

Corporate Social Responsibility, Human Rights and the Law

Multinational corporations in
developing countries

Olufemi Amao



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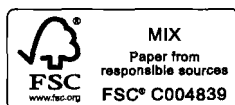
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Corporate Social Responsibility, Human Rights and the Law

The control of multinational corporations is an area of law that has attracted immense attention both at national and international level. In recognition of the importance of the subject matter, the United Nations secretary general has appointed a special representative to work in this area.

The book discusses the current trend by MNCs to self regulate by employing voluntary corporate social responsibility (CSR) strategy. Olufemi Amao argues that the CSR concept is insufficient to deal with externalities emanating from MNCs' operations, including human rights violations. Amao maintains that for CSR to be effective, the law must engage with the concept. In particular, he examines how the law can be employed to achieve this goal. While noting that the control of MNCs involves regulation at the international level, it is argued that more emphasis needs to be placed on possibilities at home, in states and host states where there are stronger bases for the control of corporations.

This book will be useful to academic scholars, students, policy makers in developing countries, UN, UN Agencies, the African Union and its agencies, the European Union and its agencies and other international policy makers.

Olufemi Amao is a lecturer in law at Brunel University, UK. His research interests include Corporate Social Responsibility, Corporate Law Theory, Corporate Governance, Multinational Corporations, Human Rights and International Commercial Law.

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Alice Belcher

With 606 oilfields, the Niger delta supplies 40 per cent of all the crude the United States imports and is the world capital of oil pollution. Life expectancy in its rural communities, half of which have no access to clean water, has fallen to little more than 40 years over the past two generations. Locals blame the oil that pollutes their land and can scarcely believe the contrast with the steps taken by BP and the US government to try to stop the Gulf oil leak and to protect the Louisiana shoreline from pollution.

John Vidal, "Nigeria's Agony Dwarfs the Gulf Oil Spill. The US and Europe Ignore It" *Observer*, Sunday 30 May 2010

Plainly, companies must be profitable as well as socially responsible, ... CSR is no longer optional.

Gideon Spanier, "Corporate Responsibility is No Longer Optional"
Evening Standard, 15 June 2010

Perhaps no place on earth has been as battered by oil, experts say, leaving residents here astonished at the nonstop attention paid to the gusher half a world away in the Gulf of Mexico. It was only a few weeks ago, they say, that a burst pipe belonging to Royal Dutch Shell in the mangroves was finally shut after flowing for two months: now nothing living moves in a black-and-brown world once teeming with shrimp and crab.

Adam Nossiter, "Far from Gulf, A Spill Scourge Decades Old"
New York Times, 16 June 2010

Of course you need a profit ... but it is a by-product, a hallmark of success. It is not the be all and end all. It is not the *raison d'être* of business. What is the purpose of business? Friedman says the social responsibility of business is to make a profit but that will no longer do. Plain common sense will tell you that cannot do. Plain common sense will tell you that you have to have a sustainable business model. You have to inevitably go back to the considerable things that go beyond simply saying that it is the social responsibility of business to make a profit.

Stephen Green, HSBC Chairman, Telegraph website, 7 July 2010

Foreword

In the past decades, it has become widely accepted that the multinational corporations (MNCs) have a massive economic and social impact on the developing countries and moreover, that this impact is not always beneficial to the developing world. In spite of this, the link between the concept of corporate social responsibility (CSR) – gradually making its way into the public and corporate consciousness – and human rights law remains to a certain extent a practical, if not a conceptual, challenge. In his book, Dr Olufemi Amao addresses the difficult interface between CSR and the law from the perspective of the consequences that the limitations of this interface have in the developing countries.

Rather than taking a traditional legalistic or corporate management path, Dr Amao breaks new ground by addressing the critical confluence between CSR and the legal discourse and in particular between CSR and the human rights legal discourse. The relationship between CSR and the law is presented against the backdrop of a comprehensive historical analysis of the evolution of the MNCs and of the initial challenging attempts to control them at international level. The innovation of his approach lies in anchoring firmly his analysis into the human rights debate in the context of the developing countries. Moreover, he advances and argues for a concept of international corporate agency and personality that could become instrumental in addressing some of the legal inconsistencies found in the normative overlap between CSR and human rights. These features make the volume theoretically solid while, at the same time, concrete and intelligible for readers coming from a variety of disciplinary backgrounds.

The originality of Dr Amao's arguments makes this a valuable contribution as a clear overview of the CSR normative challenges and as an innovative framework for regulating global corporations and for conceptualising MNCs as social, political, economic and legal actors that could potentially serve a broader set of stakeholders. He confronts economic and legal models of MNC agency with the crude social and economic realities of the developing countries, offering a valuable insight into the international and regional CSR mechanisms as well as into the judicial and regulatory

mechanisms in the United States, Europe and Africa. In this way, Dr Amao offers tools both for analysis and practical change.

A systematic study of corporate social responsibility in the human rights context, this work commands attention from scholars and practitioners alike. It represents a substantial contribution to the debate in the field of CSR, of unique value to those who seek to understand the relationship between CSR and the human rights law in a globalising world.

Aurora Voiculescu
London, December 2010

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Olufemi O. Amao
London, October, 2010.

Abbreviations

ACP	African, Caribbean and Pacific states
ACrtHPR	African Court on Human and Peoples' Rights
ATCA	Alien Torts Act
AU	African Union
BIAC	Business Industry Advisory Council
CAMA	Companies and Allied Matters Act
CARIFORUM	Caribbean Forum of African, Caribbean and Pacific States
CBI	Confederation of British Industry
CCP	Common Commercial Policy
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CERCA	Comprehensive Environmental Response, Compensation and Liability Act
CESR	Centre for Economic and Social Rights
CIME	Committee on International Investment and Multinational Enterprises
CRC	Convention on the Rights of the Child
CSR	Corporate social responsibility
EBA	Everything but arms
EC Treaty	Treaty Establishing the European Community
ECA	Export credit agency
ECHR	European Convention on Human Rights
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EFCC	Economic and Financial Crime Commission
EMAS	Eco-management and audit scheme
EPA	Economic Partnership Agreement
Farben	IG Farbenindustrie AG
FTA	Free-trade area
GATT	General Agreement on Tariffs and Trade
GSP	Generalised System of Preferences
IACtHR	Inter-American Court of Human Rights

IC	International company
ICC	International Chamber of Commerce
ICCPR	International Covenant on Civil and Political Rights
ICEM	International Federation of Chemical, Energy, Mine and General Workers' Unions
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICPC	Independent Corrupt Practices Commission
ILC	International Law Commission
ILO	International Labour Organization
IOE	International Organisation of Employers
LDC	Least developed country
MNC	Multinational corporation
MNE	Multinational enterprise
NCP	National Contact Point
NDLEA	National Drug Law Enforcement Agency
NGO	Non-governmental organisation
NLERS	Non-legally enforceable rules and standards
NNOC	Nigerian National Oil Corporation
NNPC	Nigerian National Petroleum Corporation
NRE	Nouvelles Regulations Economiques
NUPENG	National Union of Petroleum and Natural Gas Workers
OAS	Organization of American States
OAU	Organisation of African Unity
OECD	Organisation for Economic Cooperation and Development
PENGASSAN	Petroleum and Natural Gas Senior Association of Nigeria
PTA	Preferential Trade Arrangement
SE	Societas Europaea
SEA	Single European Act
SERAC	Social and Economic Rights Action Centre
SIA	Sustainability Impact Assessment
SPDC	Shell Petroleum Development Corporation
TA	Treaty of Amsterdam
TDCA	Trade Development and Cooperation Agreement
TEU	Treaty of the European Union
TNC	Transnational corporation
UDHR	Universal Declaration of Human Rights
UNCLOS	United Nations Convention of the Law of the Sea
UNCTC	United Nations Centre on Transnational Corporations
UNDP	United Nations Development Programme
UNEP	United Nations Environmental Programme
UNGC	United Nations' Global Compact