

Africa's Environmental Protection Challenges: Social
Responsibility and Liability of Non-State Actors.

Submitted in Partial Fulfilment of the Requirements of the
Degree of Masters of Law; LL.M (Human Rights and
Democratisation in Africa: 2003)

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31st October 2003.

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Declaration

I Boitumelo Mmusinyane hereby declare that this dissertation is my original work and that to the best of my knowledge it has not been wholly or in part submitted to any other University for the award of a Degree or a Diploma. Where other texts have been used the sources have been acknowledged.

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I Nii Ashie Kotey supervisor hereof, have read this work and approved it in partial fulfilment of the requirements for the Masters of Law Degree (Human Rights and Democratisation in Africa) of the University of Pretoria

Signed this _____ day of _____ 2003

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Date 31st October 2003

Acknowledgement

So many people have worked so hard and supported me so much to make me who I am. Words alone cannot express my appreciation. I am truly grateful for their encouragement and belief and I would like to thank them all. First and foremost special thanks to my Lord and Saviour, Jesus Christ and God Almighty who is sovereign over all that is, all that we do, say, think and all that we wish and dream for (Rom 8:31). I also would like to thank my supervisor Prof Kotey who ensured that this piece of work became a successful document due to his meaningful and enlightening supervision, not forgetting Prof Michelo Hansungule who shaped this topic to be what it is despite his busy schedule. Also the Centre for Human Rights (University of Pretoria) for making me who I am today. Further I would like to thank Prof Ampofo for his contributions. The whole staff from the University of Ghana, particularly the Faculty of Law, you are also acknowledged for your assistance.

A heartfelt thanks to my Family who have been my strength and my source of inspiration throughout my career and all those who are of a great influence in my life, pieces of advice and encouragement they gave me are appreciated. To my beloved mother, Magdeline Mmusinyane, who spent most of her time going out of her way trying to give me all I wanted and having trust and hope in what I am doing. I say thanks Mom for being such a courageous and supportive parent. To my brother and sister Thapelo and Resego Mmusinyane for their enduring patience and understanding. To my uncles Johannes, William, Abel, Samuel Ralokwakweng, Shimi Bogatsu, my Aunts Kgomotso Miriam Ralokwakweng and Mamane Ruta Bogatsu for their undivided, unfailing and unconditional support, piece of advice and encouragement. To them I also say thanks for understanding me and always been there when I need a father-figure with my endless requests.

Special thanks to my grandparent's warm hands in cold times, being Rosinah and Singleboy Ralokwakweng, Georgina and the late Oneboy Mmusinyane, Gotwe Mmusinyane and his family, Seruteng's and Sybok's family, also Bushy, Kagiso and his wife Mankisang Mmusinyane you are also thanked for your support when needed.

Special thanks go to my Secondary school teacher, Mr Obotseng, who advised me to pursue a career in law and my mentor Mmatsie Mooki and Tina Macintyre in advising me to pursue graduate legal studies. My gratitude goes further to my friends, Donald Tshepo Tswene, Kenneth Lehihi, Obakeng Lorathu, Terrence, Gina, Matsie (Captain) Nqai, Amos Khambule and Siphon Lalane who were always there for me to lean on during good and bad times, as well as Vuyani Mabe who has always been a brother and a source of inspiration. Lastly to the LLM 2003 family and all those that are not herein mentioned, your support and encouragement are not forgotten and you are duly acknowledged too.

Dedication

To Thabang Thuto, a young man, who has always been behind my thinking in whatever I do. I therefore dedicate this work to him.

Abbreviations

AECB-Atomic Energy Control Board

African Charter- African Charter on Human and People Rights

African Commission-The African Commission on Human and People Rights

CAO- Compliance Advisor/Ombudsman

CPR- Civil and Political Rights

ESCR-Economic, Social and Cultural Rights

IBRD- International Bank for Reconstruction and Development

ICCPR-International Covenant on CPR

ICESCR- International Covenant on Economic, Social and Cultural Rights

ICJ-The International Court of Justice

IDA -International Development Association (IDA),

IFC-International Finance Corporation

IFIs- International Financial Institutions

IMF-International Monetary Fund

LHDA Lesotho Highlands Development Authority

MNCs-Multinational Corporations

MIGA-Multilateral Investment Guarantee Agency

NAFTA- North American Free Trade Agreement

NGOs-Non Governmental Organisations

NSAs- Non-State Actors

OECD-Organisation of Economic Co-operation and Development

SAPs- Structural Adjustment Packages

SPDC-Shell Petroleum Development Corporation

The Bank- The World Bank

The UN Committee on ESCR-United Nations Committee on Economic, Social and Cultural Rights

UDHR-Universal Declaration of Human Rights

UN Charter- United Nations Charter

UN-United Nations

WTO- World Trade Organisation

UNEP-United Nations Environmental Programme

UNDP-United Nations Development Programme

CEC-The Commission for Environmental Cooperation

“Nature has engineered our globe quite well: mountains, the rivers, lakes wetlands, (sic) oil reserves, gold. If we use them well they can sustain us for long, but if we try to change them without thought about the likely effects, to ourselves, our neighbours and the universe, the results may be catastrophic. Africa and perhaps the entire developing world are now undergoing a new form of aggression. Our partners in the developed world have a lifestyle which is simply not sustainable, a life style which generates environmental degradation. Protecting the environment is in our own interest and we must take all the necessary measures locally within our means to ensure it.”

Yoweri Kaguta Museveni ‘Trade can Transform’ Our Planet, Global, Poverty, Trade and the Environment Vol 13 No 4 UNEP 2002.

Preface

Africa faces environmental threats that are great and unless development is guided by environmental, social, cultural and ethical considerations, much of it will continue to have undesired effects and provide reduced or no benefits at all. Such unsustainable development will only exacerbate the existing environmental problems. Lack of adequate development creates serious environmental problems. A sick environment undermines the health of its inhabitants. It goes without saying that environmental resources are the life blood of socio economic development and the state of the environment is a vital aspect of human well being everywhere. NSAs have a negative impact on social and economic development through environmental degradation. Environmental degradation or the inability or unwillingness to enforce environmental responsibility against NSAs coupled with exploitation of natural resources present a chain of daunting challenges for the African continent. Many factors complicate the response. Such forms of environmental degradation impede sustainable development and have a negative effect on the global ecological system.

Investment in managing the African environment should thus be seen as an investment in global security. Environmental harm to our communities, land, air and water cannot be isolated from human activities. The anticipation of prevention and integration of environmental considerations in all development actions is what the whole of Africa needs. Each and every member of the society should carry out their environmental responsibilities properly and each and every member must be held liable for failure to discharge such responsibilities. It is inconsistent for a governments dedicated to poverty alleviation and development to ignore these significant costs to its own people. If environmental management programmes are to be successful in Africa, NSAs should acknowledge their responsibilities and take part in the development and implementation of effectively policed environmental guidelines.

1. INTRODUCTION

1.1 Background

The concept of the right to a healthy and safe environment has generated debate and contradictory developments since efforts were made to use international human rights law and procedures to enhance environmental protection.¹ Human rights and environmental rights are interdependent and interrelated and it is difficult at times to achieve protection for human rights without environmental rights being affected. Thus to a large extent they complement each other and the relationship between the two may be conceived as follows. Environmental protection may be cast as a means to the end of fulfilling human rights standards, since a degraded physical environment contributes directly to infringement of the right to life, health and livelihood.² Acts leading to environmental degradation may, therefore constitute an immediate violation of internationally recognised human rights.

There are number of treaties that are devoted to classic 'civil and political right' (CPR) for instance, the 1966 International Covenant on Civil and Political Rights (ICCPR), the 1950 European Convention on Human Rights and the 1969 American Convention on Human Rights. They pre-date the widespread international concern for the environment which began in the late 1960s and 1970s, as reflected, for example, in the 1972 United Nations (UN) Conference on the Human Environment and none of these CPR instruments contains any expressive environmental rights. But if one looks closely at some of the rights found in these treaties, they may be capable of being applied in such a way to provide individuals with some limited derivative rights in the environmental sphere based on the right to life and freedom from interference.³ However, the 1981

¹ Nonetheless, the recognition that human survival depends upon a safe and healthy environment places the claim of the right to environment fully on the human rights agenda. A Kiss and D Shelton *'International Environmental Law'* (2000) 174, 175.

² The African Convention on the Ban on the Import into Africa and the Control of Transboundary Movement of Hazardous Waste within Africa (The Bamako Convention) brings to life the provisions of the African Charter regarding the right to a general satisfactory environment. It came about as a result of environmental concerns on the part of African States, especially in the late 1980s, as they became increasingly exposed to toxic and waste trade.

³ The African Commission on Human and People Rights (the African Commission) and other Human Rights Commissions have developed a jurisprudence that recognises and enforces rights linked to environmental protection. Based on the colonial Constitutions adopted by some African countries, such as Nigeria where there are no explicit provisions such as the right to food, shelter. The difficulty lies particularly when these rights are being violated and the individual or the community has no claim before the national courts for the rights that are not entrenched in the Constitution. Such as the 1999 Constitution of the Republic of Nigeria. Substantive rights that have been invoked

African Charter on Human and People Rights (The African Charter) is regarded to be the 'first instrument' to expressly specify environmental rights in its text, in addition to CPR.⁴ When looking at other International Instruments such as the ICCPR, some rights were invoked to protect environmental rights.⁵ Environmental rights broadly entail the right, whether as individuals or a group to a decent environment and more specifically such rights as the right to be free from excessive pollution of the land, water and air as well as the right to enjoy an unspoiled nature and the right to enjoy biological diversity.⁶ Some 1.2 billion people in developing countries lack clean and safe drinking water with the result that waterborne infections account for 80% of all infectious diseases worldwide.⁷

The international protection of human and environmental rights represents two of the fundamental values and aims of modern international society.⁸ The need and desire to protect the environment presents a challenge for international as well as national law, an inevitable development as it is increasingly recognised that environmental problems are international in scope. Economic factors play a role as well as in internationalising efforts to safeguard the environment. A state that enacts environmental measures must count the increased costs borne by its economy. Further States that protect their environment thus risk competitive disadvantage in the market place unless international legal

are principally those of the right to life, the right to respect one's own private life and home, the right to health, to culture and the right to the peaceful enjoyment of one's possessions. However these rights were successfully invoked by the Ogoni people before the African Commission in addition to any entrenched expressed rights. See the *Social and Economic Rights Action Centre and the Centre for Economic and Social Rights v Nigeria* Communication NO. 155/96 (The SERAC case).

⁴ Article 24 of the African Charter states 'All people shall have the right to a general satisfactory environment favourable to their development. This right is to be enjoyed immediately by 'all people' as opposed to 'every individual' who is the beneficiary of the CPR.

⁵ The author as the chairperson of the Port of Hope Environmental Group, in Canada, brought a communication on his own behalf and on behalf of the community of the Port of Hope against the Eldorado Nuclear Ltd, a Federal Crown Corporation. The Company disposed nuclear waste in dumpsites within the confines of the Port Hope community, although the cleaning operation was initiated by the Atomic Energy Control Board (AECB), the author maintains that no other constituencies wish to accept the waste and that the Federal Governments is unwilling to come to grips with the problem. Thus the author claims that the current state of affairs is a threat to life, as guaranteed by Article 6 (1) of the ICCPR), of presents and future generations of Port Hope, taking into account that the excessive exposure to radio activity is known to cause cancer and genetic defects and that this present health hazards for Port Hope residents. Even though the communication was declared to be inadmissible; this is an example where certain provisions can be invoked to protect the environment. See the *E.H.P v Canada Communication No. 67/1980*.

⁶ R R Churchill 'Environmental Rights in Existing Human Rights Treaties' in A Boyle and M Anderson (eds) (1996) *Human Rights Approaches to Environmental Protection* 89.

⁷ A Kiss and D Shelton (See note 1 above) 143.

⁸ "The protection of the environment is...a vital part of contemporary human rights doctrine, for it is a *sine qua non* for numerous human rights such as the right to life and the right to health itself. It is scarcely necessary to elaborate on this as damage to the environment can impair and undermine all the human rights articulated in the Universal Declaration of Human Rights (UDHR)." See the *Gabcikovo-Nagymaros* case (Hungary-Slovakia), I.C.J Judgment of Sept. 25 1997.

measures harmonise the requirements of environmental protection for all those involved in international trade.⁹

The economic development in Africa is in most cases conducted by Non-State Actors (NSAs). Such NSAs are the Multinational Corporations (MNCs) and International Financial Institutions (IFIs) such as the World Bank (the Bank), the International Development Association (IDA), the International Monetary Fund (IMF) and the International Finance Corporation (IFC). Under the pretext of eradication and reduction of poverty in the Sub-Saharan African, the role of NSAs is dramatically increasing even in competition to carry out development that can save Africa from poverty.¹⁰ Today, such NSAs linked with affiliates throughout the world have an enormous influence on the global economy, environmental degradation and exploitation of indigenous or economically marginalized groups, who depend immediately upon natural resources for their livelihood.¹¹

1.2 Relevance of the topic

In Africa NSAs are causing an alarming concern with the destruction of the environment and indigenous communities in the name of development; such environmental degradation leaves indigenous or economically marginalized groups in an unsatisfactory environment to their health, standard of living and basic necessities of life and the land for future development. In most instances, the host country does not get good value from the vast amount of resources extraction. In other words this kind of investment does not benefit the affected people rather; it transfers a country's resources outside.¹² In the end

⁹ See the *Gabcikovo-Nagymaros* case (note 8 above)

¹⁰ For instance it is alleged that MNCs are putting tremendous pressure on the governments of Ghana to open the country's protected forest reserves to mining, the only two percent of Ghana's original tropical rainforest and savanna forests that remain intact and protected by forest reserves legislation. Further that those MNCs are pressuring Ghana to change its laws and allow them to mine inside the forest reserves. Since mining exploration started in Ghana more than 50,000 indigenous people have been displaced without just compensation and local community being less employed in such mines, villages were destroyed, detainees illegally detained, women being raped and continually denying Ghanaians of their culture. This recent development is an outgrowth of Ghana's competition for foreign investment within the mining sector and a preview of next June's proposed introduction of new legislation on new, "friendlier" mining laws. See P Palmer 'Global Response Request for International Solidarity: "Project Forest Reserves; Keep Mining Companies out of Ghana"-April-May 2003<http://www.bicusa.org/africa/Global_Responselettercampaign.htm> (accessed on 10 June 2003).

¹¹ As above 13.

¹² R Dean 'Tanzania's Pot of Gold' <<http://news.bbc.co.uk/1/hi/world/africa/1448948.stm>> (accessed on 10 June 2003).

the poor pays for the lust of the rich.¹³ In some cases, African governments are simply not interested in the impact of the activities of NSA have on the people as they personally benefit from their presence due to corruption.¹⁴ As a result, it is correct to note that "the local partners (African governments)" are selling indigenous communities on for their personal gain.¹⁵

In spite of the fact that some of these African countries having strong environmental laws in operation they are often unwilling to force NSAs to comply with environmental rights and labour standards since they badly need the investment and capital that NSAs bring into their economies.¹⁶ Some of these NSAs pressurise national governments even threaten them with lawsuits to open their doors for them. Others completely closedown and relocate in order to blackmail the governments to follow through on the permits after exploration had started.¹⁷

Globalisation and an increase in international trade have join with the growth of the human rights movement. These dual trends have cast an increasing attention on the role that NSAs play in environmental rights violation throughout the Sub-Saharan Africa region. The critical issue in this period of globalisation and which is also a challenge to it is the liability and social responsibility of NSAs in times of violation of environment rights since today they figure prominently within the human rights field. Most of their activities are not in accordance with national or international environmental standards.

While NSAs enjoy sovereign immunity within local jurisdictions, primary responsibility lies with states, which in most cases, are held liable for wrongful acts committed by

¹³ Meanwhile, the local communities that bear the brunt of these abuses are rarely compensated, nor, do they benefit from the profit made at their expense. S. Reddy 'Corporate responsibility and human rights: A fact sheet <<http://www.dfn.org/news/USA/corpresp/htm>> (accessed on 01 March 2003).

¹⁴ In Tanzania there is an action against the backdrop of a suspicion among many people that some of their representatives have been seduced and compromised by the big mining companies. R Dean (see note 12 above).

¹⁵ In Ghana, it is alleged that, despite the resistance being shown by civil societies to these corporations 'purporting development' licenses have also been promised Ghana's Ashanti, Australia's Red Back and Canada's Nevsun Resources. Mining laws in Ghana are changing, opening up protected forest reserves to these companies for exploration, despite the "overwhelming evidence of human rights violations occasioned by the mining activities, which were not sporadic but a well established pattern common to almost all mining communities" P Palmer (see note 10 above).

¹⁶ S. Reddy ' (see note above 13).

¹⁷ P Palmer (see note 10 above).

NSAs,¹⁸ since they are regarded as the ultimate guardian of the welfare of their populations.¹⁹ As state authority declines, NSAs play a direct and indirect role in a wide range of environmental human rights violation and this has now led to a point where there is a need to attach more concrete obligations to them.²⁰

The thesis provides a framework with which the NSAs can be held directly and indirectly accountable for their role in fuelling the instability in the Sub-Saharan African region. The purpose of the thesis is to determine the approaches or guidelines that can be followed in order to ensure that NSAs behave appropriately in host states in realisation of the right to development by preserving the harmonious environment that local communities are entitled to. The creation of a viable and sustainable environment for everyone is of paramount importance in today's society.

1.3 Hypotheses

The thesis would examine the following hypothesis:

- Considering the weaknesses that African' states today are faced with, in an environmental sphere, powerful NSAs dictate environmental policies for them,
- Considering poverty that these 'weak African' states are faced with, it forces them to demand economic assistance from developed nations, particularly as provided by NSAs, which impose terms or with no such terms for them in certain instances upon which to provide the required economic support. Such states end up being manipulated.
- There is a well-established inability on the part of these African states to control NSAs within their jurisdiction despite having strong environmental policies to comply with.
- NSAs have double standards, for instance they often operate in developing countries with higher environmental standards than do local companies and they typically follow lower standards than they practice at home.

¹⁸ The Nigerian Governments was held liable for the atrocities committed by the Shell Petroleum Development Corporation (SPDC) in engaging in operations that have caused environmental degradation and health problems experienced by the Ogoni people. (See note 3 above) the SERAC case.

¹⁹ C. Jochnick "Confronting the Impunity of NSAs: New Fields for the Promotion of Human Rights' *Human Rights Quarterly* 1999 21. 1 The John Hopkins University Press, Also can be accessed on <www.socialpolicy.ca/hr/1.htm> (accessed on 06 August 03).

²⁰ See S. Reddy (note 13 above).

The thesis revolves around the above issues of concern and which are dealt with extensively below.

1.4 Literature Survey

Several authors have written extensively on state responsibility. However writings with regard to the responsibility of NSAs have been referred to by such authors within only to limited extent. In other words responsibility of NSAs under international law has always been treated separately, though not extensively. International law authors have put much emphasis on state responsibility for failing to control or regulate private parties or individuals within states jurisdictions. Though they have reasonably foreseen the changing economic demands within our society they nevertheless did not consider NSAs to be threatening to the international legal order.

There are a considerable number of scholarly writings attributing responsibility to states only. In their book A Kiss and D Shelton commented that a state is responsible for any significant injury emanating from a violation of its obligations to conform to generally accepted international environmental rules and to conduct activities so as not to cause injury to the environment of another state or of the commons.²¹ However a little concern was paid to the responsibility of NSAs when causing environmental harm within national jurisdictions of host states. They put too much emphasis on state responsibility.

Oppenheim, states that in terms of international law of vicarious liability a state is responsible for unauthorized acts of its agents or nationals and of aliens living within its territory.²² In other words states, responsibility extends also to the activities of private person that harm the environment within such states. Thus direct or indirect responsibility of NSAs is not considered and liability is laid on the shoulders of the host state.

The legal principles developed by the Experts Group on Environment and Developmental law of the World Commission on Environment and Development (the

²¹ A Kiss and D Shelton, See (note 1 above) 349.

²² Oppenheim 'International Law' (2ed) 1991 Pearson Higher Education, Canada 119-200.

Brundtland Report) concluded that a state is responsible for breach of an international obligation relating to the use of a natural resource.²³

A state bears liability since it had undertaken a binding commitment under international law to prevent harm from occurring. Therefore undertakings of states create important obligations and such states cannot escape from liability even if it alleges that harm is caused by the negligence of a private party.

Therefore no attention has been paid to NSAs despite featuring prominently within the environmental business. States are still held responsible on the basis of failing to regulate private activities within their territories. The reason is that responsibility emanates from treaties that are signed only by states and not NSAs.

Today the situation is entirely different and I agree with the Brundtland Report when it acknowledged that international law is being rapidly overtaken by the accelerating pace and expanding scale of impacts on the ecological basis of development.

Sands presents the challenges that the twenty first century is facing, that is the inherent and fundamental interdependence of the world environment with land, sea and air space that are part of the sovereign areas of states. He goes on to state that these challenges raises issues about the nature of international society and the structure of the international legal order, the content and the relationship between environmental law and other areas of international law, particularly in the economic and social domains.²⁴

In my opinion international law can no longer be regarded as governing states only but also includes other members of the international society, those who, in today's world, plays a great role in the development of Third World country's economic sphere through the extraction of natural resources.

Addo states that there is overwhelming concern calling for a delimitation of the responsibilities of MNCs to reflect their increasing influence in the society. It is only in

²³ World Commission on Environment and Development (The Brundtland Report) *Our Common Future* 1987, Oxford University Press New York, 4.

this modern era determined by events such as economic deregulation, globalisation and the minimalization of governmental responsibilities with a corresponding increase in the role of private entities that there is a need to attach a concrete accountability to NSAs.²⁵ He emphasises accountability generally on human rights violations, and my thesis is covering a specific area of accountability, that is responsibility and liability of NSAs on environmental rights violations. Since these rights today are found to be capable of being enforced independently from human rights. They can now be found in separate International instruments therefore they need a separate even though there is such an inter-relationship and interdependence with human rights. Although Jochnick deals with this issue extensively, to a limited extent under the human rights system, my thesis will examine environmental responsibilities of NSAs within a regional context.²⁶

In spite of the fact that states remain the most important actors, the history of environmental law reflects the prominent role that NSAs play in the legal order. I agree with Sands that the overall objective of international legal order is to provide a framework within which various members of the international society may co-operate, establish norms of behaviour and resolve their differences. The legislative function of international law can be achieved when the legal rules and principles that impose binding obligations requires the state and other members of the international society to conform to certain norms of behaviour.

Therefore the current international legal order allocates tasks to various actors to ensure that the standards imposed by the principle and rules of environmental law are carried out. It is in this measure where I would like to pay attention to NSAs responsibility and liability as members of the international society in upholding environmental rights and duties. The main assertion being, as in the case of human rights, environmental law provides evidence of development away from the view that international society comprises only with community of states, to one that covers or include NSAs within or among these states.

²⁴ P Sands 'Environmental Protection in the Twenty First Century: Sustainable Development and International Law' in *The Global Environment: Institution, Law and Policy*, N J Vig and R S Axelrod (eds) 1999 116 Earthscan Publications Ltd, London.

²⁵ M K Addo 'Human Rights Standards and the Responsibility of Transnational Corporations, 1999, the Hague, Kluwer Law International. The Hague 4.

²⁶ For more details see C. Jochnick (note 19 above).

International instruments such as Rio Declaration and Agenda 21²⁷ clearly recognise and call for the further development of the role of NSAs in all aspects of the international legal system that relate to the environment and development.

NSAs perform a range of functions and roles in the development and management of international legal responses to environmental issues and compliances.²⁸ I concur with Sands that it is unlikely that NSAs today will not have some responsibility for environment matters.

In conclusion it is important to note that the reviewed literature emphasised the responsibility of states thus overlooking the prominent role that NSAs plays in this era of globalisation within the environmental sphere. It is hoped that the thesis will provides African national governments with a frame work to realise that each and every member of the international society, particularly those who enjoyed immunity-NSAs-should begin to be held, directly or indirectly, liable for their separate. The rationale behind this is that since states are or remain the primary and principal subjects of international law, they are entrusted with a duty to create, adopt, domesticate and implement international environmental principles.

1.5 Methodology

The thesis is limited to the use of available resources, such as books, journals, international instruments, case law as well as Internet materials. In other words, it is library based. The thesis provides a legal framework within which the most influential NSAs can be held directly accountable for their role in violating environmental rights. Though a number of illustrations are drawn primarily from certain countries within the continent emphasis is placed on the Sub-Saharan Africa, which include Ghana, Nigeria, Lesotho, Mali and South Africa, since they are of particular interest. This is the region that is targeted, by NSAs, for natural resource extraction accompanied by lack of environmental protection.

²⁷ Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 United Nations publication, Sales No. E.93.I.8.

²⁸ As above 121.

1.6 Limitations of proposed study

Since it is impossible to deal elaborately with all the interesting issues, the thesis will focus on the responsibility and liability of NSAs in cases of violation of environmental rights. The thesis, however, does not focus on NSAs actively involved in ensuring compliance, implementation and monitoring of their activities in accordance with available environmental standards.

1.7 Proposed structure

The thesis is divided into:

- The first chapter deal with the background of the topic, highlighting the history of environmental rights and its relation to human rights law as well as NSAs rationale for alleviating poverty.
- The second chapter elucidates the environmental protection standards within which NSAs are required to operate.
- The third chapter briefly deals with activities conducted by NSAs under the pretext of economic development safeguarding Africa from poverty.
- The fourth chapter applies the standards to the situation. This involves a shift approach from state responsibility to NSAs responsibility.

Conclusions and recommendations are made to NSAs, African Governments and societies to assist them in ensuring the environment to be a better place for all.

2. ENVIRONMENTAL PROTECTION STANDARDS GOVERNING ACTIVITIES OF NSAs

2.1 Introduction

The requirements of a healthy and balanced environment and of environmentally sound management of natural resources are conditions for the implementation of other fundamental rights guaranteed to everyone. African human welfare and the environment have been increasingly left in the hands of NSAs with African governments playing almost a secondary role in trying to ensure basic levels of welfare for their populations.²⁹ It is clear that African governments are kept silent by NSAs over whom they have ever-decreasing capacity to control. Rapid privatization, free trade agreements, economic integration and the explosion of NSAs have tremendously limited government's control over its natural resources.

There is an increasing concern about poverty eradication or development purported to be carried by NSAs in respect of which they ignore environmental standards required to be complied with. The protection of the local environment of a particular state is a truly national problem requiring a domestic response and it cannot be successfully solved in an arbitrary and piece-meal fashion. Certainly the previous classical international law approach-based on the principle of state responsibility for violations of its international or national obligations to its citizens, as well as the requirement to make reparation for such breaches-is considered inadequate for addressing problems concerning environmental damage caused by NSAs.³⁰

In fact, in the face of rapid globalisation of the world economy, African states are becoming disempowered and marginalised; this is as a result of the economic role played by NSAs. Globalisation or internationalisation of capital has led to particular problems that were not anticipated. Injuries to the environment quite often are caused not by states but by NSAs. The regulation of NSAs is perhaps the most pressing task for the promotion of Economic, Social and Cultural Rights (ESCR). The under mentioned

²⁹ "The UN Special Rapporteur on ESCR describes the changes in these terms: The flurry of many States romantically to embrace the market as the ultimate solution to all of society's ills and the corresponding rush to denationalize and leave economics, politics and social matters to the whims of the private sector, although the theme of the day, will inevitably have an impact upon the full realization of economic, social and cultural rights. See C Jochnick (note 19 above) 58.

³⁰ For detail discussion see M Hansungule 'Corporate responsibility under International Law: Non State Entities' A paper prepared for and presented at the Summer School Programme on International Law, January 2002 University of Pretoria (Unpublished). 5.

instruments provide a starting point to attach concrete obligations to NSAs, such as MNCs and IFIs. This chapter therefore examines the environmental protection standards that NSAs are required to adhere to and the role of the state in ensuring compliance with such standards.

2.2 Obligations imposed upon states

Internationally accepted ideas of the various obligations mentioned by human rights indicate that all rights, civil, political and economic, generate at least four levels of duties for a state that undertakes to adhere to a rights regime. These are namely the duty to respect, promote, protect and fulfil these rights.³¹ There is a growing list of environmental-related matters, on the African continent, that have serious and far reaching consequences for present and future generations.³² Many of these problems, if left unresolved, will pose a mounting threat to the security and way of life of local communities.³³ Examples of such environmental problems include oil spills, inadequate resource development and the impacts of hydroelectric projects. Depending on the severity, of such problems, environmental damage can irreversibly affect people's way of life.

The right to a general satisfactory environment in Article 24 of the African Charter imposes clear obligations upon governments. It requires states to take reasonable and other measures to prevent pollution and ecological degradation; promote conservation and secure an ecologically sustainable development and use of natural resources.³⁴ In terms of Article 25 of the African Charter it is provided that:

³¹ See the SERAC case. (note 3 above).

³² As far as environmental conservation is concerned, human rights must also be guaranteed for the present and the coming generations and this implies the management of natural resources with the aim of not exhausting them. This applies especially to economic and social rights. See A Kiss 'Concept and Possible Implications of the Right to Environment' in K E and P Mahoney (eds) *Human Rights in the Twenty-First Century: A Global Challenge*; 1993 Martinus Nijhoff Publishers, 552-3.

³³ M Simon 'The Integration and Interdependence of Culture and the Environment' in K E and P Mahoney (eds) *Human Rights in the Twenty-First Century: A Global Challenge*; 1993 Martinus Nijhoff Publishers. 522.

³⁴ Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), requires governments to take necessary steps for the improvement of all aspects of environmental and industrial hygiene, the right to enjoy the best attainable state of physical and mental health stipulated in Article 16 (1) of the African Charter and the right to a general satisfactory environment favourable to development Article 16 (3) already obligate governments to desist from directly threatening the health and environment of their citizens. Thus the state is under a duty to respect such rights and this means that not sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual. See S Leckie "the Right to Housing" in Economic, social and cultural rights Eide, Krause and Rosas, (eds) 1995 Quoted in the SERAC case. (See note 3 above).

“States parties to the present Charter shall have the duty to promote and ensure, through teaching, education and publication, the respect of the rights and freedoms contained in the present Charter and to see to it that these freedoms and rights as well as corresponding obligations and duties are understood.”³⁵

A state bears general responsibility for the development that takes place within its territory and unless it can absolve itself from such responsibility.³⁶ Government's compliance with Articles 16 and 24 of the African Charter must include:

- ordering or at least permitting independent scientific monitoring of threatened environment;
- requiring and publicising environmental and social impact studies prior to any major industrial development;
- undertaking appropriate monitoring and provision of information to the affected communities and activities;
- provision of meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.³⁷

The 1972 Stockholm Declaration³⁸ supported the view that the environment should be protected to ensure established rights, such as the right to life, health, personal security, suitable work conditions and private property, for current as well as future generations. The ICESCR recognizes the right of everyone to enjoy the highest attainable standard of physical and mental health.³⁹ Clearly international law recognizes a human right to a decent, viable, or healthy environment.⁴⁰ The duty is upon states to ensure compliance with environmental standards in any activity, conducted by public or private entities. African governments, therefore as the guardians of their population's wealth are under a duty to eradicate all forms of foreign economic exploitation especially that practiced by international monopolies (NSAs) so as to enable peoples to benefit fully from their national resources.⁴¹

³⁵ Article 25; See also Article 1 and 2 of the African Charter.

³⁶ M Hansungule See (note 30 above) 3.

³⁷ See the SERAC case (note 3 above).

³⁸ UN. Doc. A/Conf.48/14/rev.1 (UN Pub. E 73, IIA. 14) (1973).

³⁹ Inaugural Issue, Rights Violations in the Ecuadorian Amazon: The Human Consequences of Oil Development <http://www.hsph.harvard.edu/fxbcenter/V1N1_cesr.htm, Health and Human Rights: An International Journal Vol. 1, No. 1, Fall 1994 (accessed on 05 August 03).

⁴⁰ P W Birnie and A E Boyle '*International law and the Environment*' 1992, Oxford university Press. 191.

The African Charter further provides that:

“the free disposal of wealth and natural resources must be exercised without any prejudice to the obligation of promoting international economic cooperation based on mutual respect, (for the environment, people and state’s domestic laws) equitable exchange and the principles of international law.”⁴²

Clearly NSAs are not exonerated from liability arising out of environmental rights violation that they directly or indirectly involved in. UDHR has explicitly pointed, in its Preamble that the UN General Assembly “proclaims this universal declaration as a common standard of achievement for all people and all nations, to the end that every individual and every organ of society, (sic) keeping this declaration constantly in mind, shall strive by teaching and educating to promote, respect for these rights and freedoms.

Thus reference to “*every organ of society*” extends human rights to actions of non-humans, such as NSAs, who are also expected to abide by them.⁴³ The conduct of MNCs have a great impact on poverty by directly undermining human welfare (for example, limiting a community's access to land or food) or influencing relevant governments policies and laws (for example those relating to agriculture, deforestation, dam projects, technology, employment and subsidies). Corporations are established through special grants of their incorporating countries and are presumably subject to all of the national laws under which they operate.

As explained by the Inter-American Court of Human Rights, a state violates the rights of its citizens “when it allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the American Convention.”⁴⁴ The obligation to protect ESCR requires governments to effectively regulate private persons like MNCs through legislation and enforcement. However, there is still ineffectiveness on the part of African governments to use their national laws in ensuring that NSAs behave appropriately, despite having strong environmental legislation in place. Some African

⁴¹ Article 21 (5) of the African Charter.

⁴² Article 21 (3) of the African Charter.

⁴³ UN Secretary General Kofi Annan has been calling on the world’s economic giants to ensure that they discharge their social responsibilities. In other words, profit alone without sharing this with the magnitudes of the people will not ensure world peace and security which are preconditions for the profit. The lust for money alone is slowly been discounted for equity and social responsibility on the part of the corporate responsibility. See M Hansungule (note 30 above). 10.

⁴⁴ *Velasquez Rodriguez* Case, 166, Case 7920, Ser. C, No. 4, Inter-Am. Ct. H.R. 35, O.A.S. Doc. OEA/Ser.L/V/III.19, doc. 13 (1988).

countries, such as Ghana, have still not yet domesticated any environmental international instruments they have ratified.⁴⁵

African states are reluctant to regulate NSAs in accordance with their national laws by punishing them for their wrongful acts perpetrated within their territories.⁴⁶ This is so since wrongful acts committed by citizens seem to be addressed immediately and effectively, without fear, favour or prejudice, before national courts in accordance with their domestic obligations. Even more importantly, in our world of globalization there is a growing need to address NSAs directly and not only through States, as the relative weight of the latter might be diminishing as new structures of international relations emerge.⁴⁷

2.2 The environment and the host state

International treaties and national constitutions speak of rights to a clean, healthy, decent and or safe environment and there is an established notion that the protection of the environment for present and future generations is the responsibility of each and every state.⁴⁸ African states should begin to realise that the protection of the environment is not only beneficial for the economic growth but also ensure the sustenance of peace and stability to all those living around the project.⁴⁹

Since the primary burden is upon states to ensure that the right to a healthy environment is a satisfactory one, they can facilitate this right through constitutional manifestations. Constitutional provisions are strong tools for protecting the environment. The greatest

⁴⁵ For example Ghana has ratified or acceded to over thirty-five international conventions on the environment, however these ratifications or accession have not been matched by the corresponding number of legislation required for their implementation. See G A Sarpong 'International Environmental Law and the Ghanaian Courts' in M Anderson and P Galizzi (eds) *International Environmental Law in National Courts* 2002 The British Institute of International and Comparative Law 113.

⁴⁶ This seems to be contrary to the law established by *X and Y v. Netherlands* 91 ECHR (1985) (Ser. A) AT 32. It was held that there was an obligation on authorities to take steps to make sure that the enjoyment of the rights is not interfered with by any other private person.

⁴⁷ Åbo Akademi University Institute for Human Rights and the Association of Human Rights Institutes: Accountability for Human Rights Violations Committed by NSAs Conference in Turku/Åbo, Finland, 23-24 May 2002.

⁴⁸ <http://www.abo.fi/institut/imr/seminar_may_2002.htm> (accessed on 05 August 03).

⁴⁸ Charter of Economic Rights and Duties of States, U.N. GA Res. 3281(xxix), UN GAOR, 29th Session, Supp. No. 31 (1974) 50.

⁴⁹ In its resolution 44/228, 'United Nations Conference on Environment and Development' 22 December 1992, the U.N General Assembly further affirmed that the protection and enhancement of the environment are major issues affecting the well being of people and singled out, as one of the environmental issues of concern, "the protection of human health conditions and improvement of the quality of life."

challenge Africa is facing is to open the courts to citizens to enforce their constitutional rights, strengthen the judiciary, empower civil society and foster an atmosphere of environmental accountability,. Around two thirds of African countries now have constitutional provisions assuring the right to a healthy environment, even though some of them are not expressly provided for.⁵⁰

Since the constitutions of many poor African states contain them, it appears that the level of economic development does not determine the prominence of environmental protection. The more recently adopted constitutions are more likely than earlier constitutions to contain environmental provisions.⁵¹ Since detailed environmental legal codes have not yet been drafted constitutional provisions take an enhanced importance in affording citizens legal protection on environmental questions involving natural or legal person.⁵² Constitutional entrenchment of environmental rights will give the desired visibility to environmental matters and thereby assist in the enhancement of the level of public awareness about the critical importance of environmental matters.

In order to gain credibility among all stakeholders including NSAs, governments, environmental groups and local populations guaranteeing the sustainability of environmental projects requires an integral strategy that includes:

- (a) balance between the needs of NSAs and local communities;
- (b) environmental education;
- (c) co-operation at all level (governments, public and NSAs); and
- (d) legislative and administrative changes to stimulate changes in environmental management.

⁵⁰ For example the 1992 Constitution of the Republic of Ghana does not provide expressly for the guarantee of environmental rights of Ghanaian citizens. Under Article 36 (9) of the Constitution, the state is enjoined to take appropriate measures needed to protect and safeguard the national environment for posterity and seek co-operation with other states and bodies for the purposes of protecting the wider international environment for mankind. The 1999 Nigerian Constitution states "Every Nigerian shall have the right to a clean and healthy environment" While South Africa, in section 24 of its 1996 Constitution, 1990 Namibia Constitution, Article 95 (1) and 1993 Malawi, Article 13, are one of the few to have express environmental provisions in their provisions.

⁵¹ For example the draft Constitution of the Democratic Republic of Congo includes environmental provisions and other countries, like Kenya and Tanzania, are contemplating similar provisions. What's the Constitutional basis of Africa's environmental laws? See C Bruch et al <<http://www.acts.or.ke.htm>> (accessed on 08 August 03).

⁵² As above.

2.3 The relationship between the State and the NSAs

The relationship between the two has been subject to criticism and debate on the African continent. Local communities and civil societies are pressurizing governments to beat the hand (of the NSA) that feeds it, not satisfied with the manner in which NSAs operate. For instance, land rights of local communities are being taken away or the environment being degraded or contaminated without any regard for their fundamentally protected rights.⁵³ This tension is precipitated by the fact that both the state and NSAs no longer play according to the rules of the game. African Governments, on one hand, are required to ensure compliance with their domestic environmental standards.⁵⁴ On the other hand NSAs are required to make profit and to develop poor African countries, eradicate poverty through equitable distribution of profit and local participation in projects without ignoring or violating environmental rights.

African governments have ignored the local outcry that NSAs are involved in many direct or indirect violations of political, social, economic or cultural dimensions.⁵⁵ In Nigeria, since the hanging of Ken Saro-Wiwa,⁵⁶ the struggle by oil producing areas has continued to grow. The activities of oil companies operating in the Niger Delta in joint venture with the national oil company are frequently disrupted by activists from local communities seeking redress for a host of grievances against the Nigerian state.⁵⁷ In Ghana, the environment, especially the mining sector is bedevilled with serious environmental hazards that impact negatively on the health and lives of the people. But the governments seem to be unconcerned and even not ready to address the concerns.⁵⁸

⁵³ This is illustrated by the destructive and selfish role played by oil development in Ogoni land, closely tied with repressive tactics of the Nigerian Governments and the lack of material benefits accruing to the local population. See the SERAC case (note 3 above).

⁵⁴ Contrary to that is the SERAC case where the Nigerian governments sacrificed part of its population only to create a viable and stable sustainable environment for MNCs by facilitating the destruction of the Ogoni land, thus giving the green light to private actors-oil companies-to devastatingly affect the well-being of the Ogoni's. See the SERAC case (note 3 above).

⁵⁵ An example is the serious allegations that the Royal Dutch Shell was involved in the repression of the Ogoni people in Nigeria, notably in helping the Nigeria military regime to arrest Ken Saro-Wiwa and other opponents. For detail discussion see S Danilov 'The Accountability of NSAs for Human Rights Violations: The Special Case of Transnational Corporation' October 1998.

⁵⁶ <<http://www.humanrights.ch/bi/dungarbeit/seminaire.pdf>> (accessed on 05 August 03).
He is a poet and a play writer who was hanged for speaking out against the environmental damage to the Niger Delta caused by Shell Oil Company through its 37 years of drilling in the region. He was campaigning for the most basic human rights such as the right for clean air, land and water. For detail discussion see 'Ken Saro-Wiwa and 8 ogoni people executed: blood on shell's hands' on <<http://archive.greenpeace.org/comms/ken/murder.html>> (accessed on 23 October 2003).

⁵⁷ For detail discussion see I Oguine 'Nigeria's Oil Revenue and the Oil Producing Areas Vol 4-10'2000<<http://www.Dundee.ac.uk/cepmlp/journal/html/vol4-10.html>> (accessed on 01/03/03).

⁵⁸ G A Sarpong. See (note 45 above) 119.

2.4 Conclusion

The global changes limiting state control are particularly relevant to the field of ESCR. While civil liberties and formal political rights are generally consistent with the demands of the market place, ESCR are often at odds with these demands. The application of human rights laws to NSAs is well supported under international law.⁵⁹ In any situation of human rights and environmental rights violation, the investigation initially focuses on the government's obligations despite the fact that a private company⁶⁰ may have been responsible for the damage.⁶¹

In the SERAC case the African Commission showed little sympathy for the technicality that private companies are legally exempted from human rights claims, since they do not sign covenants guaranteeing human rights and that only the Nigerian state is responsible for ensuring these rights.⁶² This is a serious issue of concern since the insistence on sole governmental obligations obscures the true nature of the violation and reinforces the SPDC's impunity. The real potential of human rights lies in its ability to change the way people perceive themselves *vis-à-vis* the governments and other actors. Rights make it clear that violations are inevitable or natural but arise from deliberate decisions and policies. By demanding explanations and accountability, human rights expose the hidden priorities and structures behind violations. Thus the demystification of human rights, both in terms of their economic and social content and their applicability to NSAs constitutes critical steps towards challenging the conditions that creates and

⁵⁹ International law has long contemplated duties for NSAs. Early treaties outlawing piracy and slavery were clearly directed at private parties. The imposition of duties on private parties is also found in the 1948 Genocide Convention, which declares that "persons committing genocide shall be punished, whether they are constitutionally responsible rulers, public officials or private individuals." The Nuremberg Tribunal lent strong support to this principle by trying both state actors and private individuals, "international law binds every citizen just as does ordinary municipal law. Acts adjudged criminal when done by an officer of the Government are criminal when done by a private individual." The 1950 Principles of the Nuremberg Charter and Judgment state: "Any person who commits an act which constitutes a crime under international law is responsible and liable to punishment." The Geneva Conventions also contain a minimum set of obligations applicable to all parties to a conflict, regardless of their status as state or NSAs. See C Jochnick (note 19 above). 62, 63.

⁶⁰ For example SPDC. For detail discussion see the SERAC case (note 3 above).

⁶¹ The SERAC case (See note 3 above).

⁶² J Oloka-Onyango 'Reinforcing Marginalized Rights in an Age of Globalisation: International Mechanisms, Non State Actors and the Struggle for People Rights in Africa. A paper presented at the Washington College of Law, American University and New York University School of Law (Fall 2002). Unpublished 35.

tolerate poverty.⁶³ The American Declaration of the Rights and Duties of Man⁶⁴ is even clearer about private duties:

“the fulfilment of duty by each individual is a prerequisite to the rights of all. Rights and duties are interrelated in every social and political activity of man.”

Both the ICCPR and the ICESCR reaffirm the obligations of individuals: “that the individual, having duties to other individuals and to the community to which he [sic] belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant.”⁶⁵ Recent international conferences and UN body resolutions continue to push for human rights and environmental accountability from corporations. For example, the Rio Declaration⁶⁶ and the Copenhagen Declaration on Social Development⁶⁷ both underscore the responsibilities of MNCs with regard to development and the environment. In addition the UN Secretary General has stated that MNCs have a duty to promote the right to development. Likewise, both the UN General Assembly⁶⁸ and the Commission on Human Rights⁶⁹ have addressed the need for MNCs to promote human rights and prevent further violations. These various resolutions and declarations substantiate a continuing interest in applying rights obligation directly to corporations.⁷⁰

⁶³ More recently, the UN Commission on Multinational Corporations produced a comprehensive code for MNCs after twenty years of drafting and negotiations. While the code was never adopted, its human rights provisions are relevant insofar as they are the product of lengthy consideration and consensus, among the drafters. These human rights provisions mandate, among other things, that [t]ransnational corporations should respect the social and cultural objectives, values and traditions of the countries in which they operate. They shall respect human rights and fundamental freedoms in the countries in which they operate. See *Development and International Economic Co-operation: Multinational Corporations, Letter Dated 31 May 1990 from the Chairman of the Reconvened Special Session of the Commission on the Transnational Corporation to the President of the Economic and Social Council*, U.N. ESCOR, Comment on Transnational Corps., 2nd Session., Agenda Item 7, U.N. Doc. E/1990/94 (1990).

⁶⁴ Approved by the Ninth International Conference of American States, Bogotá, Colombia, 1948.

⁶⁵ C Jochnick (See note 19 above) 63.

⁶⁶ Rio Declaration on Environment and Development, *adopted* 13 June 1992, U.N. Conference on Environment and Development, U.N. Doc. A/CONF.151/26 (vol.I) (1992), *reprinted in* 31 I.L.M. 874 (1992).

⁶⁷ Copenhagen Declaration on Social Development and Programme of Action, Report of the World Summit for Social Development, *adopted* 12 Mar. 1995, U.N. Doc. A /C O N F.166/9 (1995) available in <gopher://go pher.undp.org /70/00/unconfs/wssd/summit/off/a--9.en>. (accessed on 20 August 2003).

⁶⁸ See *The Impact of Property on the Enjoyment of Human Rights and Fundamental Freedoms*, *adopted* 11 Feb. 1988, G.A. Res. 42/115, U.N. GAOR, 42d Session, Agenda Item 105, at 2, U.N. Doc. A/42/115 (1988).

⁶⁹ See Commission on Human Rights, C.H.R. Res. 1987/18; C.H.R. Res. 1988/19.

⁷⁰ The UN Sub-Commission on Prevention of Discrimination and Protection of Minorities has recently begun to focus attention on MNCs and human rights. See Resolutions 1995/34, 1996/39.

African governments are obliged to ensure that the right to a healthy, clean, decent and balanced environment is protected and enforceable against any persons. Obligations undertaken under international environmental law instruments should be put into effective use thereby protecting the vulnerable people from activities that threaten or degrade their environment. There should be an effective ongoing monitoring of environmental projects in terms of environmental standards. States are in a better position to ensure that the NSAs respect the people and the environment in countries they operate. Despite many African countries being poor and requesting for development, they also need their natural environment, their cultures and traditions, in other words, their human dignity. Development without dignity is a hollow concept and if it results in environmental degradation or in people dying then it is not worth having it.

3. THE NSAs: THE MAIN ENVIRONMENTAL ACTOR

3.1 Introduction

The most prominent actors in the economic sphere are NSAs and their activities in international trade, finance and investments have numerous implications for the observation and protection of human rights, especially ESCR.⁷¹ They hold significant economic and political power in the world and in some cases wield more power than individual states.⁷² There is an estimated 63 000 MNCs throughout the world with more than 700, 000 affiliates and subsidiaries. The 100 largest MNCs are located in developed countries, such as the United States of America (USA), Germany and Australia.⁷³ Africa has hosted a wide variety of MNCs from developed countries. Human rights and environmental violations perpetrated by NSAs usually take place in developing countries with lower standards and weaker enforcement mechanisms for labour, environment and human rights norms.

It is a fact that developing countries need development, they need roads, railway lines, bridges, oil wells, dam projects and housing. Most Sub-Saharan African economies remained heavily dependent on oil, gold, gas and mineral extraction (See Annexure A, attached hereto). Under the development paradigm the world is presently pursuing capitalism where direct and indirect capital is the main tool of development. Sub-Saharan African countries cannot afford but look to NSAs to fulfil their much needed capital needs for development. On the other hand, they need their environment, cultures and traditions.

There are over 200 million indigenous people in the world, many of them living in extremely vulnerable ecosystems, such as tropical rain forest and mountains. These lands come under increasing pressure for economic exploitation. NSAs see the territories used and occupied by indigenous people important repositories of mineral deposits, hydroelectric potential and oil. These vulnerable groups are particularly affected by environmental harm caused by NSAs.⁷⁴ Despite the intensive exploitation of

⁷¹ See J Oloka-Onyango (note 62 above) 40, 41.

⁷² See S Reddy (note 13 above).

⁷³ As above.

⁷⁴ D Shelton 'Environmental Rights' in P Alston (ed) *People Rights* Vol IX/2 2001 Oxford University Press. 36-7.

Sub-Saharan Africa's natural resource wealth, poverty is on the rise.⁷⁵ While natural resource wealth may seem to hold potential for contributing positively to Africa's economic development, in practice it has been difficult to convert resource wealth into broad based improvement in economic growth and human development. In all of the above instances NSAs are responsible for activities that have been driven by profit that almost always blind them and their boardrooms from their social and environmental responsibilities. Most investment decisions are not made on the basis of environmental criteria. Tackling environmental problems is an essential component of sustainable development but there is an undemocratic relationship between alleviating poverty and improving the environment.⁷⁶

This chapter examines NSAs and the activities they engage in by attempting to promote economic growth, eradicate poverty, ensuring basic standards of living with better health care services and a clean, decent and sustainable environment. Most of these activities are flawed and fail to convince vulnerable groups of a better life and healthier environment.

3.2 International Financial Institutions: the fiscal manager, funder and promoter of projects

The Bank's financial support in Africa is guided by the Africa Regional Environmental Strategy which emphasises the need to maintain the environmental goods and services that are fundamental to sustainable development.⁷⁷ The strategy targets aspects of environmental management and degradation that most affect the poor:

- (a) management of natural resources for livelihood and energy, including land, soil and biological resources,
- (b) environmental conditions affecting health and
- (c) vulnerability to environmental disasters and extreme events, including the impact of climate change.

⁷⁵ S Pegg 'Poverty Reduction or Poverty Exacerbation'? The Bank Group Support for Extractive Industries in Africa April 2003 <<http://www.environmentaldefense.org/pdf>> (accessed on 23 June 2003).

⁷⁶ D Chudnovsky 'Investing in the Environment' in Global, Poverty, Trade and Development: *Our Planet* UNEP VOL. 13 No. 4. 2002.

⁷⁷ A Kiss 'Africa Region' in *Environment Matters at the World Bank: Towards Environmentally and Socially Sustainable Development*, Annual Review 2002.

In Africa, the Bank's mission to fight poverty is closely intertwined with environmental protection and natural resources. A great deal of attention has been devoted to the human rights impacts on IFIs like the Bank and the IMF. These institutions play a vital role in the ability of African governments, to provide for the general welfare of their populations. For example, the Bank is the largest source of international funding for development programs.⁷⁸ Bank funded projects dominate economies of third world countries to the extent that the Bank is a virtual household name (see Annexure C attached hereto).

However the projects they fund often directly implicate violations of both CPR and ESCR. In both rural and urban areas, the Bank has projects. Schools are being built or rehabilitated; dams and canals are being constructed together with water reticulation systems, hydroelectric projects and resurfacing of roads. All of them are funded by the Bank.⁷⁹ Examples include, Lake Malawi (shared by Malawi, Tanzania and Mozambique), Lake Chad projects, Mozambique Transfrontier Conservation Areas and the recently approved South Africa and Lesotho Maloti Drakensberg projects. Various Bank projects in developing countries have been initiated without due regard to local needs and environmental concerns. Their potential for violations is directly related to the tremendous influence they exercise over the economies of developing countries.

Structural adjustment packages (SAPs) demanded by both the Bank and the IMF often have widespread serious impacts on human welfare. The UN Special Rapporteur on ESCR lists the following components of SAPs that threaten human rights:

- (a) devaluation of local currency;
- (b) decrease of governments expenditure on public services;
- (c) abolition of price controls;
- (d) imposition of wage controls;
- (e) reduction of trade and foreign exchange controls;

⁷⁸ A confluence of economic and political circumstances in the 1970s left many African countries destitute, highly indebted and dependent on the Bank and other international lenders for assistance, yet donor assistance from the bank and other agencies did little to improve the desperate financial situation of Africa. Many African countries received multiple adjustment loans during the 1980s and 1990s-including 26 for Cote d'Ivoire and Ghana, 21 for Senegal, 20 for Uganda and 18 for Zambia. See (Annexure B attached hereto); See also S Pegg (note 75 above).

⁷⁹ M Hansungule 'Access to Panel: The Notion of Affected Party, Issues of Collective and Material Interest' in G Alfredsson and R Ring (eds) *The Inspection Panel of the World Bank: A Different Complaints Procedure*. 153.

- (f) restrictions on domestic credit,
- (g) reduction of the role of the state in the economy;
- (h) increasing basis for the export economy;
- (i) decreasing imports; and
- (j) privatization of public enterprises.⁸⁰

These policies have been particularly devastating to vulnerable sectors of the population, such as indigenous people, the poor, women and children. Additionally, many of the development projects funded by the Bank have involved gross human rights abuses and environmental degradation, including forced evictions.⁸¹ Beyond the substantive impacts IFIs involvement in development decisions often move the locus of decision making further from affected communities, making policies less transparent,⁸² participatory and accountable to traditional democratic processes.

Negotiations with the IMF over debt reduction and over SAPs, both of which have broad effects on development policies, are almost exclusively carried out behind closed doors with only the involvement of finance ministries.⁸³ While the Bank and IMF readily concede their impact on human rights they have refused to hold themselves accountable to human rights standards. They have justified this policy on the basis of their constitutive charters, which arguably limit their mandate to the consideration of "economic" factors--distinguishing human rights concerns as "political."⁸⁴

⁸⁰ *The Realization of Economic, Social and Cultural Rights, Second Progress Report Submitted by Mr. Danilo Türk, Special Rapporteur*, U.N. ESCOR, Commission on Human Rights., Sub-Commission on Prevention of Discrimination and Protection of Minorities, 43d Session., Agenda Item 8, 85, U.N. Doc. E/CN.4/Sub.2/1991/17 (1991).

⁸¹ See S Pegg (note 75 above).

⁸² The Bujagali is a 200 MW hydropower project on the Victoria Nile in Uganda, developed by AES Corporation. It is supported by the bank through loans and risk management facilities from the IFC and IDA. A group of Ugandan Non-Governmental Organisations (NGOs) and individuals filed a claim with the Inspection Panel, claiming that the proposed project violated eleven of the bank policies. The panel noted that the management violated the bank's information disclosure policy when it withheld the Economic Review of the Bujagali project from the public despite repeated requests from NGOs. See IRN Inspection Panel Review: A Review of the Bank's Inspection Panel Report on the Bujagali Hydropower Project <[http:// n.org/p rograms/bujagali/wb.Bujagali paper.pdf](http://n.org/programs/bujagali/wb.Bujagali%20paper.pdf)> (accessed on 21 June 2003).

⁸³ The Special Rapporteur's study of IFIs concludes that "the relative decline of national sovereignty and domestic control over local economic processes and resources and the corresponding growth in the level to which the international financial agencies directly influence domestic policy decisions are clearly aspects of the adjustment process which conclusively affect economic, social and cultural rights." See D Türk (note 80 above).

⁸⁴ Articles of Agreement of the International Bank for Reconstruction and Development, 7 Dec. 1945, Article. IV, 10, 60 Statute. 1440, 2 U.N.T.S. 134, as amended, 16 U.S.T. 1942, (17 Dec. 1965)

While these charter limitations provide the Bank and the IMF with a defence against CPR obligations they pose no ostensible limitation to ESCR obligations. On the contrary, both the Bank and the IMF increasingly consider poverty alleviation and a number of related welfare concerns to be central to their missions.⁸⁵

However, the affected Lesotho communities have begun to question the dominant global economic prescription offered by the IMF and the Bank⁸⁶, which frequently saddle developing countries with loan conditions that increase the pressures on natural resource exploitation with devastating environmental consequences. Among other things, these SAPs significantly increase the rate of forest harvesting, mining and fishery harvests. While these SAPs are increasing natural resource exploitation, many governments are also being directed to reduce public spending, including funds for environmental protection and natural resource management. To make matters worse, large structural adjustment loan packages heap additional debt onto already heavily indebted countries.

available in <<http://www.worldbank.org/html/extdr/backgrd/ibrd/arttoc.htm> The Bank and its officers shall not interfere in the political affairs of any member. Only economic considerations shall be relevant. Articles of Agreement of the International Monetary Fund, 27 Dec. 1945, 60 Statute. 1401, 2 U.N.T.S. 39, as amended, 20 U.S.T. 2775, Article. IV, 3(b), (1 Apr. 1978) <<http://www.imf.org/external/pubs/ft/aa/aa04.htm#3>> "respect the domestic social and political policies of members and in applying these principles pay due regard to the circumstances of members". The Bretton Woods institutions (the IBRD and the IMF) were originally conceived as the "economic" partner to the "political" UN institution. However, both institutions have already broadened the interpretation of economic consideration to include "good governance" and environmental concerns on the grounds that these issues have economic impacts. The Inter-American Development Bank charter contains similar provisions against considering human rights. The European Bank for Reconstruction and Development, on the other hand, considers human rights to be central to its purposes.

⁸⁵ As the President of the Bank forcefully declared in 2003's meeting of the Bank and the IMF: "We must address the issues of long-term equitable growth on which prosperity and human progress depend. We must focus on social issues if we do not have greater equity and social justice, there will be no political stability and without political stability no amount of money put together in financial packages will give us financial stability." C Jochnick (See note 19 above). 70, 71.

⁸⁶ It is the largest water scheme of its kind in the world. It is a brilliant engineering feat surpassed by none of its kind and has opened once inaccessible rugged Lesotho highlands through a series of roads that lead to its large reservoirs such as the Katse, Mohale and Muela dams. It is a multi-billion Dollar project called the Lesotho Highland Development Project which enjoys the financial support of multi-national corporations such as the Bank and injects millions of Maloti into the Lesotho economy by selling water to South Africa. However, in all the places that were affected by the project, it has left a trail of poverty, hopelessness, discontent and despair despite earlier promises that communities affected by the construction work of the enormous project would enjoy benefits that would upgrade their standard of living and ensure sustainable development of their areas. See T Thakalekoala 'Lesotho High Land Development Quarry is a Menace to the Ha Ntsi Community' <<http://www.irn.org/programs/Lesotho/index.asp?ihtml>> (accessed on 23 August 2003).

Natural resources form the backbone of Africa's economy and provide the life support system for most of its people. As most people directly depend on natural resources for their livelihood they are particularly vulnerable to the effects of environmental change.⁸⁷ Despite the presence of NSAs the environment has continued to deteriorate and poverty has deepened despite attempts by the local-partner (governments) to halt or reverse degradation.

Sovereign nations should be able to retain the right to regulate foreign investors operating in their territory and to determine the extent to which local people should be given preferential treatment with respect to their local resources. Ensuring that local people benefit from natural resource extraction is not only fair but, in the long run, likely to lead to more sustainable development.

3.2.1 Inspection Panel

Bank policies have been applied without regard to the interest of local people and the Bank staff applying these rules and procedures ignore the rights and interest of the people in affected areas. The situation has not been helped by local partners-national governments. The harm and injury inflicted on local people by the Bank either due to the failure of its officials to adhere to the policies of the Bank, or for any other reason, remained uncorrected because there was no system of detection and redress within the Bank.⁸⁸ The need for the Bank to increase its visibility in regard to its operation and conduct in today's rapidly changing environment cannot be overemphasised. The Panel is the Bank's idea to respond to complaints about the effect of its operation in borrowing countries. It was created to transform the Bank into a transparent and accountable sustainable development organisation. This reform reflected a growing awareness that public tax from donor countries were going to support projects in borrowing countries

⁸⁷ Africa's Environmental Outlook in Our Planet: The UNEP Magazine for Environmentally sustainable Development, Vol 13. No 3 2002.

⁸⁸ Today the image of the Bank from the point of view of ordinary people is that it is an uncaring institution which takes no regard of the results of its actions or omissions however detrimental these may be to the local population. Where poor victims try to turn to their states for redress, they would most often be viciously met with harassment by state officials and politicians who as a rule do not tolerate such actions from their citizens. See M Hansungule (note 79 above) 144. The Bujagali project is the example where Ugandan groups that filed a complaint with the Panel have come under strong pressure from Uganda's governments for allegedly acting against the national interest. See (note S Pegg 75 above).

that had adverse effects on local and global environment and that seemed to exacerbate rather than alleviate poverty.⁸⁹

Among prominent reforms undertaken were the adoption by the Bank of a set of environmental and social policies that aimed at improving the environmental, human rights and citizen participation record of the Bank. These include policies to ensure environmental assessment, consultation with indigenous people in projects that affect their rights, access to information by the public and appropriate compensation for local people who are forcibly resettled by Bank-financed projects. In most cases policies that were supposed to ensure social and environmental sustainability have been routinely ignored by Bank staff and the policies seemed to have little or no significant impact on improving the environmental and social profile of the Bank's overall portfolio.⁹⁰

Although the panel process has become highly politicized, in almost every instance claimants have received some relief and have triggered important discussions and debates about reforms at the highest level of the Bank. The Panel embodies a unique approach to increasing accountability at an international institution, in that it places power in the hands of the citizens, often living and working at the project level. It has the potential to bridge the gap between top-level decision makers at the Bank and those who feel the impact of these decisions. The Panel further provides an important opportunity for the Board to receive local-level information about the quality of project design and implementation and to hear directly from the people who are affected by the projects approved by the Board.

Growing public awareness about fundamental human rights means that more and more people will try to get involved in the activities of such important organs of society-as the Bank- in order to understand how it operates and to find out if it takes the interest of the people into account in its operation. The Lesotho project demonstrates that the promises made at the time of controversial projects are largely ignored and forgotten during project implementation. The IFIs have yet to prohibit funding for projects that exacerbate the very same problems that these global environmental regimes are meant to address

⁸⁹ See D Clark and D Hunter 'The World Bank Inspection Panel: Amplifying Citizen Voices for Sustainable Development' 167, 168 also M Hansungule (see note 79 above) in G Alfredsson and R Ring (eds) *The Inspection Panel of the Bank: A Different Complaints Procedure* 143.

and to formalize into international law a reduction in the power of national and local governments to control the environmental and social impacts of foreign investment.

The IFC recently created an Ombudsman's office⁹¹ to hear citizen complaints and it is also considering creating an inspection panel. Another recent citizen forum is the petition process of the North American Free Trade Agreement (NAFTA) Commission on Environmental Cooperation through which citizens can question the effectiveness of any NAFTA country's environmental enforcement efforts.⁹² All these citizen forums need to be strengthened and others created to expand the role of citizens in protecting their environment. However most people are still not aware of such complaint mechanism and the Bank must ensure this is known to the public before being affected by its projects.

3.3 Multinational Corporations

MNCs are well-established institutions in national and international economic affairs and have responded well to the changing demands of society.⁹³ They have also left the negative environmental impact on the society they conduct their operations. MNCs have benefited from home and host governments policies as well as the decisions of inter-governmental institutions such as the Bank, IMF, Organisation of Economic Co-operation and Development (OECD) and recently, the World Trade Organisation (WTO). While it cannot be said that they have replaced the State as the unit of official power it must be admitted that the decisions and activities of NSAs carry considerable weight in national and international policy-making. Grouped together in trade associations with the active support of their home countries, MNCs exercise an inordinate influence over local laws and policies.⁹⁴

⁹⁰ The best example is the Lesotho High Land Development Quarry. See T Thakalekoala (note 86 above).

⁹¹ For detail discussion See '*Ombudsman: Information about the Compliance Advisor/Ombudsman (CAO) Ombudsman Function* <<http://www.cao-ombudsman.org/ev.php>> (accessed on 25 September 2003).

⁹² The Commission for Environmental Cooperation (CEC) is an international organization created by Canada, Mexico and the United States under the North American Agreement on Environmental Cooperation. The CEC was established to address regional environmental concerns, help prevent potential trade and environmental conflicts and to promote the effective enforcement of environmental law. The Agreement complements the environmental provisions of the NAFTA. See R L Barsh and N Khattak 'Non-Governmental Organisations in Global Governance' in G Alfredsson and M Stavropoulou (eds) Vol. 10 2002 Justice Pending: Indigenous People and other Good Causes 29. Also available in <http://www.cec.org/who_we_are/index.cfm?varlan=english> (accessed on 23 October 2003).

⁹³ See M K Addo (note 25 above) 3.

⁹⁴ C Jochnick (See note 19 above) 65.

They are embarking on a free ride of exploration and exploitation of natural resources.⁹⁵ There is no regular program for monitoring the implementation and sustainability of environmental measures during the subsequent life of exploration. In areas where MNCs are operating there is:

- (a) no access to clean drinking water or alternative water facility,
- (b) increased health hazards with still no access to proper health care,
- (c) restricted access to lands for crop production for subsistence and absence of access to schools and
- (d) absence of access routes to communities.⁹⁶

Where there are MNCs communities have been exploited, houses and schools destroyed and water supplies polluted.⁹⁷ The local communities are not adequately compensated or forced to accept inadequate resettlement packages. Their impact on human rights ranges from direct role in violations, such as abuse of employees or the environment to indirect support of governments guilty of widespread repression.⁹⁸

⁹⁵ For example in Ghana, the mining sector contributes almost 60 percent of annual foreign exchange earnings but the sector employs only 5 percent of the country's labour force. In Mali, the Sadiola Gold Mine created approximately one mining job for every \$700, 000 invested based on the total project cost. In direct and indirect ways mining accounts for the high rate of unemployment in the {Tarkwa mining area} in Ghana. Large scale surface mining has taken up large tracts of land from the farmers and at the same time as mining activities do not provide enough jobs to match the total number of people laid off from agriculture as a result of impact of mining. Furthermore for more than 40 years after oil was discovered in the Niger Delta in Nigeria, the vast majority of people there still do not have access to basic infrastructure like electricity or pipe-borne portable water. See S Pegg (note 75 above).

⁹⁶ For example in Nigeria, the roads in place built by Shell Oil Company leads to oil installations by-passing the local villages. See S Pegg (note 75 above)

⁹⁷ For example in Nkwantakrom region of Ghana water from hand-dug wells and stream which is the main source of drinking water for the communities had a bad odour and unacceptable colour and faecal matter content. This resulted from raw sewerage and other effluents pumped into the stream Ghana Australian Goldfields. The village on the other hand has no alternative water facility. See S Pingel 'A Report of Human Rights Violations due to Gold Mining Activities by Ghana Australian Goldfields' <http://www.fian.de/goldghana/gog-rep.pdf> (accessed on 17 June 2003). See also J kuyek 'Canada Gold Mining Interests involved in Police Shootings in Ghana ' <<http://www.miningwatch.ca/publications/Tarkwa.html>> (accessed on 09 June 2003).

⁹⁸ In South Africa, the mining industry has created a human and environmental disaster with the biggest man-made disasters of the 20th century. Tens of thousands have been crippled. The disaster was brought about by short-sightedness, greed and an oppressive legislative framework that enabled the industry to externalise the real human and environmental costs of doing business by allowing it to pass these costs on their employees and neighbouring communities. Estimated to be between 300 000 and 500 000 people are now suffering from preventable occupational lung disease caused by the inhalation of harmful dust and gasses. The company responsible, Cape plc agreed to pay R100-million to about 7 500 asbestos victims, while South Africa mining house Gencor and two of its subsidiaries, Gefco and Msauli, agreed to pay R450-million to compensate the victims. It is a warning to mining companies that they can and will be held accountable for the harm that they have done to thousands of people. The impunity they enjoyed over the last 100 years is no longer guaranteed. See R Spoor 'Mining Companies Deep in Debt' *Sunday Times*, 23 March 2003. 19.

Apparently despite so many decades of documented evidence implicating MNCs on environmental degradation few if any have been brought to local courts and formally charged.⁹⁹ Some domestic courts have been drawn into the effort to secure greater accountability whether through civil actions¹⁰⁰ or filing of criminal charges against company officials.¹⁰¹

In Lesotho, the judiciary seems to be aware of their role in protecting environmental degradation. A case concerns Acres International, a Canadian Engineering Company and other companies include Spies Batignolles and Larmeyer, later charged, is one of the multinational construction companies that are engaged in the Lesotho Highlands Water Scheme. It has been fined M22, 058,091 by the Lesotho High court after it was found guilty of paying bribes to the former Chief Executive of the Lesotho Highlands Development Authority (LHDA). The Judge found that the sentence is such that other international organisations would think twice before bribing a public officer in the country. Bribery begets corruption. It undermines economic growth, deters international investment and restricts efficient collection of taxes. It also undermines policy, trust and credibility of institutions. It was stressed that corruption could cause political and

⁹⁹ In Ghana 1997 the affected people brought the Company, Ghana Australian Goldfields, to the High Court for demolishing their buildings without any payment of compensation as required by the Constitution. After summons for directions was taken the case was adjourned more than 20 times. In 2001 the trial judge ordered both parties to take their case to the Land Valuation Board and adjourned the case indefinitely. However the plaintiff's case could not proceed with the Board since the Board claimed that it could not value the buildings because they had been demolished four years back. Further the Board stated that since one of the issues for determination touches on the very existence of Nkwantakrom region it could not determine that and the proper forum is the High Court. Since then the case has been adjourned for hearing. See Nana Kofi Kari Kari and 44 others <<http://www.cepil.org/casestory.asp?id=18>> (accessed on 09 June 2003).

¹⁰⁰ The US case *Doe v. Unocal* 963 F. 880 (C.D.Cal. 1997), also the case of *Ken Wiwa & Others v. Royal Dutch Petroleum Company & Shell Transport & Trading Company p.l.c* 98 Civ 8389 (SDNY).

¹⁰¹ Another case in Lesotho concerns a foreign engineering company named Lameyer, was also fined more than M10 Million, after it was found guilty of having bribed a former Chief Executive of the LHDA, Masupha Sole by the High Court. When passing sentence, Justice Mofolo, said during the time Lameyer issued bribes to Sole, who had already been corrupted by other companies that were already giving him substantial amounts of money. He clarified that, the law of bribery is meant to protect the public against corrupt administration, as it is a serious offence that sticks at the roots of public administration. Bribery also disrupts development and that perpetrators must therefore be punished severely. He said when passing sentence, courts of law must look at the circumstances that could be imputed to perpetrators' generosity. A crime is an end result of economic and moral factors and that its punishment must not only be a deterrent, but should also be educational, courts of law must show no mercy when passing sentences, so that such sentences could be appropriate ones. See 'High Court Fines Engineering Company M10 Million <<http://www.lesotho.gov.ls/Articles /2003.htm>> (accessed on 16 September 2003). See *Rex v. Masupha Sole* (High Court of Lesotho; Ref CRI/T111/99, dated 20 may; Unreported).

economic unrest if efforts are not made to curb it; further bribery is a component of corruption that brings new behavioural norms and cited greed as one of its sources.¹⁰²

There is also reluctance on the funders of these MNCs to discourage further funding in cases of systematic violations of environmental rights. The greatest challenge to other African courts of law is to learn how to apply and uphold the environmental rights, if not directly, but through the existing laws in an endeavour to ensure the punishment of perpetrators whether a legal or natural person.

3.3.1 Codes of Conduct

Additional efforts have been made by individual corporations, industry associations and NGOs to develop codes of conduct covering various human rights.¹⁰³ These codes have covered a range of activities from working conditions, wages, free association, child labour, discrimination, environmental pollution and investment in countries deemed gross violators of human rights. While there is promise in some of these efforts, they carry a risk of legitimizing and thereby facilitating the existing practices as much as restraining them.¹⁰⁴ The fact that the codes are voluntary and largely established through corporate initiative has tended to preclude them from impinging significantly on corporate interests and certainly not sufficiently to address the massive violation of ESCR in which MNCs play a role.

3.4 Conclusion

As specialized agencies of the UN, the bank and IMF are obligated to promote the UN's human rights mission and as international organizations they are at least responsible for not violating customary international human rights law. Both institutions, like any other UN body or any other subject of international law, are bound by the UN Charter and have a duty to respect the postulates formulated in the Preamble to the Charter, the objectives of the Organization in the area of international economic and social cooperation, specific provisions contained in the Charter aimed at their realization¹⁰⁵ as

¹⁰² High Court Fines Acres International more than M22 Million.<<http://www.lesotho.govs/Articles/2002.htm>>28 October, 2002. (accessed on 10 May 2003).

¹⁰³ The well-publicized codes include those of Levi's, Reebok, Sears and Philips Van-Heusen. See generally Lance A. 'Compa & Tashia Hinchliffe, *Private Labour Rights Enforcement through Corporate Codes of Conduct*, 33 Columbia Journal on Transnational Law. (1995)

¹⁰⁴ Most see the in-house ethics efforts of corporations being adopted more for public relations than for the good of the public. The truth is corporations are no more capable of acting ethically than they are of acting lovingly. See Gerry Spence, 'With Justice for None' Crown Publishing Group (1988) 277.

¹⁰⁵ Article 56 of the UN Charter charges each member nation to help the UN to achieve goals set forth in Article 55. While Article 55 states that with a view to the creation of conditions of stability and

well as in other international instruments including, inter alia, the International Covenants on Human Rights, international conventions, including the international labour conventions and resolutions and declarations of the UN.

The UN Committee on ESCR has underscored the human rights obligations of these institutions, noting that:

*“the international agencies should scrupulously avoid involvement in projects which, for example, violate the environmental human rights or large-scale evictions or displacement of persons and those IFIs promoting measures of structural adjustment should ensure that such measures do not compromise the enjoyment of the right to adequate housing.”*¹⁰⁶

These obligations are further highlighted and bolstered by recent UN conferences that have made explicit reference to IFIs urging them to "assess the impact of their policies and programmes on the enjoyment of human rights" and underscoring their "special responsibility" to promote human rights through international cooperation.¹⁰⁷ Additionally, the UN Commission on Human Rights has recently issued a number of resolutions touching on IFI responsibilities.¹⁰⁸ Poverty reduction, the Bank emphasises, entails helping poor people to manage risks and vulnerabilities. The environmental impacts of resource extraction increase the vulnerability of the poor to health problems from air, water pollution and exacerbate the adverse effects of global climate change more generally.¹⁰⁹

well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall **promote**:

(a) higher standards of living, full employment, and conditions of economic and social progress and development;

(b) solutions of international economic, social, health, and related problems; and international cultural and educational cooperation and

(c) universal respect for and observance of human rights and fundamental freedoms for all without any distinction as to race, sex, language or religion.

¹⁰⁶ *International Technical Assistance Measures*, General Comment No. 2, U.N. ESCOR, Committee on Economic, Social & Cultural Rights, 4th Session, 6, U.N. Doc. E/C.12/1990/23 (1990). See also *The Right to Adequate Housing*, General Comment No. 4, U.N. ESCOR, Commission on Economic, Social & Cultural Rights, 6th Session, 19, U.N. Doc. E/C.12/1991/4 (1992). See also *Globalization and Economic, Social and Cultural Rights: Statement by the Committee on Economic, Social and Cultural Rights*, Commission on Social and Cultural Rights. (1998).

¹⁰⁷ Report of the United Nations Conference on Environment and Development, U.N. Conference on Environment and Development, Agenda 21, 38.41, A/Conf.151/26 (Vol. III) (1992).

¹⁰⁸ The Realization of Economic, Social and Cultural Rights: Preliminary Set of Basic Policy Guidelines on Structural Adjustment Programmes and Economic, Social and Cultural Rights, Report of the Secretary-General Prepared in Pursuance of Resolution 1994/37, U.N. ESCOR, Committee on Human Rights and Sub-Committee on Prevention of Discrimination and Protection of Minorities, U.N. Doc. E/CN.4/Sub.2/1995/10 (1995).

Ultimately, the problem may be that liberalizing trade and investment is too often viewed as a positive goal in its own right. Goals such as environmental protection, human rights and social equity—which are arguably more closely linked to human welfare than is liberalized trade—have been relegated to the back seat in the drive towards free trade. IFIs and MNCs need to do a better job of mainstreaming concerns about the environment into their day-to-day operation. This general issue is highlighted by the way in which these institutions relate to multilateral environmental agreements. Indigenous people's culture and ethnic integrity has been disrespected for long. There will be no peace, stability and justice if the environment is degraded without either liability or responsibility for those responsible. Human rights offer these communities an alternative dialogue guaranteeing them a right to a healthy environment that was clearly being violated by NSA's regular environmental rights violation.¹¹⁰

¹⁰⁹ S Pegg (note 75 above).

¹¹⁰ See Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador"), OEA/Ser.P/ XVIII.O.2, Article 11 (1989) (guaranteeing the right to a healthy environment).

4. A SHIFT IN APPROACH: FROM STATE TO NSAs RESPONSIBILITY

4.1 Introduction

The subject of corporate responsibility exceeds the narrow focus on economic norms such as director's duties to shareholders and reporting obligations. Indeed as one writer has noted the responsibility of NSAs is today defined by norms of global environmental sustainability, accountability and transparency of corporate entities, respect for human rights, free trade as well as the inseparability of corporate global undertakings, all of which broaden the basis upon which NSAs are held accountable.¹¹¹ Not all corporate responsibilities are grounded in law, some including many popularly canvassed concerns, are matters of moral rather than legal obligation. However, this should not undermine their importance because of their close relationship with legal obligations.¹¹² After all, today's social or moral concerns are likely to be tomorrow's legal obligations. The development of legal obligations relating to environmental matters is an example of this progressive development of social concerns into legal obligations.¹¹³

The responsibility of a corporate institution on account of their separate and independent legal character is well supported. It complements the notion that corporations have a capacity of their own. On account of the theoretical proposal of H.L.A Hart a responsible entity is one capable of exercising control and able to make choices. Corporations can be seen as capable of their own separate responsibilities.¹¹⁴ This approach moves away from the so-called identification doctrine by which responsibility is always derived through corporate officers.

Responsibility based on organisational principle requires business to be responsible for the outcomes relating to the primary and secondary areas of their involvement within the society. The law has remained a key avenue through which the nature, place, role and responsibilities of corporate institutions are defined. This chapter deals with the application of norms and standards outlining the full responsibilities and liabilities of NSAs, on the basis of an analogical extension of individual responsibility without implicating the state.

¹¹¹ See M K Addo (note 25 above) 12.

¹¹² As above 13.

¹¹³ As above 16.

¹¹⁴ As above. 17, 18.

4.2 The Need for Change

International law has long been considered the exclusive province of state actors, as treaties and the primary instruments of international law existed to govern relations between states.¹¹⁵ The establishment of human rights instruments was revolutionary in the sense that it recognized a new subject of international law, private individuals. But this recognition was limited largely to individuals as the holders of rights, with states still considered the principal, if not exclusive, holders of duties.¹¹⁶

The exclusive concern with national governments not only distorts the reality of the growing weakness of national-level authority but also shields other actors, such as NSAs, from greater responsibility. The focus on state responsibility also creates a false sense of rigidity or inevitability about social and political hierarchies and existing inequities. International human rights law perpetuates the notion that private actors are and by implication should be only accountable to states, not individuals and that other states are and should be only accountable to their own populations.¹¹⁷

There are well-established normative standards in the human rights field which are sufficiently global and multidisciplinary to provide a legal basis for directing corporate behaviour in their social or political and economic persona. The responsibility of these bodies can clearly be encapsulated within the broad human rights legal framework.¹¹⁸ There is some convincing evidence that MNCs do not adopt proactive social policies without some form of internal and external pressure. Internally, it arises from specific situations in which they find themselves. Shell in Nigeria is a good example in this respect. Externally, it arises from pressure that requires and encourages them not only to respect human rights but to protect them actively by developing and implementing effective social responsibility policies and procedures based on the principle that a company has responsibility for its impact on lives and the environment in host countries.¹¹⁹

¹¹⁵ As above 9.

¹¹⁶ C Jochnick See (note 19 above) 59.

¹¹⁷ C MacKinnon 'On Torture: A Feminist Perspective on Human Rights' in *Human Rights in the Twenty-First Century: A Global Challenge 21* Kathleen Mahoney & Paul Mahoney (eds). 1993. 61

¹¹⁸ See M K Addo (note 25 above) 23, 24.

¹¹⁹ P O'Reilly and S Tickell 'Transnational Corporations and Social Issues in the Developing World' in *Human Rights in the Twenty-First Century: A Global Challenge 21* Kathleen Mahoney & Paul Mahoney (eds), 1993.

4.3 Towards Fuller Accountability

The array of the treaties, declarations and resolutions demonstrate the interest and potential of bringing environmental rights to bear on NSAs. NSAs are only too eager to trumpet the importance of human rights but will rarely mention actual human rights obligations. The literature of the World Bank is full with commentary about its role in promoting ESCR but never suggests actual legal obligations.¹²⁰ MNCs are equally skilful at appropriating the language of human rights to their benefit.¹²¹ The whole concept of human rights is undermined by the notion that institutions will promote them at their own discretion.

Defining a human right as such allows for a process of developing reciprocal duties, monitoring conduct and holding actors accountable. Codes of conduct, policy directives and legislation must be tied to the larger framework of environmental rights in order to ensure the positive and integrated contribution of this legal obligation to human development. Furthermore, tying legal obligations to human rights imbues these laws with the necessary sense that rights and obligations derive from human dignity and not generosity or whim.¹²²

4.3.1 Responsibility and influence of Actors

Responsibility should correspond to an actor's influence and closeness to violations. The human rights system allots almost total responsibility to the state based on the presumption that the state has control over violations. However, because other actors have assumed much of this influence and control they should assume some of the corresponding duties. The US Supreme Court's recognition of state-like obligations for certain private corporation with state-like authority provides an illuminating example.¹²³ Likewise, humanitarian law places responsibility on non-state forces and third-party

¹²⁰ The Bank's submission to the World Conference on Human Rights is typical. In thirteen pages devoted to the importance of human rights and the many ways in which the Bank "is helping developing countries to make the enjoyment of economic and social human rights a reality," there is a serious avoidance of legal obligation. See *The World Bank and the Promotion of Human Rights*, U.N. Doc. A/Conf.157/PC/61/Add.19 1993.

¹²¹ With rising pressure from human rights advocates, corporations have become increasingly active in supporting and promoting human rights issues. See for example the web pages of Reebok, available in <http://www.reebok.com/humanrights/moore.html> and Royal Dutch Shell, available in <http://www.shell.com/values/content/1,1240,1216-1228,00.html> (accessed on 10 September 2003).

¹²² C Jochnick (See note 19 above) 76-77.

¹²³ These cases have involved a requirement on the part of corporations to respect First Amendment free speech rights even when they infringe upon private property rights. See *Marsh v. Alabama*, 326 U.S. 501 1946.

states based on their influence and control over the welfare of occupied or threatened population. For example, international law implicates states in the activities of terrorist groups that they harbour or finance. Thus, the International Court of Justice's (ICJ) decision holding the US governments responsible for the acts of the Nicaraguan Contras was based on the government's proximity and degree of influence over the Contras' violations of Nicaraguan sovereignty.¹²⁴ Such an imposition of state responsibility suggests interesting parallels for the legalization, headquartering, subsidization and general promotion of MNCs abroad.

4.3.2 Duty to Respect

All parties must be held to the most basic level of obligation, that of "respect." The UN Charter and the various, human rights treaties¹²⁵ require that states and specialized agencies ensure that their economic and political relations with other countries neither significantly threaten the ability of a country to provide for its population nor encourage or facilitate violations. As the UN Committee on ESCR states:

*Many activities undertaken in the name of "development" have subsequently been recognized as ill-conceived and even counter-productive in human rights terms. In order to reduce the incidence of such problems, the whole range of issues dealt with in the ICESCR should, wherever possible and appropriate, be given specific and careful consideration.*¹²⁶

The duty to respect¹²⁷ must be understood to encompass government's initiatives and activities that play a significant role in violations. Free trade agreements that fail to incorporate human rights concerns, foreign assistance that have negative impact on certain sectors of the population, SAPs excessive debt repayment schedules and the facilitation of NSAs activities without corresponding controls, may all implicate this duty to respect. Given the dramatic and growing gap between the richest and poorest

¹²⁴ Military and Paramilitary Activities (*Nicaragua. v. U.S.*), 1986 I.C.J. 4 (27 June) 107-09. The Inter-American Commission has recently held the Cuban governments responsible for deaths caused by the acts of a private shipping company.

¹²⁵ See the ICCPR, ICESCR and the African Charter.

¹²⁶ See the *International Technical Assistance Measures*, (note 107 above).

¹²⁷ For an effective protection of human rights, it is crucial that anyone who has the power to affect the right of others does so without violating or undermining them, this duty is therefore not one imposed exclusively on governmental or public officials. The duty to respect is applicable across all categories of human rights, including civil, political, economic, social and cultural rights. The responsibility to standardize good practice emerges as a legal duty rather as an exceptional moral undertaking. Without a doubt, most of these corporations have policies and activities which conform to their duty to respect the rights of others. However, not all of them conceptualize these policies as human rights concerns. See M K Addo (note 25 above) 27.

countries, the duty to respect may implicate a wide range of state policies that under-gird the current global economy.¹²⁸

Correlative to the duty of respect the rights of others is that not to impede the protection of rights and a negative obligation imposed on everyone including NSAs. Both duties are necessary for the effective protection of all rights. For most corporations, the greater impact of their duty not to impede the protection of the rights of others is likely to be felt in their relationship with governments and other public officials.¹²⁹ The supervisory responsibility of African governments under international human rights law to secure the rights of everyone requires them to take specific measures such as passing laws and establishing institutions to facilitate the protection of environmental and human rights.¹³⁰ Thus, for NSAs, this may require the initiation or engagement in dialogue with subsidiaries or agents in foreign countries or with the host country governments.

4.3.3 Procedural Obligations

Given the lack of legal precedents and guidelines, procedural obligations, such as transparency, monitoring, impact statements, consultation and participation, remedies may provide the most effective starting point for advocacy around ESCR, particularly with NSAs.¹³¹ Compared to other substantive components of ESCR, these obligations, such as requiring impact statements and accounting, are less threatening and more crucial because of their capacity to bring affected populations in defining and ensuring protection of their rights.

4.4 Problems of Enforcement

There are acute problems relating to the enforcement of environmental rights and basing NSAs responsibilities on international environmental and human rights standards is the most effective way of ensuring comparable standards across national jurisdictions. It is evident that there are number of issues relating to the environment, in Africa, which have not received the attention they deserve because they do not fall clearly within the sphere

¹²⁸ See M K Addo (note 25 above) 30.

¹²⁹ As above 29-30.

¹³⁰ See Article 1 of the European Convention on Human Rights (1950), Article 2 (1) of ICCPR (1966), Article 1 of the American Convention on Human Rights (1969) and Article 1 of the African Charter.

¹³¹ The Bank has taken significant steps in terms of impact studies, consultations, access to information and even some accountability (though not tied to human rights). The IMF, by contrast, remains highly insular and continues to negotiate its agreements with only the participation of the finance ministries and Central Bank. See D D. Bradlow, 'The World Bank, the IMF and Human Rights' *The World Bank, the International Monetary Fund and Human Rights*, 6 *Transnational Law and Contemporary Problems* 47 1996 76-78.

of responsibility of any particular authoritative body. In the event none of them has taken the initiative in attending to them.¹³² Environmental degradation in Africa is mainly due to neglect and exploitation of limitations and weaknesses of current legislation and regulations. For various reason they are not enforced and some NSAs deliberately ignore them because they view environmental compliance costs increase production costs and thus make some projects uneconomic.¹³³ However, the implementation of international environmental law depends on African governments through their supervisory roles under environmental and human rights treaties. Some African countries are not particularly keen on environmental rights protection themselves and therefore may not rely upon to fully ensure that NSAs comply with all their responsibilities.

This problem of enforcement can prove intractable especially in the present state of international law under which only the state concerned is called to account. NSAs can choose to hide behind governments at the international level. However, this problem should not prevent NSAs from implementing their environmental responsibilities fully despite the lack of support from host states. This is based on the fact that responsibility to respect the rights of others is their own rather than that of host governments and the entitlement to have one's rights respected is inherent in all persons irrespective of an enforcement procedure. Basically, the enforcement process gives qualitative effectiveness to environmental rights but its absence does not destroy the existence of the rights.¹³⁴

In addition to lowering environmental impacts, the benefits of managing environmental issues at an organisational level include compliance with regulatory requirements and with the corporation's own targets, improved public image, investor satisfaction and better relations with stake-holders such as local communities and regulatory authorities.¹³⁵ Good environmental performance reduces social and environmental costs for the host country, increasing internal stability and improving relations with multilateral financial institutions. The basic components of an effective environmental management

¹³² Ghana: Annual report Ghana Environmental Action Plan. Vol 1 1991 20.

¹³³ O Maponga and A Mutemererwa 'Zimbabwe: Gold and the Environment' in Mining and Environment Research Network, Bulletin No. 8 1993 33.

¹³⁴ See M K Addo (note 25 above) 31.

¹³⁵ A R Sweeting and A P Clark 'A New Geographic Focus: Mining in the Tropics' *Lightening the Lode: A guide to Responsible Large-Scale Mining* 2000 20 Conservation International 112.

system include the corporation's environmental policy, a review of environmental impacts, goals, objective setting. Others include community consultation throughout the entire project life, documentation and records of performance, emerging procedures, regulatory, legal compliance, environmental performance audits and emissions and performance monitoring.¹³⁶

4.5 Conclusion

The move away from responsibility of state actor's to that of NSAs will be resisted by the many powerful interests that benefit from the relative immunity provided by narrow conceptions of human and environmental rights. However, in a world of growing poverty, environmental degradation, exploitation of natural resources and marginalization, the constituency for a broader and truer vision of environmental rights grows ever larger. For the human and environmental rights regime to remain relevant to this constituency, it must be free to challenge the full range of actors that currently threaten human dignity.

¹³⁶

As above 20.

5. CONCLUSION

Non compliance with environmental rules, emergency response measures and the failure by NSAs to live up to their social responsibilities has largely contributed to the current debate.¹³⁷ Africa is a continent burdened by disease, poverty and armed conflict, faces significant obstacles in its way toward economic and political development. Indeed, these three issues—health, wealth and ethnic strife—interact with one another to make Africa the home of some of the world’s oldest and most intractable conflicts. In Sudan, Angola, Sierra Leone, Liberia and Congo, the lure of so-called “conflict diamonds,” as well as gold, oil and timber have made war a profit-driven enterprise.

To achieve sustainable societies sub-Saharan African countries must understand the forces that generate environmental problems and delay social and economic development. The causes of the economic, political and environmental problems in Africa are complex. The region must make the right analysis and prescribe the cure for today’s weakness and the prevention of tomorrows. Clearly to protect the region’s environment good political intentions must be prepared to be translated into practical collective actions.

While lawsuits in the ICJ are difficult to be brought against a company for violating environmental rights, companies can still be held responsible for violation of rights in national courts. Environmental rights are most effective where there is an independent, autonomous and sympathetic judiciary. At the national level, the question of enforcement focuses more closely on the role of the judiciary. The judiciary need to be sensitized and educated in matters concerning environmental rights so that they can know how to ensure environmental protection through enforcement and compliance. Therefore African courts need not be cowed by a ‘fear that their interpretations may be unprincipled and illegitimate and thus improperly activists’ and must not allow any political interference with its independence.¹³⁸

Even though, few tools exist to enforce environmental rights for corporations, legal action against them can and has proved to have the strongest tooth in making an impact

¹³⁷ E K Kwarteng ‘Controversies of Cyanide Spillage’ in the *Daily Graphic* 18 August 2003.

¹³⁸ F Du Bois ‘Social Justice and Judicial Enforcement’ in A Boyle and Anderson (eds) (See note 6 above) 75.

ending corporate impunity, deterring future environmental violations, providing the communities with a sense of justice and demanding accountability.

Environmental priorities provide a practical base for direct action and for national and international policies. They aim to reconcile the social, economic and environmental goals of development and to address the underlying causes of environmental degradation, human suffering, grinding poverty, unfair international economic relations, unsustainable life styles, uncontrolled consumption and irresponsible use of African resources.¹³⁹ Unless economic development and environmental protection are fully integrated there will be no secure future for either the wealth of the people or the health of the planet.

Therefore NSAs may minimise risks of loss, find new opportunities and sources of profit while at the same time promoting human and environmental rights by applying to their operations an individual human and environmental rights policy, based on a multidimensional approach, stakeholder co-operation and international environmental standards as a globally recognised standard. NSAs must be held accountable for failure to discharge their social responsibility. Therefore, there will be a need for African society to revise its attitude towards NSAs and their role in society.

¹³⁹ See note 87 above.

6. RECOMMENDATIONS

In order to have a decent, healthy, clean and sustainable environment, economic, political, social and cultural stability in Africa, like in other parts of the world, all sectors of the society must be involved in making the environment a better place through collective decision making. It is not late for NSAs to be champions of environmental and African governments, on the other hand, to begin to play an active role between its society and its trade partners (NSAs) through the regulation of any activity taking place in its territory. Recommendations are made to all stakeholders as follows.

International Financial Institutions must

- Adopt and enhance policies and procedures that ensure that their support to development activities does not lead to environmental deterioration.
- Agree on the means of ensuring compliance with environmental treaties and strengthening its established institutional complaint mechanism to verify their implementation and check their effectiveness in dealing with the problems which were designed to address,
- The World Bank and other lending agencies must make available to the public detailed information about their plans and fully involve the public in project planning,
- Democratize structures and policy making mechanisms of the Bank and the IMF. Shareholding procedures to allow for more meaningful participation and to create a sense of belonging among developing nations.

African governments must

- Seek assistance of UNEP and UNDP and other donors in facilitating the development and harmonisation of national regulations on environmental standards.
- In consultation with NSAs establish legislation which strictly controls MNCs environmental degradation by giving more power to the Courts and appropriate designated authorities without any interference to police compliance.
- Adopt a collective strategy as a fundamental approach to the development and protection of the environment. The objective must be to create an enabling environment which fosters popular participation, consensus building and eliminate civil strife and political instability,

- Enact, strengthen and ensure enforcement of environmental legislation on a wide range of environmental hazards,
- Integrate practical environmental education into all educational programmes,
- Work with stakeholders to develop a long-term, strategic plan to determine where development projects are appropriate and where it should be avoided,
- Avoid and minimise mining activity in forest reserves, national parks and lands that are home to voluntarily isolated indigenous people,
- Set priorities for conservation, community development, mining and other economic activities through consultation with stakeholders,
- Clarify and reform roles and responsibilities within and among government's agencies.

Concerning monitoring and enforcement African governments should

- Implement regular monitoring of compliance with environmental and social regulations,
- Institute a MNCs audit requirements to check the performance of MNCs,
- Ensure consistent and fair enforcement of regulations,
- Criminalise and punish violation of environmental and social statutes,
- Allow citizens to effectively have recourse to legal action in case of violations.

African Governments in Collaboration with NSAs must:

- Establish and strengthen appropriate environmental, health and safety standards,
- Establish and strengthen procedures for reviewing performances and monitoring,
- Ensure that new projects are designed and developed according to acceptable environmental standards.

MNCs

To adequately address environmental threats a suitable approach could be to:

- Formulate and ensure its effectiveness, a broad environmental management system that considers environmental impacts and potential mitigation measures purpose being to implement and review the general premise of environmental policy to which all MNC's action at all levels should respond,

- Identify, pre-empt and anticipate problems at their operations and take initiatives to address them without being forced,
- Take prompt measures to deal with crises,
- Implement a comprehensive environmental management plan and a rigorous system of performance monitoring
- MNCs must begin to take responsibility for environmental and human rights development issues that they have never been prepared to accept for,

It does not mean that they should take over the role of the governments but:

- Support the development of strong local governments and strong civil society to overcome the problems associated with for example oil development,
- Act to discharge this responsibility while not undermining the governments.

For MNCs compensation and support system should be to

- Ensure that any compensation scheme is comprehensive, long term and sustainable,
- Make arrangements for infrastructures, such as health clinics, to remain viable after closure,
- Involve local people to determine what industries or economic activities will be most important to the area,
- Adopt a policy of hiring local people and providing training if they lack the right skills,

Complete a formal written agreement between the community and the MNC, to ensure clarity and transparency

There should be consultation and participation involving African governments, NSAs and the civil society to

- Supplement impact minimization with proactive contributions to conservation and community development,
- Ensure that negotiations and discussions are always between groups rather than individual,
- Ensure that all parties can participate in consultations as fully as possible and provide assistance to the weaker,
- Provide clear and accessible information on the project to all stakeholders.

Word count: 17, 953

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Annexures

Annexure A

Table 1: Sub-Saharan Africa's Most Mineral Dependent States

Country	Mining product exports as percentage of GDP (1990-99)
Guinea	84.7
Dem. Republic of Congo	80
Zambia	74.8
Niger	70.6
Botswana	70
Namibia	55.4
Sierra Leone	50

 Source S Pegg 'Poverty Reduction or Poverty Exacerbation? The World Bank Submissions to the Extractive Industries in Africa' April 2003

Table 2: Sub-Saharan Africa's Most Oil Dependent States

Country	Oil Exports as percentage of GDP (2002)
Equatorial Guinea	86
Gabon	73
Congo (Brazzaville)	67
Angola	45
Nigeria	40
Cameroon	4.9

 Source: S Pegg 'Poverty Reduction or Poverty Exacerbation? The World Bank Submissions to the Extractive Industries in Africa' April 2003

Annexure B

Table 3: Top African Recipient Countries of World Bank Support for Extractive Industries				
1999-2000				
(In millions of US Dollars)				
Country	IDA/IRBD	IFC	MIGA	TOTAL
Cameroon	59	475		534
Chad	91	400		491
Tanzania	226	4	172	402
Nigeria	108	183		391
Zambia	361	30		391
Cote d'Ivoire		199		199
Mali	6	102		108

Source: S Pegg 'Poverty Reduction or Poverty Exacerbation? The World Bank Submissions to the Extractive Industries in Africa' April 2003

Annexure C

World Bank Group Support for Extractive Industries in Africa 1990-2003

Country Project	Year	Status	Amount of World Bank [Investment or Guarantee] (in US \$ millions)	World Bank Agency
	Approved (FY)			
Burkina Faso				
AEF Faso Mine	1999	Active	2	IFC
Mining Sector Capacity Building and Environmental Management Project	1997	Active	21	IBRD/IDA
Cameroon				
Pecten	1992	Closed	?	IFC
Pecten (II)	1994	Closed	115	IFC
Pecten Itindi	1997	Active	95	IFC
Pecten-Mokoko	1998	Active	265	IFC
Petroleum Environmental Capacity	2000	Active	6	IBRD/IDA
Chad-Cameroon pipeline	2000	Active	53	IBRD/IDA
Chad				
Management of the Petroleum Economy Project	2000	Active	18	IBRD/IDA

Boitumelo O Mmusinyane

Petroleum & Power Engineering	1991	Active	11	IBRD/IDA
Petroleum Development & Pipeline	2000	Active	40	IBRD/IDA
Petroleum Sector Management Capacity Building	2000	Active	53	IBRD/IDA
Chad-Cameroon				
Chad-Cameroon Pipeline	2000	Active	400	IFC
Congo Republic				
ELF Congo	1995	Closed	50	IFC
Engen	1995	Closed	91	IFC
Cote D'Ivoire				
Block CI-11	1993	Active	11	IFC
Block CI-11	1995	Active	27	IFC
Block CI-11-Pluspetrol	1995	Closed	18	IFC
Block CI-11-UMIC	1995	Closed	35	IFC
Block CI-1-GNR	1995	Closed	18	IFC
Block CI-11/12 RI	19997	Active	5	IFC
Block CI-11 RI 2	1998	Active	5	IFC
Foxtrot	1998	Dropped	80	IFC
Equatorial Guinea				
Petroleum Technical Assistance II	1993	Closed	2	IBRD/IDA
Zafiro Offshore	1998	Cancelled	24	MIGA
Ethiopia				
Calub Energy Development	1994	Closed	74	IBRD/IDA
Gabon				
Valco Offshore Gabon Oilfield Development Project	2002	Active	18	IFC
Ghana				
Iduapriem Gold	1990	Active	2.5	IFC
Iduapriem Gold	1991	Active	35.4	IFC
Bogosu (V)-Restr	1993	Active	0	IFC
GAGL III	1995	Active	2.6	IFC
GAGL IV	1996	Active	4.5	IFC
GAGL IV-Restr	2000	Active	1	IFC
Mining Sector & Development	1995	Active	12	IBRD/IDA

Environment				
Guinea				
Mining Sector Investment Promotion	1996	Active	12	IBRD/IDA
Kenya				
Gapco Kenya	2002	Active	15	IFC
Madagascar				
Petroleum Sector Reform	1994	Closed	52	IBRD/IDA
Mining Project	1998	Active	5	IBRD/IDA
Mineral Resources Governance Project	2003	Active	32	IDA
Mali				
Mining Capacity	1992	Closed	6	IBRD/IDA
Sadiola Gold	1995	Active	65	IFC
Randgold Somisy Capex	1997	Active	35	IFC
Randgold RI	1999	Active	2	IFC
Mauritania				
Private Sector Development Capacity Building Project	1995	Closed	7.2	IBRD/IDA
Mining Sector Capacity Building	1999	Active	15	IBRD/IDA
Second Mining and Hydrocarbons Capacity	2003	Approved	12	IBRD/IDA
Mozambique				
Pande Gas Engineering	1994	Active	30	IBRD/IDA
Mineral Resources Project (NRMCP)	2001	Active	18	IBRD/IDA
Sasol-Pande Gas Pipeline	2003	Active	72	MIGA
Nigeria				
Oso Condensate	1991	Closed	218	IBRD/IDA
Escravos Gas	1993	Dropped	108	IFC
Niger Delta Contractor Revolving Credit Facility	2001	Active	15	IFC
Adamac Revolving Credit Facility	2002	Active	50	IFC

Senegal				
Tolsa-Thies	1998	Dropped	4	IFC
Climents du Sahel	1999	Active	18.2	IFC
Sierra Leone				
Sierra Restr	1998	Active	0	IFC
Tanzania				
Tazama Oil Pipeline	1994	Active	30	IBRD/IDA
Technical Assistance	1995	Active	13	IBRD/IDA
Kahama Mining Corporation Limited	2000-2001	Active	172	MIGA
Songo-Songo Gas Development and Power Generation	2001	Active	183	IDA/IBRD
Uganda				
Kasese Cobalt	1996	Active	25	IFC
Kasese Cobalt Company Limited	1993-1998	Active	63	MIGA
Zambia				
Mining Technical Assistance	1991	Active	21	IBRD/IDA
Petroleum Sector Rehabilitation Project	1994	Closed	30	IBRD/IDA
Public Sector Reform and Export Promotion Credit Project	1995	Closed	170	IBRD/IDA
Economic Recovery & Investment	1996	Closed	140	IBRD/IDA
Konkola Copper Mines	2000	Active	30	IFC
Zimbabwe				
Wankie Collerie 2	1993	Closed	10	IFC

Source: S Pegg 'Poverty Reduction or Poverty Exacerbation? The World Bank Submissions to the Extractive Industries in Africa April 2003.
