fact, decisive answers or responses cannot always be provided for many ethical issues because enforceable standards or reliable theories for resolving ethical conflicts are lacking.³⁷

3 Empirical Illustrations: Three Multinational Corporations in Three Different Legal Regimes

These examples illustrate the conflict between CSR policy and MNC actions and goes to the heart of the CSR-debate. Corporations that have claimed to promote CSR and to be committed to sustainable development, while at the same time engaging in harmful business practices in the communities in which they operate challenge the whole concept and meaning of CSR. The brief empirical case illustrations here, demonstrate the extent in which the activities of three large multinational corporations contribute to the sustainable development of the communities in which they operate. It shows the practical problem of disproportionality of CSR activities to the overall activities of the respective MNCs. However, the illustration also shows that unethical conduct and acts of illegality, though detrimental to the sustainable development of the communities, on some occasions end up causing the executives of the MNCs or/and the MNCs themselves, problems.

3.1 Enron in the United States of America (North America)

Traditionally in the US, the definition of CSR has been based on a philanthropic model; companies are allowed to make profit largely unhindered (that is operating on a moral space) but are then expected to donate a certain percentage of the profits to charitable causes.³⁸ Companies have moral spaces, and as well, owe moral obligations to those whom they come up against. Operating within these apparently undefined moral terrains is not simple. Thus, since the 1930s academic debate about the obligations that US companies owe to shareholders and to society at large.³⁹ Based on the

³⁶ See Maniam, B. and Teetz, H. (2005) supra, pp.83-98.

³⁷ See Di Lorenzo, V. (2004). *'The Influence of Law on Business Ethics'*, Paper presented at the annual meeting of the Law and Society Association, Renaissance Hotel, Chicago, Illinois, May.

³⁸ The Law Society (2002) supra

³⁹ Kagan, R., Gunningham, N. and Thornton, D. (2003) supra

traditional model, most companies in the US have abused the freedom because only very small shares of profits are actually channeled to charitable causes. For example, according to a recent Harvard University study, “U.S. companies avoid paying tax on nearly \$300 billion in income in 1998... In 1940, companies and individuals each paid about half the federal income tax collected; now the companies pay 13.7% and individuals 86.3%”.⁴⁰

Recently, however, the US government amended the US Sentencing Guidelines which effectively reshaped the debate by requiring corporate boards to ensure that their companies have organizational cultures that promote ethical conduct.⁴¹ If companies fail to do so, they could face increased risk of prosecution, increased penalties following conviction, or the possibility of shareholder suits for breach of fiduciary duty. Despite the availability of statutes, regulations, cases, and legions of lawyers to interpret them, it is hard for companies to decipher what is legal and illegal, and to say the least, to decode what is normatively ethical and unethical. Yet, it would be unwise for companies to assume that for purposes of the Guidelines, the standard for corporate ethical conduct is soft, subjective, and nebulous. If this were the case, Enron could have met the requirement,⁴² but it did not, because the Guidelines on corporate ethical conduct set forth a normative threshold or acceptable standard.

Enron indeed displays one of the most elaborate CSR policies recorded in recent years, before it met its collapse. Before its demise, Enron had been on the list of the 100 Best Companies to Work for in America and received six environmental awards in 2000. Enron emphasized activities that promote sustainable development of society and issued a triple bottom line report. It had great policies on climate change, human rights, and anti-corruption. Its CEO gave speeches at ethics conferences and put together a statement of values emphasising ‘communication, respect, and integrity’. The company’s stock was included in many social investing mutual funds, when it collapsed.⁴³

By the end of 2000, it became known that Enron over several years had engaged in clandestine activities involving non-ethical conduct and illegal practices – which has recently been described as ‘an illusion of smoke and mirrors created by its upper management echelon’.⁴⁴ Enron, through its executives and most senior officials, involved itself in cleverly designed conspiracy, impersonation, forgery, over estimation of its financial statement and deception. In fact, the CEO Jeffery Skilling answered arrogantly and derogatorily to the initial questioning about the company’s transparency and initial doubts about the veracity of the financial statements of the company instead of answering

⁴⁰ See Nanette, B. and Lavelle, L. (2003). ‘Special Report: The Corporate Tax Game – How blue-chip companies are paying less and less of the nation’s tax bill. *Business Week*, March 31, 2003, 79-87.

⁴¹ United States Sentencing Commission, Federal Sentencing Guidelines Manuals available at <http://www.ussc.gov/guidelin.htm> (12/04/10)

⁴² See Sherman, J. (2007) *supra*.

⁴³ See Kelly, M. (2002). ‘The Next Step for CSR: building economic democracy’, *Business Ethics*, Summer Issue

⁴⁴ Maniam, B. and Teetz, H. (2005) *supra*, p.89.

the questions posed to him. This attitude likely added to the injury initiating even greater scrutiny by market actors into the reputation of the company. In consequence, Enron's stock, previously valued at about eighty dollars fell drastically to selling for twenty-six cents a share. Now, some of its executives are facing criminal charges – for example Ben Gilson, Jr., the former treasurer of Enron, is serving a five year sentence, and the former CEO Jeffery Skilling is facing indictment concerning the reasons leading to the crumbling of Enron.⁴⁵ CEO Jeffery Skilling has been quoted “my job as a businessman is to maximise returns to shareholders. It is the government's job to step in if the product is dangerous”⁴⁶ Now the government including the courts have done so and former MNC Enron including its executives are no longer, as they sink into limbo.

3.2 McDonalds in the United Kingdom (Europe)

In the UK model, the CSR – focus rests on operating the core business in a socially responsible way, balanced by investment in communities for genuine business reasons, For example, Douglas Alexander, the former UK Minister for CSR, has remarked that a company with a CSR policy in practice should;

- realise that its activities have a wide impact on society;
- in response, vigorously manage the economic, social, environmental and human rights impact of its global activities; and
- seek to accomplish these benefits by working closely with other groups and organisations.⁴⁷

In the same vein, the Corporation of London in its Policy Statement on CSR has observed that CSR concerns the recognition by business and other organisations, whether in the private or public sector, of their responsibilities to society in which they operate.⁴⁸ Therefore, the UK model, as compared to the philanthropic model in the US, is at least in theory more oriented towards reaching sustainable results.

⁴⁵ For more on Enron's scandal, see Thomas, C. and Morris, T. (2003). Enron and Beyond: What's the World Coming To? *The CPA Journal*, Vol. 73 Issue 1. p8; Maniam, B. and Teetz, H. (2005), supra.

⁴⁶The observer (2002), cited in Ying, F. (2005) supra.

⁴⁷ See 'Argument against CSR' at <http://www.mallenbaker.net/csr/against.php> (02/04/10).

⁴⁸ For the views of Alexander and Corporation of London, see the Law Society (2002) supra, p.3. It is important to note that apparently, the new UK government no longer appoints ministers for CSR, available at <http://www.fabianpattberg.com/2010/06/csr-minister-post-disappears-devaluation-uk-leadership-responsible-business-practice/> (19/03/2012).

It is documented that the administration of Prime Minister Tony Blair is exemplary as a government leadership that emphasises and encourages the promotion of CSR. One example of its policy encouragement was that the U.K. government was persuaded that extractive industry revenue transparency would help to promote government accountability, political stability and reduced poverty in many resource rich, yet poor countries.⁴⁹ In 1996, the Blair administration promulgated regulations that require the trustees of occupational pension funds to adopt Statements of Investment Principles (SIP) specifying the way social and environmental information is taken into account in constructing investment portfolios. Other countries such as, Belgium, France, Germany and the Netherlands have adopted similar initiatives.⁵⁰ It is believed that this regulation has had an important impact on most UK companies towards acting in a socially responsible way.⁵¹

MacDonald's is one such company, which is well known in the UK/Europe for its CSR programmes concerning environmental, labour and sustainable development practices. Since the 1970s, the McDonald's Corporation in association with Ronald McDonald House has been viewed as the leading CSR and relationship marketing. More recently, as CSR has become the mainstream in global trends, the company has further emphasized its CSR programs related to its labour, environmental and other practices.⁵² The company's Corporate Social Responsibility Department provides corporate staff leadership, coordination and support for global corporate social responsibility policies, programs and reporting. The Corporate Responsibility Committee acts in an advisory capacity to the company's management, regarding policies and strategies that affect McDonald's role as a socially responsible organisation, such as issues related to product safety, workplace safety, employee opportunities and training, diversity and particularly the environment and sustainable supply chain initiatives. Essentially, McDonald's CSR initiatives seem to be founded on the deliberate inclusion of public interest into corporate decision-making, and the honouring of a triple bottom line: People, Planet, and Profit (PPPs).⁵³

However, McDonald's CSR policies left much to be desired regarding sensitivity to unethical and illegal conduct that seem to affect its level of responsiveness to sustainable development of the society. The two primary ethical challenges faced by McDonald's in recent years (that have

⁴⁹ See Williams, C. and Aguilera (2008) supra.

⁵⁰ Williams, C. and Conley, J. (2005). An Emerging Third Way?: The Erosion of the Anglo-American Shareholder Value Construct. *Cornell International Law Journal*, 38(2): 493-551.

⁵¹ For example it has been argued that based on UK's leadership role in promoting and encouraging CSR, it is not startling that comparative works demonstrate that companies in the U.K possess higher rates of 'stakeholder engagement and social reporting' than companies in all other European countries, but Norway; yet evaluating on these metrics, the European companies lead globally, see Welford, R. (2005). Corporate Social Responsibility in Europe, North America and Asia. *Journal of Corporate Citizenship*, 17: 13-52.

⁵² McDonald's Corporation CSR information, available at <http://www.mcdonalds.com/usa/good/report.html>

⁵³ Sound ethics and good governance are priceless, available at http://www.aboutmcdonalds.com/mcd/csr/report/corporate_ethics.html (09/04/10).

subsequently resulted to law suits), concern issues of health and nutrition, and demeaning pay and working conditions of its workers.⁵⁴ Critics claim that a diet of fast food has been a major contributor to escalating rates of obesity, and the social responsibility of McDonald's as the world's leading fast food company, has been questioned. There is a claim that 'If one eats enough McDonald's food, one's diet may well become high in fat etc., with the very real risk of heart disease.'⁵⁵ The company's recent report on CSR reveals that it is at a low-water mark for the concept of sustainability and the promise of corporate social responsibility has remained unfulfilled. The report asks, whether:

A corporation that has been severely stung by bad publicity, poor service, dirty restaurants, and declining earnings.... It presupposes that we can continue to have a global chain of restaurants that serves fried, sugary junk food produced by an agricultural system of monocultures, monopolies, standardization and destruction, and at the same time find a path to sustainability...⁵⁶

There was an initial lawsuit (with great publicity in 2002) brought against the company on behalf of two New York children. It was alleged that the company has failed to provide a balanced menu; rather it provides insufficient nutritional information and guidance that actively encourages consumers (especially children) to make unhealthy choices. Although this initial lawsuit was dismissed, elements regarding deceptive advertising were reinstated as admissible following appeal in 2005.⁵⁷ In Europe, the governments have equally reacted; for example the UK government initiated a Commons Health Committee inquiry into obesity that brought executives from McDonald's and other food companies to give evidence, and there is further action aimed at tackling obesity anticipated in the near future.⁵⁸ McDonald's is not better off concerning workers pay-

⁵⁴ The issue here lies on whether it is socially responsible to sell unhealthy or sub-standard products to the consumers, and the level of standard required from the various MNCs on their products. This contrasts reasonably from the illegal or unethical behaviours of executives, for example, as was the case of Enron. However, it should be noted that certain level of neglect or lack of reasonable response to the duty of care owned to the public, may still be a ground to bring legal suit against MNC.

⁵⁵ See Habisch, A., Jonker, J., Wegner, M., and Schmidpeter, R. eds., (2005). *Corporate Social Responsibility across the Europe*. Heidelberg: Springer.

⁵⁶ See the view of Hawken, P. on McDonald's 'Report on Corporate Social Responsibility' in *McDonald's and Corporate Social Responsibility*, available at <http://www.ethicalcorp.com/content.asp?ContentID=85> April 14 (06/04/10).

⁵⁷ See Big Mac under attack (III): A big fat problem with health and nutrition in *McDonald's and Corporate Social Responsibility*, available at <http://www.ethicalcorp.com/content.asp?ContentID=85> (06/04/10). There are fears that food companies could come under the similar sort of legal attacks that threatened the tobacco industry in the 1990s.

⁵⁸ See Big Mac under attack (III): A big fat problem with health and nutrition in *McDonald's and Corporate Social Responsibility*.

package and general working conditions, as what are obtainable in terms of general duty of care owed to its workers is below the required standard.⁵⁹

3.3 Shell B.P. in Nigeria (Africa)

On the matter of Multinational Corporations' CSR and sustainable development; African countries and other developing countries face a dilemma. On the one hand, foreign investment is a key to economic growth, prosperity and sustainable development. On the other hand, governments of these countries were unwilling to give up control over precious economic resources to those they perceived as agents of foreign economic interests.⁶⁰ Some governments of developing countries that have decided to allow foreign investment are promulgating laws requiring higher standards of responsible environmental or social conduct in order to compete for foreign capital and institutional investment. However, these governments also compete on adopting favorable rules on issues of contract and property law rights, financial transparency, intellectual property and consumer protection, and reduced government corruption or more general adherence to the rule of law.⁶¹ Yet, one prevalent CSR concern in developing countries is that governments will ignore corporate irresponsibility or refuse to enforce protective labour or environmental standards in the law, as an inducement to foreign investment.⁶²

It is the result of the strategy of MNCs to seek out areas with low production costs, poor working conditions, and abundant and easily exploitable resources, where profits can be maximised and repatriated without legal constraints, where political leadership is weak, corrupt, and ready to enter into deals or compromises. MNCs invest handsomely in countries that meet these criteria, and most African countries, including Nigeria fall within this category. Nigeria's vast resources (especially oil), cheap labour, large population, and expanding markets are crucial targets to the MNCs, particularly oil companies.⁶³ Therefore, many multinational oil companies such as, Chevron, Mobil, Total, Shell and ExxonMobil, Elf etc have investments in Nigeria, and all claim to promote sustainable development in Nigeria through their CSR programmes.

⁵⁹Slapps, online, available at <http://www.environmentcrimes.com/Corporations/Slapps.htm> (08/01/10). In fact, it is instructive to know that in the case of McDonald's Restaurant V. Morris and Steel, the court presided over by Justices Pill, May and Keane held that it was right or fair comment to say that MD employees globally perform badly on the issue of pay and working conditions.

⁶⁰ See Zerk, J. (2006) supra.

⁶¹ See Hebb, H. and Wojcik, D. (2004). *Global Standards and Emerging Markets: the institutional investor value chain and CALPERS' investment strategy*. University of Oxford Working Paper 04-05.

⁶² See Aman, A. (2001). Privatisation and the Democracy Problem in Globalisation: Making markets more accountable through administrative law. *Fordham Urban Journal*, 28: 1477-1506.

⁶³ See Dare, S. (2001) supra.

Shell in particular, which dominates the lucrative Nigeria oil fields has a much-publicised CSR policy and was a pioneer in triple bottom line reporting. A sustainable development approach for CSR that is becoming widely accepted is community-based development projects. Shell has been involved in many projects across the world, including a partnership with Marks and Spencer (UK) in three flower and fruit-growing communities across Africa such as, the Shell Foundation's involvement in the Flower Valley, South Africa. Here they have set up an Early Learning Centre to help educate the community's children, as well as develop new skills for the adults.⁶⁴ In Nigeria, Shell undoubtedly has contributed immensely to the sustainable development of local communities in its areas of operation. As a foremost employer of labour, about 12,000 persons (skilled and unskilled) are employed in Shell's activities. One of the strong evidence of Shell's CSR activities is in its community development programmes in the local communities. Through the community development programmes for example, Shell contributes to the development of education by awarding primary, secondary/post primary and university scholarships to local people. Shell also builds classrooms, provides equipment and occasionally pays the salaries of secondary school teachers.⁶⁵

However, some of the activities of Shell in Nigeria suggest that the company falls short of ethical and legal standards;⁶⁶ most communities in Nigeria, particularly the Niger Delta, see Shell's oil investment in Nigeria as a curse and the Niger Delta has been in constant conflict with both the Nigerian government and the Shell oil corporation. The Niger Delta communities contend that Shell, in collaboration with the Nigerian government, have been exploiting their oil wealth without giving much of it back to the oil communities in the form of sustainable development.⁶⁷ Niger Delta, a flourishing of mangrove swamps, rainforests and swampland is the site of rich oil and natural gas reserves in Nigeria.⁶⁸ Despite being the richest geopolitical region in terms of natural resource endowment, the Niger Delta's potential for sustainable development however remains unfulfilled, and is now increasingly threatened by environmental devastation and worsening economic conditions. In spite of the enormous wealth accrued from their land, the people continue to live in pristine conditions in the absence of electricity, pipe borne water, hospitals, housing and schools.

⁶⁴ Available at http://www.fairtrade.org.uk/work/case_studies/read_a_case_study/default.aspx?ID=40 (16/02/10).

⁶⁵ Tuodolo, F. (2009). Corporate Social Responsibility: Between Civil Society and Oil Industry in the Developing World. *ACME: An International EJournal for Critical Geographies*, 8 (3), 530-541.

⁶⁶ There is the need to promote social justice and environmental protection in Nigeria, and most other developing countries but this is lacking. As Amaeshi, et al puts it, the Niger Delta region of the country, and indeed the entire Nigerian nation has up to today continued to seek social justice and environmental protection but the oil politics is restlessly driven by powerful interests – the government and the oil firms. The Nigerian oil sector is dominated by MNCs; see Amaeshi, et al (2006). Corporate Social Responsibility in Nigeria: western mimicry or indigenous influences?

⁶⁷ Onyeiwu, S. (2004). *On the Economic Determinants of Violent Conflict in Africa; Preliminary Evidence From Nigeria*, Helsinki: Finland.

⁶⁸ Oil accounts for about 90 per cent of Nigerian exports and more than 80 per cent of government revenue.

The late environmentalist and minority rights crusader, Ken Saro-Wiwa described the pitiable situation of his 500,000 Ogoni people in the Niger Delta to have been relegated to slavery and extinction.⁶⁹

In 1993 when Saro Wiwa was arrested as a rebellion leader, because of protest against the exploitation of oil and pollution of Ogoni community, human rights groups urged Shell to use its influence on the Nigerian government to prevent them from executing him. It has been argued that the Shell Group Chairman Herkströter had claimed that the corporation as an economic actor had no licence to meddle with political processes and that Shell chose to remain politically unbiased.⁷⁰ Yet, other sources state that when Ken Saro-Wiwa and eight other activists were hanged for crusading against the government and the oil company; officials at Royal Dutch Shell admitted in a press statement that the company could have stopped the hangings, if it had so desired. Shell executives also publicly confessed to purchasing arms for the Nigerian State Police, who have attacked community residents and activists.⁷¹ In addition, the criss-crossing Shell oil pipelines in the front and back premises of private residences should raise the duty of care placed on Shell regarding its operations.⁷²

Instead, some local groups have engaged in hostage taking, hijacking and kidnapping of expatriate oil company workers and demand of ransom, and repeated invasion and blockading of oil installations.⁷³ Violence in the Niger Delta has been spearheaded mainly by 'restive, and often unemployed,' youths, who blow up oil pipelines; kidnap expatriate workers of oil corporations, assassinate law enforcement officers guarding oil facilities, as well as community members that collaborate with oil companies and the federal government.⁷⁴

⁶⁹ See Onduku, A. (2001). *Environmental Conflicts: The Case of the Niger Delta*; A Paper presented at the One World Fortnight Programme Organised by Department of Peace Studies, University of Bradford, UK, Nov., 2001.

⁷⁰ See Livesey, S. (2001). Eco Identity as Discursive Struggle: Royal Dutch/Shell, Brent Spar, and Nigeria. *Journal of Business Communication*, 38 (1): 58-91.

⁷¹ See Dare, S. (2001) *supra*.

⁷² See Onduku, A. (2001) *supra*.

⁷³ Onduku, A. (2001) *Ibid*. In 1993 for instance, it is claimed that, the operations and activities of Shell were disrupted by about a hundred communal disturbances, leading to the loss of some 12 million barrels of crude oil worth about 369 billion naira.

⁷⁴ Onyeiwu, S. (2004) *supra*. There were the kidnappings of 2 expatriates in 2006; both included British nationals and involved officials and Ministers; more information available at <http://www.publications.parliament.uk/pa/Id200405/ldhansrd/pdvn/lds06/text/60418-1...> (07/02/2007). Because the conflict wane the peace of the nation, the Federal Government had to organise a 'peace workshop' in April 2004 that included the major youth organisations in the Niger Delta. Coordinated by Academic Associates Peace Works – a NGO involved in the conflict resolution – the workshop sought to 'preach peace among youths of the Niger Delta'; The Nigerian Guardian, 2004; in Onyeiwu, S. (2004) *supra*. President Obasanjo addressed the workshop.

In 2004 it was reported that Shell had misreported oil reserves, which seriously damaged its reputation. In May 2008 four Nigerian fishermen and farmers from the village of Oruma, in the Niger Delta region, together with Friends of the Earth-Netherlands and Friends of the Earth-Nigeria, filed a lawsuit against Shell in the district court of The Hague, Netherlands, where the company has its international headquarters. The plaintiffs allege that Shell was negligent in its clean-up of oil spills in Nigeria and that their health was adversely affected by the oil spills. The plaintiffs claim that Shell had failed to adhere to international standards of 'good field practice' in its Nigerian oil operations. They also seek damages for loss of fishponds and livelihood.⁷⁵

Now, Shell faces a lawsuit in the Netherlands over alleged oil pollution in Nigeria, the Ecumenical Council for Corporate Responsibility (ECCR), considers how the operations of Shell's Nigerian subsidiary, the Shell Petroleum Development Company (SPDC), affect the human rights and living conditions of Niger Delta communities. Based on case studies researched and written by five civil society organisations working in the Niger Delta, there are concerns about Shell's operations in relation to international social and environmental standards, pollution levels, communities' health and livelihoods, and the right of local people to have a say in decisions that affect their lives.⁷⁶ Human rights and corporate responsibility advocates argue that the activities of Shell negate the provisions in the International Covenant on Civil and Political Rights and the Covenant on the Economic, Social and Cultural Rights of the United Nations, both of which Nigeria is a signatory.⁷⁷

3.4 Conclusions for CSR

The three empirical illustrations above show that the CSR contributions of MNCs to the sustainable development of the communities in which the corporations operate their businesses seem trifling or insignificant in relation to the overall activities, resulting (irreparable) harm and profits of the MNCs. This seems to reflect that largely voluntary rather than mandatory CSR regulation in reality leaves much to be desired for the goal of achieving sustainable development in affected communities.

This implies that though MNCs have made some positive contributions to sustainable development of some communities; however, these are not commensurate to the benefits they accrue. There is a case for CSR of MNCs; as a result of globalisation, particularly the spread of MNCs to developing countries, has resulted in the increase of global capital, which has been a dynamic instrument of

⁷⁵ See Case profile: Shell lawsuit (re oil pollution in Nigeria), at <http://www.business-humanrights.org/Categories/Lawlawsuits/Lawsuitsregulatoryaction/LawsuitsSelectedcases/ShelllawsuitreoilpollutioninNigeria> (13/04/10).

⁷⁶ See The Ecumenical Council for Corporate Responsibility (2010). Shell in the Niger Delta: A Framework for Change, available at <http://sndden.wordpress.com/2010/03/23/shell-can-improve-impacts-in-the-niger-delta-says-new-report/> (11/04/10).

⁷⁷ For example see ECCR Report (2009) supra; Onduku, A. (2001) supra.

growth, creating avenues for diverse opportunities in terms of goods and services, creating employment and, boosting government revenues.⁷⁸ This has proved beneficial in few cases; for example in South Africa and Nigeria, gold mining and oil companies have brought new technology, attracted subsidiary industries in the home country, and facilitated the acquiring of skills by indigenous personnel.⁷⁹ In November 2002, the British American Tobacco (BAT) Nigeria established a British American Tobacco Foundation, the role of which is to identify and implement community enhancement programmes across Nigeria. The foundation has commenced series of Poverty Reduction Projects for unemployed youths in different States of Nigeria. The foundation is also working with the International Institute of Tropical Agriculture to provide improved maize seedlings and cassava cuttings to farmers from communities of production.⁸⁰ Shell also currently runs competitive internship programme open to University students, and sabbatical programme for senior academic staff of Universities. Shell, in partnership with Marks and Spencer (UK), embarked on projects in three flower and fruit-growing communities across Africa, including Shell Foundation's involvement in the Flower Valley, South Africa – where they set up Early Learning Centre to provide education to the community's children, and develop new skills for the adults.⁸¹ In Nigeria, Shell is foremost employer of labour; about 12,000 persons (skilled and unskilled) are employed in Shell's activities.⁸² In Latin America, CSR is seen by many as the hope for positive change in the face of persistent poverty, environmental degradation, corruption, and economic stagnation.⁸³

However, any such benefits are far outweighed by activities that deplete local resources, stifle local or indigenous industry, subvert the fragile democratic process, and abuse children on hard labour in developing countries. Based on the impact of their operations, CSR-policies should be re-tailored and re-channelled in a meaningful way that has practical sustainable impact; and this should not just be on ad hoc basis.

⁷⁸ Dare, S. (2001) *supra*

⁷⁹ *Ibid*

⁸⁰ Amaeshi, et al (2008), *supra*.

⁸¹ Available at http://www.fairtrade.org.uk/work/case_studies/read_a_case_study/default.aspx?ID=40 (16/02/10).

⁸² Tuodolo, F. (2009), *supra*.

⁸³ See Schmidheiny, S. (2006). 'A View of Corporate Citizenship in Latin America'. *Journal of Corporate Citizenship*, 21, spring: 21-4.

Brief comparative remarks of CSR in UK (Europe), North America (USA), and Nigeria (Africa)

The distinct character of CSR activities of MNCs in the three different regimens empirically presented becomes clearer with brief evaluative comparative remarks of the British model to the US model and, African state of affairs.

Developing countries of Africa present typical forms of CSR challenges which are quite different to those faced in the developed world such as UK and USA. Due to poverty, poor social amenities, and philanthropic cultural traditional value in most African countries, CSR practically suggests more the economic and philanthropic aspects, rather than legal and ethical responsibilities that are more common in the USA and UK.⁸⁴ Just as Amaeshi et al suggest CSR in Nigeria (like most other poor developing countries) specifically aims at addressing the socio-economic development challenges of the country, including poverty alleviation, health-care provision, infrastructure development, and education.⁸⁵ This, contrast largely to USA and UK CSR priorities that emphasis consumer protection, fair trade, green marketing, climate change concerns, or socially responsible investments.⁸⁶ The legal framework in the UK highly influences the philanthropic responsibility, which is contrary to discretionary acts of successful companies or rich capitalists as in the United States.⁸⁷ Developing countries of Africa appear to identify more with the American model in this direction.

In African countries, legal responsibilities generally have a lower priority than in developed countries; primarily as result of far less pressure for good conduct. This is because, in most African countries, adequate legal regulation instruments are lacking, and where they are adequately available, there are weak regulations comparable to UK and USA. For example, the case presented in this paper on the impact of environmental damage because of the oil spillages of the Shell British Petroleum in the US and Nigeria, and the different responses and attentions given to the oil-spillages in these societies support this view. Similarly ethical responsibilities are given more attention in the UK than in the United States.⁸⁸ In developing countries of Africa, however, ethics seems to have the least influence on the CSR agenda. Though, South Africa, have been toeing an exemplary line in favouring an 'inclusive approach'; King III in particular emphasises: social responsibility, stakeholder relationships,

⁸⁴ See Visser, W. (2006). Revisiting Carroll's CSR pyramid. In: E.R. Predersen and Huniche, M. (Eds), *Corporate Citizenship in Developing Countries*, The Copenhagen Centre.

⁸⁵ Amaeshi et al (2006), supra.

⁸⁶ Ibid

⁸⁷ See Aguilera, R., Williams, C., Conley, J., and Ripp, D. (2006). Corporate Governance and Social Responsibility: a comparative analysis of the UK and the US. *Corporate Governance* Volume 14 Number 3 May.

⁸⁸ Crane, A., and Matten, D. (2007). *Business Ethics*, 2nd edn. Oxford: Oxford University Press.

corporate citizenship, and sustainability principles, as salvaging concepts for achieving a new role for business in society.⁸⁹ The three empirical cases provide crucial ‘legal food for thought’.⁹⁰

Therefore, whether CSR should be taken to be mandatory or voluntary, is analysed in the following sections.

4 Mandatory or Voluntary CSR?

While CSR has gradually continued to move away from that vague and imprecise concept that it has been for many years,⁹¹ what is very clear is that up to now CSR has been something more of voluntary than anything else, as the three empirical cases above suggest. However, there is an on-going heated debate in the academic circles whether CSR should remain voluntary or become mandatory, there is yet no consensus in this respect.

4.1 Arguments in favour of mandatory CSR

Most who argue in favour of mandatory CSR, for example adhere to the view that the limitation of the CO₂ in atmosphere emissions will not stop unless there is a legal duty attached to it.⁹² In this respect, scholars emphasise that CSR initiatives should not only benefit the companies financially,

⁸⁹ Miles, L. and Jones, M. (2009), *supra*.

⁹⁰ Legally speaking; Shell, Enron and MacDonald’s are from three different planets both in what they “cause”, the type of “harm” and whether they are complying with existing rules or not: (a) what the executives did in Enron was a crime, and the company is bankrupt and executives in jail – Public response = zero tolerance; (b) what Shell does is dangerous and environmentally hazardous for innocent bystanders, therefore it can be argue that the obligations to give back to communities are expected to be higher. – Public response = give more money or contribute more to the communities; and (c) MacDonald’s sells a legal product to willing buyers. Whether its activities are socially responsible can be debated, but it is a far way from questioning whether the company can ever live up to CSR standards – Public response = change your product, and practicalise responsible advertising etc.

⁹¹ Some suggest that it is just about glossy reports and public relations. Some see it as a source of business opportunity and improved competitiveness. Some see it as no more than sound business practice. Others see it as a distraction or threat. Is it a framework for across the board regulative of all of the relationships between the business and the rest of society, nationally and globally? Is it just about the activities of North American and European multinationals in developing countries? Is it relevant and useful to companies of all sages no matter where they are based and operate? Lively debate will continue on these and many other questions. See Mullerat, R. (2006). *Social Corporate Responsibility: New Trends*: American Bar Association Section of International Law.

⁹² Mullerat, R. (2006) *Ibid*, p.1.

but also benefit workers and communities socially and environmentally. The inclusion of a range of guiding principles in relation to regulation, profit strategies, governance and political responsibilities concerning CSR, have been suggested.⁹³ It has been argued that the issue at stake is not to proclaim that companies are socially responsible, but rather that the law now weighs in to give substance, meaning, and accountability for CSR undertakings.⁹⁴ The CSR -movement in recent times has developed the notion of corporate governance as a vehicle for asserting on management to put into consideration wider ethical issues. The CSR-movement has therefore, joined the political endeavours to make corporations more responsive to public, environmental, and social needs by pursuing corporate governance as a framework for boards and managers to treat not only employees, consumers and communities similarly to, if not the same as, shareholders, but also to contribute in the sustainable development of the communities in which they operate businesses.⁹⁵

Mandatory CSR: national and international legal system

There has been increasing demonstration of tendencies by both national and international legal systems to require some more mandatory corporate social conscience.⁹⁶ A similar view is that information pertaining to all environmental, social, and governance (ESG) activities of a company, are not only standardised and government mandated, but also independently reviewed and audited as well, just like financial reports.⁹⁷ There are various relevant instruments which have provided some mandatory regulatory procedures or guidelines for companies.⁹⁸ Nations and regions as diverse as China, United Kingdom, the Middle East, America, South Africa, have taken equally remarkable and

⁹³ For example see Coleman, G. (2002). 'Gender, power and post-structuralism in corporate citizenship: a personal perspective on theory and change', *Journal of Corporate Citizenship* 5, Spring, pp. 17-25.

⁹⁴ Weissbrodt, D (2010) supra.

⁹⁵ Stefan, A. (2008). "Realizing the Potential: Global Corporations and Human Rights": Article: Corporate Governance as Social Responsibility: A Research Agenda; Riesenfeld Symposium.

⁹⁶ This becomes necessary considering the CSR activities of Enron, MacDonald's and Shell B.P, as presented in this paper.

1 ⁹⁷ Robinson, R. (2010). A Call for Mandatory Corporate Social Responsibility Reporting. <http://english.alroya.com/node/44794> (12/05/2010).

⁹⁸ This includes, OECD, Guidelines for Multinational Enterprises (1976/2000); ILO, Tripartite Declaration of Principles concerning Multinational Enterprise and Social Policy (1971/2001); UN Global Compact: Corporate Citizen in the World Economy (2000); EU Commission, Green Paper Promoting a European framework for Corporate Social Responsibility (2001) UNCHR, Norms on the Responsibilities of Transnational Corporations and other Business Entities with regard to Human Rights (2003); and EU Commission, Communication "Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility (2006) etc. See Ernst, P. (2009). *Corporate Social Responsibility from a Legal Perspective* ACC Europe, Corporate Counsel Symposium Antwerp, March 5.

systematic steps towards to introducing more mandatory elements into their corporate governance and CSR systems. As Horrigan clarifies, countries in the Anglo-American and Anglo-Commonwealth tradition (and even within corporate regulatory systems) have been more explicit in sensitising a regime of corporate laws consideration beyond the shareholders to become more inclusive.⁹⁹ According to a recent report on CSR:

Three countries stand out with regard to CSR regulations. The first is Denmark, which was the first western country to require non-financial (i.e. CSR) information in their largest companies' and annual financial reports. The second is Indonesia, which has taken a global lead by passing a law requiring all public companies to issue CSR reports; and third, perhaps the biggest impetus for CSR reporting, came in January 2010, when the U.S. Security Exchange Commission (SEC) asked all U.S. public companies to regularly disclose climate-related risks in their annual reports to investors. There is little doubt that we will have near universal government mandated CSR reporting for all public companies sometime in the next five to ten years.¹⁰⁰

The Higgs Review and its proposal for changes in the boardroom provides for an Operating and Financial Review (OFR) included in the company's annual report, containing information on the company's relations with stakeholders on areas such as – corporate governance, risk management, and environmental and community impact. It is envisaged that this will lead to a formulation and development of “best practices” intended to have persuasive effect on CSR in the UK.¹⁰¹

Similarly, in South Africa, there is active support from the government as well as domestic and foreign companies in promoting CSR. For example, the 2005 response to a survey carried out by Trialogue of more than 100 stock exchange-noted companies in South Africa, shows that 73.5% of those surveyed take corporate citizenship ‘very seriously’ and 24.5% take it ‘seriously’. Since 1994, political change and the efforts to balance out the unequal distribution of wealth that was inherited from the apartheid periods have driven CSR forward.¹⁰² The legal sphere in South Africa provides specific legislation which compels companies to take the interests of certain stakeholders into

⁹⁹ Horrigan, B. (2010). *Corporate Social Responsibility in the 21st Century Debates, Models and Practices Across Government, Law and Business*; see also Horrigan, B. (2007). 21st Century Corporate Social Responsibility Trends – An Emerging Comparative Body of Law and Regulation on Corporate Responsibility, Governance, and Sustainability. *MQJBL* Vol 4, 85-122; electronic copy available at <http://ssrn.com/abstract=1087133>

¹⁰⁰ Robinson, R. (2010) *supra*.

¹⁰¹ Thomson, S. (2011). *UK takes step towards CSR reporting*, <http://www.stuartthomson.co.uk/articles/csr/> (13/05/2011). There are signs that the introduction of OFRs may be the first giant step towards mandatory CSR reporting in the UK.

¹⁰² Coetzee, S. (2005). *CSR Towards a New Paradigm*, at <http://www.csr-weltweit.de/en/laenderprofile/profile/suedafrika/index.nc.html> (09/6/11).

account. This is, for example evident in the Labour Relations Act 66 of 1995; the Promotion of Access to Information Act 2 of 2000; and the Broad Based Black Economic Empowerment Act 53 of 2003.¹⁰³

The current corporate governance regime in South Africa imposes a legal duty on directors to adopt an 'inclusive approach' in managing their business and to reiterate the value of good corporate citizenship and responsibility. The series of Kings Reports (1994, 2002 and 2009 in South Africa)¹⁰⁴ on Corporate Governance follow the same line in favouring an inclusive approach; King III in particular concentrates on: social responsibility, stakeholder relationships, corporate citizenship, and sustainability principles, as salvaging concepts for achieving a new role for business in society.¹⁰⁵ The effect of new South African Companies Act 71 2008, especially sections 7, 76(2b) and 72(4) also suggests that CSR has ceased to be a mere voluntary act.¹⁰⁶

4.2 Arguments for Voluntary CSR

In spite of all these and other measures¹⁰⁷ that support mandatory over voluntary CSR, and which aim to eliminate concerns over the impact of MNC operations in environmentally sensitive areas, particularly in economically developing areas, in order to ensure more commitment of MNCs responsiveness to sustainable development. The three cases above show that the CSR of Shell B.P in Nigeria is poorer compared with those of Enron and MacDonald's in USA and UK respectively. Some experts maintain that one of the major challenges of using the concept of CSR in effectively promoting corporate accountability and community responsibility so far has been and still remains

¹⁰³ Esser, I. and Dekker, A (2008). The Dynamics of Corporate Governance in South Africa: Broad Based Black Economic Empowerment and the Enhancement of Good Corporate Governance Principles: *Journal of International Commercial Law & Technology*, Vol. 3, Issue 3. See also Hodes, L. (1983). 'The Social Responsibility of a Company'. 100 *South African Law Journal* 468-495.

¹⁰⁴ It should be noted however that King's Report II did not support for a legislative regime that mandates companies to comply with its recommendations, rather it recommended for self regulation.

¹⁰⁵ Miles, L. and Jones, M. (2009). 'The Prospects for Corporate Governance Operating as a Vehicle for Social Change in South Africa' (2009) 14(1) *Deakin Law Review* at 71. Making reference to 'Principle 2.2' Miles and Jones argued that, King III is of the view that for a company to be seen as a good corporate citizen, it must be that with comprehensive policies and practices which enable it to make decisions and conduct its operations ethically, meet legal requirements and show consideration for society, communities and the environment.

¹⁰⁶ The new Act which came into effect in 2010 is making giant stride in putting more regulatory steps on CSR in South Africa; see Companies Act (No 71 of 2008) at <http://www.polity.org.za/article/companies-act-no-71-of-2008-2009-05-13> (12/05/2011). Nigeria and other African countries should borrow a leaf from South Africa's bold step towards more regulatory CSR.

¹⁰⁷ Some scholars have seen this number of measures as an emergence of CSR movement in the 20th and 2nd Centuries; see for example Zerk, J. (2006). *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* 15-29.

the urge for a binding regulatory framework, since there has been strong resistance to a binding regulatory code for the activities of MNCs.¹⁰⁸ Many corporations also favour only voluntary CSR commitments, however, a legal regime 'with some' mandatory or binding rules will surely bring more improvement. Since there are claims that corporations have used the concept of CSR as a ploy for 'public relations' or simply a box-ticking, 'some level' of mandatory and binding rules might help to expose whether the CSR activities of corporations are seriously honest or not. Boeving argues:

Even if companies are honestly committed to CSR, legally binding rules may work to overcome the classic collective action problem arises when no individual corporation has an incentive to bind itself to a given norm if other corporations are free to ignore it. Thus, legally binding rules may "push" companies to adopt more robust commitments - and to add commitments not previously adopted. This would have the effect, according to some scholars, of restor[ing] what is presently an unequal bargaining power in which [multi-national corporations] enjoy substantially more leverage over the environmental policies of developing countries.¹⁰⁹

The sort of legal regime needed, therefore, is such that would improve CSR, and in turn improve environmental, human rights and other activities of sustainability in place in most developing countries. Law, corporate law in particular at first acknowledges the relative lack of progress of the CSR movement during the past few decades.¹¹⁰ Since socially responsible business should respect human rights and consider whether both the social and environmental effects of their actions have gained broad acceptance and signification in the eyes of the communities they operate;¹¹¹ there is the need for CSR to be voluntary. This is particularly important when it is appreciated that a pre-requisite of CSR is willingness by organisations to look beyond their legal requirement, commercial concentration and business appeal to take account of social and environmental factors in the communities in which they operate. CSR is therefore about going further than the law requires, rather than simply complying with it and, it is only a voluntary approach to CSR that will practically accommodate this principle.¹¹²

¹⁰⁸ Emeseh, E. et al (2010). Corporations, CSR and Self-Regulation: What Lessons From the Global Financial Crisis? 11 *German LJ*. 230, 237.

¹⁰⁹ Boeving, J. (2005). Half Full...Or Completely Empty?: Environmental Alien Tort Claims Post *Sosa v. Alvarez-Machain* 18 *GEO. International Environmental Law Review*. 109, 114.

¹¹⁰ Nina, B., Murray, R., and Villiers, C. (2008). *Perspectives on Corporate Social Responsibility*. Edward Elgar Publishing: London - Review by Lowe, K. (2009). *Web Journal of Current Legal Issue*, <http://webjcli.ncl.ac.uk/2009issue4/lowe4.html> (29/03/10).

¹¹¹ See Weissbrodt, D. (2010). Corporate Social Responsibility: A Legal Analysis: *Human Rights Quarterly*, Volume 32, No. 1, February, pp. 207-215 'Review'.

¹¹² See for example Lea, R. (2002). 'Corporate Social Responsibility: IoD Member Opinion Survey' The Institute of Directors, UK, November.

Another problem of a mandatory approach to corporate social responsibility remains the want of viable and subtle law that will ensure companies take their CSR seriously.¹¹³ This points to another problem associated with CSR of MNCs in contributing to sustainable development of communities that is the 'box-ticking' syndrome – this will be examined generally and, with more reference to developing countries.

5 CSR in Practice

5.1 Box-ticking and CSR Implementation on a Practical Level

Since corporate social responsibility (CSR) is concerned with the relationship between corporations and society, it goes to the heart of the sustained co-existence of business and contemporary society; the role which corporations or business are supposed to play has become more fundamental to the society. There are three underlying reasons;

1. the more obvious negative impacts such as financial scandals, environmental and human rights violations, accusations of complicity in corruption and collaboration with oppressive state power (common in developing countries);
2. the subtle impacts of the changing role of the private/public divide in the provision of goods and services; and
3. the active engagement of multinational corporations and business organisations at the international level.¹¹⁴

All of the above have led to a gradual, but radical change in ideology behind regulation both within the areas of global governance and corporate governance in the context of CSR of MNCs and sustainable development of communities.

CSR regulation of business generally could be viewed in two ways; the 'conviction or value-led CSR' and 'the compliance CSR'.¹¹⁵ As the discussion so far in this paper shows, in recent times a gradual

¹¹³ See CSR & Legality section in this paper .

¹¹⁴ Okeye, A. (2008). Stream: Regulation, Governance and CSR. Socio-Legal Studies Association (SLSA) Annual Conference, available at <http://www.manchester.ac.uk/aboutus/news/events/SLSA2008/documents> (09/6/11).

¹¹⁵ The first views CSR as conviction or value-led, and is the expression of a company's purpose and values in all its relationship. This view if taken by companies would provide a kind of marketplace in corporate personality, in which companies are free to disclose what they stood for and what their aim is, regarding contribution to the society. Stakeholders will then be invited to join them in evaluating how effectively they have performed on these intentions and lived up to their own corporate values. Even though companies will not have the same level of

but more critical debate in favor of mandatory regulation over business or corporations' CSR is taking place with heightened sensitivity and dynamism in most countries and regions at various levels.¹¹⁶ Horrigan argues that the 21st century is already bearing witness to transformational changes in CSR thinking, regulation, and practice.¹¹⁷ Powerful global bodies such as the G8 leaders have equally called for a new CSR with suitable standards that goes beyond simply emphasising the desirability of voluntary CSR initiatives:

'(w)e call on private corporations and business organisations to adhere to the principles in the OECD Guidelines for Multinational Enterprises', '(w)e invite corporations from the G8 countries, emerging nations and developing countries to participate actively in the Global Compact and to support the worldwide dissemination of this initiative', and '(w)e invite the companies listed on our Stock Markets to assess, in their annual reports, the way they comply with CSR standards and principles'. Taken at face value, these commitments extend beyond generic rhetorical support for CSR, and position it anew within contemporary international policy priorities. In short, the 2007 G8 Summit Declaration not only places CSR in the top tier of international policy concerns and initiatives, and signals clear roles and responsibilities of the private sector in addressing such shared geopolitical problems as climate change, underdeveloped economies, and unsustainable development, but also urges progression to the next stage of global CSR dialogue, framework-building, and standard-setting.¹¹⁸

Due to the serious nature of this campaign for more robust CSR regulatory actions and policies, most corporations are now more willing than ever to respond to being CSR accountable. However, this corporate willingness to be accountable can easily degenerate into telling the stakeholders what they want to hear in order to pacify them. This is because this willingness for CSR compliance is not necessarily genuine or honest, but as Goyder points out is driven by external pressures, such as the need to appease the company's critics or the threat of legal repercussions, and risks creating if

commitment to society, but there would be no pretending; as companies would have the freedom to say that they care for no one except their shareholders if that is what they want. This will make the process of reporting and dialogue non cumbersome, however, it would clearly expose those companies that show their conscience without having the deeds to match. The second (compliance CSR) sees it as a process by which companies are required by social pressures to comply with a widening range of social expectations. If all companies were to subscribe to this view, CSR would become like a fashion parade, where companies would win applause for wearing the right clothes and saying the right things in their reports, but where actually meaning what they said would not be important and CSR would be well isolated from genuine business activity; Goyder, M. (2003). *Redefining CSR: from the rhetoric of accountability to the reality of earning the trust*; available at http://www.tomorrowcompany.com/uploads/Redf_CSRintro.pdf (11/6/11).

¹¹⁶ It is important to highlight that the level of CSR regulation in most of the developing countries are weak.

¹¹⁷ Horrigan, B. (2007). 21st Century Corporate Social Responsibility Trends – An Emerging Comparative Body of Law and Regulation on Corporate Responsibility, Governance, and Sustainability. *MQJBL* Vol. 4, 85-122.

¹¹⁸ Ibid

companies' totally neglect ethical compliance. The case of Enron, MacDonald's and Shell B.P demonstrate the problem of "fake" willingness at different level – that is a simple and passive box-ticking syndrome.¹¹⁹ Thus, much of the effort that goes into the campaign for a more robust CSR will not make a long-term impact on the sustainable development of the communities in which companies operates their businesses.¹²⁰

This fake willingness (i.e. a mere box-ticking mentality), as demonstrated by Enron, MacDonaldis and Shell BP in this paper that their CSR responds to sustainable development of the communities, could also be notably seen or easily read in many ways in other companies. For example, one MNC used the accommodating language to describe their willingness and involvement: community initiatives, community development and community engagement. Also the integration of citizenship initiatives into business strategy as a way of responding to community needs is communicated regularly within most of the global company reports of MNCs. For example:

ExxonMobil directly states: "*ExxonMobil applies a rigorous approach to corporate citizenship in all aspects of our business, everywhere we operate.* Citigroup echoes this sentiment writing that they integrate "*citizenship initiatives into our business.* AIG states that citizenship efforts are "*essential to (their) long-term business objective.* At General Electric they make good citizenship "*a way of life at GE.* Wal-Mart acknowledges their responsibility to society though they do not speak explicitly of being a good citizen.¹²¹

Similarly, another MNC communicates their commitment to citizenship and environmental 'sustainability' in their CSR reporting as follows:

Citigroup demonstrates reporting that they are "*evaluating environmental and social challenges, what we call sustainability issues,*" into their mission and they focus on building sustainable communities. ConocoPhillips refers to itself as a "*responsible global energy company committed to sustainable development.*" Chevron suggests that their community engagement initiatives not only contribute to the economic prosperity and improvement of the sustainability of the communities where they operate, but that in doing so, it establishes them "*as a partner of choice in the region.*"¹²²

However, in reality or practice, the activities of most corporations seem not to make this profound impact on society.¹²³ The ethics of CSR need to not only rest on paper, thought, word or mere

¹¹⁹ This suggests the inherent contradictory nature of 'corporate will' and 'CSR'.

¹²⁰ Goyder, M. (2003) *supra*.

¹²¹ Merrill, N. (2009). *Doing Good in Society: A comparative study of the communication of the ethical aspects of Corporate Social Responsibility in Germany and the US*: CCG p.33.

¹²² *Ibid*, p34.

¹²³ Only quite a minority communicate a clear sense of the values that differentiate them from their competitors – the Co-operative Bank, Cadbury, Schweppes are good cases to mention.

intention, but should be practicalised in deed, action and activities.¹²⁴ Rather than adopting relevant ethical and legal practices that will benefit stakeholders, particularly the promotion of sustainable development of the communities, MNCs seem to have willingly championed the move to avoid or remove legal obligations and regulations that seem to obstruct their business, as well as ignore the ethical norms and policy that guide their business undertakings.¹²⁵ It is common therefore that MNCs pursue the sole business objective or follow legal advice that claims that it is unlawful to pursue any other goal than delivering profits to the company/shareholders.¹²⁶ Based on this belief, most MNCs practically ignore the interests of the community in which they operate.¹²⁷

Therefore to its critics,¹²⁸ as argued in the beginning of this paper, CSR initiatives of MNCs are all about cover up and pretence.¹²⁹ CSR policy ideally, would function as a built-in, self-regulating mechanism whereby business would monitor and ensure its adherence to law, ethical standards and the relevant domestic and international norms. That is to say, business would benefit its stakeholders and practically promote the public interest, by encouraging community growth and development, and voluntarily eliminating practices that harm the public sphere or wider society without regard to legality.¹³⁰ However, the issue at stake is that only very few corporations are socially responsible.¹³¹

Despite worries over the box-ticking syndrome and impact of multinational corporations in environmentally sensitive areas, particularly their poor contribution to sustainable development of communities; some scholars take the position that the corporate social performance of MNCs has

¹²⁴ Corporations, on one hand demonstrate their neglect to ethics in the sense that it is those corporate decisions which encompass both ethical and legal issues that directly affect the business activities of corporations that are given immediate and proper attention by corporations because the corporations are left with no other option, since the choice is both ethically and legally wrong. On the other hand, those decisions that are not within this combined terrain (that is, matters that have only ethical implications and, do not affect the corporations' business activities directly) or that concern matters that affect solely the sustainable development of the community are not attended to, or are given improper attention; See Hamed, P. and Sutliff, K. (2003) supra.

¹²⁵ See for example Plesch, D. (2005). Corporate Social Responsibility: questions of equality before the law, property rights and de-regulation. *Accountancy Business and the Public Interest*, Vol. 4, No. 2.

¹²⁶ See Plesch, D. (2005), Ibid.

¹²⁷ The cases of Shell BP in Nigeria, particularly in the Niger-Delta areas and the Anglo American Gold illegal exploitation and consequential environmental hazards in DRC should be noted.

¹²⁸ It is important to point out that this paper takes a critical view of CSR of multinationals.

¹²⁹ See Ying, F. (2005), supra.

¹³⁰ Please, see for example Ward, D. (1991). Corporate Social Performance Revisited. *The Academy of Management Review*, Vol. 16, No. 4 Oct.

¹³¹ Only quite a minority communicate a clear sense of the values that differentiate them from their competitors - the Co-operative Bank, Cadbury, Schweppes are good cases to mention.

been surprisingly favourable to date.¹³² For example, the activities of MNCs encourage technology transfer from the developed to the developing world, and the wages paid to multinational employees in developing countries are generally above the national average, as exemplified in the case of Shell B.P in Africa. Kotler and Nancy in their 2005 work also suggest that charitable giving has risen from \$9.6b in 1999 to \$12,19b.¹³³ There is equally a view that the business case for the importance of socially responsible business activity is now commonly accepted. An award winning article from the 2006 Harvard Business Review emphasises a smooth running between business and social value.¹³⁴

5.2 Box-ticking Mentality and Developing Regions

As argued in the beginning of this paper, most authoritative works on CSR, analyse company CSR from the context of developed areas, and therefore overlook or briefly discuss the CSR situations in developing countries that more glaringly demonstrate companies box ticking syndrome.¹³⁵ The few works that focus on developing areas reveal that in developing countries almost all the corporations are involve in box-ticking. Akyildiz points out that the reason why MNCs choose particularly developing countries has been studied under two themes: so called “dirtying companies” choose the countries that do not have severe legal rules and, countries where the public opinion is unconscious of the harms that economical activities do to the environment.¹³⁶ Prieto-Carrón, et al also contend that debating whether companies should go beyond their legal obligations and voluntarily adopt CSR initiatives makes little sense in many developing countries where box-ticking thrives. The nature of things in developing countries or situational challenges facing developing regions are such that call for sensitivity to CSR by MNCs in the sustainable development of communities in which they operate. This is reiterated by the UN millennium development visionary target refined in 2000: “a world with less poverty, hunger and disease, greater survival prospects for mothers and their infants, better educated children, equal opportunities for women, and a healthier environment”.¹³⁷ However, unfortunately, the ethical and legal responses of MNCs to sustainable development in the

¹³² See Tuodolo, F. (2009). Corporate Social Responsibility: Between Civil Society and Oil Industry in the Developing World. *ACME: An International EJournal for Critical Geographies*, 8 (3), 530-541; Kotler, P. & Lee, N. (2005). *Corporate Social Responsibility*: Wiley.

¹³³ Kotler, P. & Nancy, L. (2005). *Corporate Social Responsibility*: Wiley.

¹³⁴ Porter, M. and Kramer, M. (2006). Strategy and Society: The Link between Competitive Advantage and Corporate Social Responsibility. *84 Harvard Business Review* 78.

¹³⁵ See Horrigan (2010), supra.

¹³⁶ Akyildiz, F. (2006). "The Failure of Multinational Companies in Developing Countries in Sharing Environmental Responsibilities: The Case of Turkey", *Social Responsibility Journal*, Vol. 2 Issue: 2, pp.142 - 150.

¹³⁷ UN. (2006). *Millennium Development Goals Report 2006*. Brussels: United Nations.

communities they operate, suggest that these global aspirations remain far from being met in many developing countries today. In some countries, for example India, Pakistan, Nigeria and the DRC, MNCs demonstrate box-ticking.¹³⁸

DRC offers one good instructive example of Companies CSR Box-Ticking mentality – a country since the end of Mobutu’s era in 1997 has been describes as a scene of organised looting of a sovereign State not seen in any part of the globe in recent times. Every type of wealth in the country has been impacted upon by structures set up and imposed by power from above. Stockpile of extracted minerals (coltan, gold, diamond, cassiterite, etc) were seized and taken away as loots to Rwanda, Uganda and Burindi. There is indication that these minerals are exploited to supply multinationals in their need of raw materials – a transparent neglect of CSR that has incited call for a world wide campaign to boycott end products (laptops, cell phones, jewels, etc) made from these minerals. The situation is such that for nearly two decades UN institutions and international justice system are being used or manipulated by Western powers because of their selfish polices and interest.¹³⁹

In some of the developing countries in Asia, Nike factories have been making great wealth at the expense of the people that is, by contributing little to the sustainable development of the communities it operates. It is so open that, Nike factories were even criticized for extremely poor working conditions and, for employing young children who suppose to be attending schools. Similarly, in Africa, Nestle received criticism in relation to its’ practices including marketing and utilizing a supply chain that use child bonded labour.¹⁴⁰ The continuous exploitation of resources in the Niger-Delta by the MNCs with the fake promises to contribute in the sustainable development of the community has resulted in serious environmental damage, developmental neglect, human-rights

¹³⁸ In Africa in particular, rather than contributing to the sustainable development of the communities in which they operate; many multinational corporations (MNCs) have acted as economic predators in Africa, gobbling up national resources, distorting national economic policies, exploiting and changing labor relations, committing environmental despoliation, violating sovereignties, and manipulating governments and the media. In order to ensure uninterrupted access to resources see Dare, S. (2001). *A Continent in Crisis, Africa and Globalization*. Dollars and Sense Magazine, July/August. Also available at http://www.thirdworldtraveler.com/Africa/Continent_Crisis.html (27/03/12).

¹³⁹ See *Ending illegal exploitation of Democratic Republic of Congo Mineral and other Resources*, available at <http://therisingcontinent.worldpress.com/2010/11/24/ending-illegal-exploitation-of-democratic-republic-of-congo-minerals-and-other-resources/> accessed (21/11/2011).

¹⁴⁰ See Kercher, K. (2007). Corporate Social Responsibility: Impact of globalisation and international business. *Corporate Governance e-Journal*, 4-2. Bond University Faculty of Law. The use of children is for the main purpose of reducing cost of labour, as the children receive menial pay and, they cannot complain. It is presented in the pretence as if these companies are offering employment to these children – a mere box-ticking mentality. The use of children in such labour is internationally legally prohibited; for example, it is against the ILO convention against the worst forms of child labor otherwise known as Convention no. 182, and the UN Convention on the Rights of the Child.

abuses, economic oppression, and inequitable resource allocation. These abuses, and the need for redress, are at the heart of the conflict in this community.¹⁴¹

It is the rule rather than the exception that companies do not comply with existing legal frameworks related to corruption, payment of taxes, fair trade practices, and respect for human rights, customer services, and environmental protection.¹⁴² This suggests that CSR-contributions of MNCs to sustainable development in developing communities are poor.

As companies pretend to take CSR more seriously now, the campaigns or regulatory proposals for CSR transformation (which emphasize that companies should operate in a more ethically or environmentally friendly way) is increasingly influential. In reality, MNCs have continued to show cosmetic embellishments to their CSR and this is not beneficial in relation to: practical community development, citizenship initiative, stakeholders' engagement, and societal responsibility, which are all relevant to promoting and contributing to the sustainable development of the communities in the developing countries. The case of Shell discussed above, largely gives credence to this position. Waller also concurs that something substantial is being lost in this direction, "call it what you like – the personality, the authenticity, the soul and character of the company is masked by pro forma statement",¹⁴³ which weakens their CSR activities. This in turns impacts negatively on the sustainable development of the communities in which corporations operate their businesses.

5.3 Addressing MNC Box-ticking Mentality in Developing Countries

In order to have a more practical implementation of CSR that will contribute to sustainable development, particularly in the developing countries; this paper specifically suggests that there is the need to first address the political ideological orientation underpinning CSR of business. It can be argued that the current CSR regulation in place in the developing global south is deliberately fashioned, manipulated and used by the powers that be in the developed global north (which institutionalise both the global political norms and legal rules) to control and protect their

¹⁴¹ Dare, S. (2001), supra.

¹⁴² Prieto-Carrón, M., Lund-Thomsen, P., Chan, A., Muro, A., & Bhushan, C. (2006). Critical Perspective on CSR and Development: what we know, what we don't know, and what we need to know: *International Affairs* 82: 5, 977-987.

¹⁴³ Waller, M. (2003). *Much Corporate Responsibility is box-ticking*: Times July 8. Waller points out that most companies may claim they comply with the expectations of society; "Enron, for example, was a great 'compliance CSR' company." But only a minority communicates a clear sense of the values that differentiate them from their competitors. "The Co-operative Bank and Cadbury Schweppes are good examples here."

multinational businesses scattered all over the developing regions. The CSR activity of Shell in developed and developing regions is a very good practical example.¹⁴⁴

When this political ideological issue is addressed, then, it will become more practicable for ‘*certain salient CSR issues*’ (such as illegal or/and unethical activities of MNCs over mineral resource exploitations and, the use of children for cheap labour) in the developing countries to be ‘*distinctly*’ mandatory regulated, while other non-salient CSR issues, such as sponsoring a ‘genuine’ political party or candidate in election or grooming flower garden, as was the case in Shell partnership with Marks and Spencer (UK) in three flower and fruit-growing communities across Africa (which is country or regional specifically applicable)¹⁴⁵ should be allowed to remain voluntary. This will help reduce box-ticking in this region and also allow corporations to function properly for the sustainable development of the communities.

This is because the present CSR in place shows that the distinction between companies’ voluntary and mandatory action is most times blurred in the developing world. As Graham and Woods clarify, voluntary initiatives may have mandatory aspects and national regulatory frameworks may incorporate the use of voluntary instruments.¹⁴⁶ However, there must be a clear distinct dividing line between the voluntary instruments and national regulatory frameworks, as well as between ethical and legal issues to achieve practical CSR goals. This will not only involve putting stringent regulatory laws in place, but also there should be practical move to make the implementation of the regulatory rules active and enforceable; in order to ensure that MNCs contribute to sustainable development in the communities in which they operate. One key suggestion is that there should be an agreed blueprint on a minimum CSR requirement, in the form of contribution to sustainable development expected from MNCs every three years in each community, which they operate.¹⁴⁷ This minimal expectation should serve as a legal pendulum; while any contribution above the required minimum

¹⁴⁴ The environmental pollution of Oil-spill in the Deepwater Horizon of the Gulf of Mexico, which killed 11 workers because of the oil-pipe line spill of the Shell British Petroleum (the same oil company that has been doing environmental havoc and killing hundreds of people in the third world countries because of their poor CSR) made headlines around the world, since it is described as the worst environmental disaster in US history. The US has even went ahead to sue the Shell B.P and eight other subsidiaries alleging that the cause of the 20 April oil explosion in the US was due to violations of safety and operational regulations that implicate the CSR of the Shell B.P. This is one of the many clear cases where companies are hold responsible for their poor CSR in Western developed global north (because of their powerful control of both global political and legal norms) as opposed to the poor CSR activities in the global north.

¹⁴⁵ What may be taken as salient CSR issues in many developing countries, may not be the same in developed countries, and vice versa.

¹⁴⁶ Graham, D., and Woods, N., (2006). Making Corporate Self-regulation Effective in Developing Countries: *World Development* 34: 5, 868-883.

¹⁴⁷ This will be a practical step, as each company will be expected to meet its minimum requirement, or face legal action.

will be seen as ethical. The minimal expected contribution must not be imposed; rather it must be agreed between the concerned MNC and community. This will make it enforceability practical and active.

6 Conclusion

Society needs MNCs to progress, but MNCs have contributed very little to the continued sustainable development of the communities in which they operate because the business operations of most corporations negate most of the common ethical and legal practices incorporated in their CSR programmes. The problem arises when corporations interpret the grey areas of the law and ethics underlining CSR to suit their own interests, purposes, whims and caprices at the detriment of sustainable development of the communities. However, sometimes, this may backfire against the corporation, as the cases of Enron, MacDonald's and Shell illustrated in this paper.

The deceptive and illegal business activities of Enron in America had serious consequences on the American public who invested in the illegitimate investment of the company. Enron paid a higher price at the end, in the form of its collapse and the criminal indictment against its executives. Similarly, McDonald's in the UK has endangered the health of individuals, particularly children, because it provides insufficient nutritional information and unhealthy food. Yet, the company has been affected, since it has been confronted with bad publicity, declining earnings and series of law suits, which threatens its very existence. In the same vein, Shell has contributed immensely in the environmental devastation and deteriorating economic conditions of Nigeria, and in the Niger Delta conflicts and loss of lives. However, Shell has experienced great losses and menace of its officials by the restive Niger Delta people and a series of pending law suits.

It stands to justify that the neglect of the ethical and legal aspects of CSR, though detrimental to the sustainable development of the communities in which corporations operate their businesses, eventually in some occasions end up causing the executives of these MNCs problem (for example, through the loss of money, threat to the officials, loss of employment and even ultimate collapse). It will therefore, benefit the corporations and the society if there is sensitivity and adherence to both ethically and legally sustainable practices. This will have more positive impact on CSR in relation to all the stakeholders, particularly on the sustainable development of the wider community.

Relying on the view that MNCs amass so much wealth and possess enormous power to transform the world political economy, it is crucial that further research should be carried out to specifically examine the impact of MNCs in the current global financial and economic downturn.

In conclusion, it is more practicable for '*certain salient CSR issues*' to be '*distinctly*' mandatory regulated, while other non-salient CSR issues should be allowed to remain voluntary. The dividing line between what should be taken as salient CSR issues and, non-salient CSR issues should depend on the activities of MNCs within the context of each individual country/region.