

**A Critical Examination of the Multinational Companies' Anti-Corruption Policy
in Nigeria**

by

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Abstract

In contemporary enterprise and organisational culture, many companies are increasingly willing to increase their profits and to gain competitive advantages through indulgence in bribery, corruption, money laundering and other anti-social practices that shows little regard for social obligations and even laws. Companies cemented their social relations by claims of socially responsible and of ethical conduct, but the evidence in practice proves otherwise. The burgeoning corporate social responsibility literature rarely examines predatory practices of MNCs even though the practices affect a variety of stakeholders. This paper draws attention to the gaps between corporate anti-corruption policy and acts. The paper used publicly available evidence to provide case studies to show that companies engaged in bribery, corruption and money laundering as against their claims of responsible social conduct. The paper argued that MNCs have used the political elite in developing countries to seek to advance their global earnings and competitive advantages by offering bribes and other inducements to secure government contracts in Nigeria. It also encourages reflections on endemic corrupt practices and offers some suggestions for reform.

Keywords: Corruption, CSR, Code of Conduct, Corporate policy, Bribery, Multinational

1. Introduction

The rapid pace of globalisation and the concomitant increase in the volume of international trade and investment, coupled with recent corporate scandals, have heightened the importance of issues relating to politics, corruption and corporate social responsibility (CSR) (Rodriguez *et al*, 2006). As foreign firms expanded into, and new firms were born within, developing and transition economies governments, managers and scholars grew more aware of the magnitude of corruption and the need to understand and address it. The contemporary literature, often from the Western World, offers a variety of competing and overlapping definitions of corruption, its causes and solutions. For example, the literature identifies varieties of corruption covering political, social, economic, legal, electoral, institutional and other scenarios (Rose-Ackerman, 1978; Johnston, 1983; Tanzi, 1994; Mbaku, 1996; Gyimah-Boadi, 2004). In general, corruption is considered to be a negative activity, in other words something which undermines social welfare (Amundsen, 2006; Olurode, 2005; Obayelu, 2007; Bakre, 2007; Otusanya, 2011b). Its destructive capacities have been captured by metaphors such as 'cancer' (Wolfensohn, 1996, González de Aragón, 2004), 'virus' (Elliot, 1997, Hao and Johnston, 2002; Underkuffler, 2005) and 'disease' (Klitgaard, 2000; Underkuffler, 2005, Neutze and Karatnycky, 2007).

Some writers associate corruption with the recurring misuse of public office for private financial gain (Rose-Ackerman, 1978; Zakiuddin and Haque, 2002; Klitgaard, 2002; Olurode, 2005), but this is not exclusively so because corruption also exist in both (small and large) private enterprises (Klitgaard, MacLean-Abaroa and Parris, 1996; Tanzi, 2002; AAPP, 2006; Akindele, 2005). Their gains arise because of fraud, bribery, exploitation, embezzlement, and abuses and conflicts of interest (Sikka, 2008). Corruption is frequently associated with the activities of politicians, presidents, dictators, bureaucrats, and public officials (Osoba, 1996; AAPP, 2006; Lawal and Ariyo, 2006). Its outcomes are associated with loss of taxes, public revenues, economic devastation, lack of investment in public goods, the emergence of gangs and private armies, a loss of faith in law and institutions, a poor quality of life and even a decline in average life expectancy (Christian Aid, 2005; Sikka and Hampton, 2005; AAPP, 2006).

Attention has been focused on the demand side (the receiver) (Tanzi, 1998; TI, 2004) and the supply side (the giver) (FCPA, 1977; OECD Convention, 1997; Hellman *et al*, 2000; UN Office on Drugs and Crime, 2005) and much of the reform is aimed at controlling the discretion and power of public officials (OECD Convention, 1997; UN Convention Against Corruption, 2003). The International Monetary Fund (IMF) has argued that the impact of market forces can help to combat corrupt practices as it constantly evaluates managerial and business performance and also reduces bottlenecks and administrative problems in the public sector and thereby reduces the ability of public officials to extract extra economic rents (Rose-Ackerman, 1996; World Bank, 1997). This presupposes that corrupt practices do not flourish in the market economies. In contrast, a body of literature has documented the role of the private sector in perpetuating corrupt practices through a variety of business vehicles (US Senate Sub-Committee on Investigations, 2005; AAPPG, 2006).

The endemic corrupt environment has attracted the increasing attention of international organisations and policy-makers (Organisation for Economic Cooperation and Development (OECD), 2000; US Senate Committee on Investigations, 2003, 2006; the United Nations (UN): UNODC, 2005; UNDP, 2004; UNICEF, 2006; Financial Action Task Force (FATF), 2000; International Monetary Fund (IMF), 2001; World Bank (WB), 2007; NGOs (e.g. Oxfam, 2000, 2004; Tax Justice Network (TJN), 2005, 2006, 2007; Christian Aid, 2005, 2008; Mitchell, *et al* 2002; Mitchell and Sikka, 2002, 2005; Cousins, *et al* 2004; Transparency International (TI), 2005, 2006, 2007) and scholars (Mauro, 1995, 1997; Rose-Ackermann, 1999; Salisu, 2000; Tanzi, 2002; Sikka and Hampton, 2005; Cobham, 2005; Everett, *et al.* 2007), but comparatively little scholarly attention has focused on the role of multinational companies (MNCs) in facilitating corruption (Sikka, 2003, 2005, 2008; Bakre, 2007a, 2008ab; Otusanya, 2010). A number of studies have paid attention to exploring corporate social responsibility (Rodriguez *et al*, 2006; Musa, 2008; Usman, 2009). The literature in this area is diffuse. While there is considerable research on a number of aspects (governance, accountability, ethics and future of capitalism *e.t.c.*), broader accounts of the corporate claims of social responsibility and their practice of offering bribes and engaging in other corrupt

practices as impediments for sustainable development in developing countries are scarce.

This paper seeks to contribute to the debates about the consequences of corrupt practices as an aspect of corporate social responsibility because the public revenues going as bribe can make a difference to the quality of life of millions of people. The corporate claims of responsible conduct and abiding to local laws and their practices of illegally securing competitive advantages and enhance profitability is hard to reconciled. The paper examines the anti-corruption policies of some multinational companies (MNCs) under scrutiny and thus extends possibility of research in corporate social responsibility claims of corporations and financial crime. In particular, it seeks to encourage reflections on some questionable practices of MNCs which increase profits, but harm citizens. Such practices are located within the broader dynamics of capitalist society where corporations use a variety of schemes including corruption to increase profits and offer high rewards for their executives.

This paper is organised into four further sections. The next section offers a framework for exploring the corporate social responsibility as it relates to MNCs involvement in corrupt practices. The section argued that the policy of ethical conduct does not stymie the MNCs from engaging in predatory practices in pursuit of corporate profits and ever rising return to capital. The section also reviews various studies and cases that have implicated MNCs and their managers in various corrupt practices such as bribery and corruption which shows a considerable disparity between corporate claims of responsible and ethical conduct and their involvement in corrupt practice. The second section examines the available anti-corruption law globally and in Nigeria as opposed to the real practice of MNCs in international business. The third section provides extracts from a number of corporate social responsibility statements of some MNCs and their action. The paper argued that despite companies claims of social responsibility and code of ethical business conduct, MNCs have been implicated in facilitating corruption in developing countries particularly Nigeria. The final section summarises and concludes the paper.

2. Multinationals and the Claim of Socially Responsible

In the contemporary market society, corporations, particularly multinational companies, are the motor of capitalism. Though created through law and numerous social contracts, corporations do not owe allegiance to any nation, community or locality (Bakan, 2004). It has been argued that governments and host communities may be interested in eradicating poverty, promoting education, health care and human rights, but corporations may not necessarily share such goals. They are essentially 'private' organisation and are required by law to prioritise the welfare of the shareholders (capital) above other stakeholders (Sikka, 2008). Corporation today are expected to conduct their operations responsibly with accountability to wider society. To legitimise their social power corporations may acknowledge some social responsibilities, but they cannot buck the systemic requirement to increase profits and dividends to the benefit of capital. As Bakan (2004) puts it:

'A corporation can do good only to help itself do well, a profound limit on just how much good it can. The benevolent rhetoric and deeds of socially responsible corporations create attractive corporate images, and likely do some good in the world. They do not, however, change the corporation's fundamental institutional nature: its unblinking commitment to its own self-interest'. (p. 50.)

This has been accompanied by a variety of strategies to improve corporate earnings through financial engineering, cartel, money laundering, bribery and corrupt practices (Sikka, 2008; Bakre 2008ab, Otusanya, 2010, 2011). Though corruption is somewhat contentious to define, bribery and corruption remain major features of the world economy. In general, the practices involve attempts to gain competitive advantages and to enhance profits (Johnston, 2005; Otusanya, 2010). A large amount of corruption and bribery is also associated with the looting of countries by their rulers, a process that frequently carries the fingerprints of corporations (Sikka, 2008; Bakre, 2008ab; Otusanya, 2010). Corporation is all about creating wealth, and it is a highly effective vehicle for doing so. No internal limits, whether moral, ethical, or legal, limit what or whom corporations can exploit to create wealth for themselves and their owners (Bakan, 2004). According to Sikka (2008), 'such practices seems to be part of the 'enterprise culture' that persuades many to believe that 'bending the rules' for personal gain is a sign of business acumen' (p. 270). Where gaining competitive advantages is considered to be an entrepreneurial skill, especially when competitive

business environment link profit and market shares with meeting global business target. This therefore illustrates how an executive's moral concerns and altruistic desire must ultimately succumb to her corporation's overriding goals:

'If you're a CEO', 'do you think your shareholders really care whether you're Billy Buttercup or not? Do you think that they would prefer you to be a nice guy over having money in their pocket? I don't think so. I think people want money. That's the bottom line'. Greed and moral indifference define the corporate world's culture,...As pressure builds on CEOs to increase shareholder value, corporations are doing anything and everything they can to be competitive'. (Bakan, 2004, p. 55.)

The use of bribery and inducement to secure competitive advantages is primarily a matter of executive discretion rather than any legal or moral compulsion. It has been argued that this discretion may be used to enrich directors since their remuneration is influenced by the level of profits and return to capital. Markets therefore exert pressure on companies to generate ever increasing profits and returns as capitalism does not provide any guide to upper limits of accumulation (Sikka, 2010). Companies can generate additional returns for finance capital, not only through competitive advantages on products and services, but also through bribery and other inducements to secure government contracts. 'In an attempt to satisfy the corporate goal, everybody else is put at risk'. Corporations try to manipulate everything, including public opinion', and they are grandiose, always insisting 'that we're number one, we're the best'. A lack of empathy and asocial tendencies are also key characteristics of the corporation (Bakan, 2004).

The codes of business conduct include statements rejecting the payment or acceptance of bribes, collusion, pressure or illegitimate favour, either directly or through third parties whether public officers or private individuals. Yet, their involvement in corrupt practices and other anti-social practices cannot therefore be reconciled with their business codes of conduct (Christensen and Murphy, 2004; Sikka, 2008, 2010; Otusanya, 2010). Companies manage environmental turbulence and threats to their reputation by publishing corporate social responsibility (CSR) statements and code of conduct that promise ethical behaviour, improvement of economic and social infrastructure and quality of life of all stakeholders (Phillips, 2003; Sikka, 2010). Transparency International (2010) also noted that:

‘A number of companies have reported the strategies, policies and management systems they had in place to fight bribery and corruption. But, corporate responsibility and corporate governance, including measures and initiatives to combat corruption in business have developed mostly in parallel’, (p. 2.)

This therefore shows how gap can exist between company’s cleverly crafted do-gooder image and its actual operations and suggests, at a minimum, that scepticism about corporate social responsibility is well warranted (Bakan, 2004). The CSR statements may symbolically satisfy the diverse demands from critical external environment, but rarely empower stakeholders to shape corporate decisions or provide means of monitoring compliance with the promised policies. Sikka (2010) for example argued that the policy of ethical conduct does not stymie the systemic pressures to produce ever rising profits, gaining competitive advantages and the executive quest for higher financial rewards. Even if one organisation restrains itself, the superior profits of competitors and business environment exert pressure to explore ways of matching or exceeding that. Thus the tendency to increase profits through corrupt practices as a means of gaining competitive advantages remains embedded within the corporate enterprise culture. To accomplish and gain competitive advantages, according to Sikka (2010):

‘Organisations may be decentralised and staff may not share the ideals of the executives and thus high sounding statements may not be acted upon. Companies may also be divided into departments, divisions and sub units and each may be assigned production or revenue generating target, which conflicts with the publicly espoused goals’ (p.157).

Unerman and O’Dwyer (2007) argued that, though some may laud the glossy CSR reports as evidence of corporate responsiveness to public pressure, but much of this responsiveness is primarily linked to the ability to make profits. Such practices seem to be part of an ‘enterprise culture’ that persuade many to believe that ‘bending the rules’ for personal gain is a sign of business acumen (Sikka, 2008). Through the appeal to business codes of ethics and claims of serving the public interest MNCs may disarm critics but policy is not easily translated into actions. As Bakan (2004) notes:

‘Corporations relate to others superficially—‘their whole goal is to present themselves to the public in a way that is appealing to the public [but] in fact may not be representative of what th[e] organisation is really like’.....Through it

they can present themselves as compassionate and concerned about others when, in fact, they lack the ability to care about anyone or anything but themselves'. (p. 57.)

This therefore highlights the review of organisational policies and compliance which manifests itself in hypocrisy, emphasising the gap between the promise to act responsibly by not taken unfair advantage through manipulation, concealment, and abuse of privileged information. Since policies and acts may not easily be reconciled corporations develop dual strategies to manage conflict. It has been argued that such codes of conduct and statement of responsible and ethical conduct are used as strategic resources to mould public opinion and shield the business from a hostile external environment (Bakan, 2004; Sikka, 2010). This is because such alienation and the surrounding media publicity, scrutiny by non-governmental organisations (NGOs), regulatory investigations and sanctions could lead to loss of public legitimacy and damage a company's ability to accumulate profits.

Bribery and corrupt practices are generally pursued away from the glare of public scrutiny and company financial reports are mostly silent on the issues. Such practices are often disguised in the financial report as legitimate expenses. In many cases western companies and agents have been guilty of offering and paying bribes to government officials to secure government contracts and other advantages (AAPP, 2006; Bakre, 2008ab; Sikka, 2008; Otusanya, 2010). In the above context, the next subsection examines the involvement of Western MNCs in anti-corruption practices in developing countries which contradicts their claims of ethical business practices.

2.1 The Involvement of Multinational Companies

The literature has indicated that Western countries have often provided the infrastructures that facilitate corruption in developing countries (Kapoor, 2005; Martens, 2007); AAPP, 2006). It has been argued that companies, especially multinationals, are the biggest perpetrators using a sophisticated network of notional companies and corporate structure to facilitate corrupt practices in developing countries (Kapoor, 2005, Martens, 2007). AAPP (2006) for example draws attention to numerous cases which demonstrate the role played by foreign companies in Africa in paying bribes, and facilitating other forms of corruption. According to AAPP (*ibid*), 'in many cases western companies and western agents

have been guilty of offering bribes to government officials to secure contracts and other advantages (p. 20). Transparency International (2007) adds that bribe money often stems from multinationals based in the world's richest countries

The corporate hand in corrupt practices is sometimes given visibility by regulatory reports such as the US Securities and Exchange Commission, US Department of Justice, UK Special Fraud Office, and UK Financial Services Authority. A number of related cases have also been reported in the UK. For example, Balfour Beatty, a leading UK-based construction company, agreed to pay a penalty of £2.25 million in relation to certain payments irregularities in respect of a major project in Egypt. It was also reported that, Aon an insurance company, made a suspicious payments to third parties amounting to approximately \$2.5 million and €3.4 million. The company was fined £5.25 million by the UK Financial Services Authority (FSA), for failing to establish and maintain effective systems and controls of countering the risk of bribery and corruption. In addition, the famous case prosecuted against the French oil company, Elf, by Eva Joly clearly shows that Transnational Corporations (TNCs) had engaged in corrupt practices in developing countries (WSWS, 2003).

Since the enactment of the Foreign Corrupt Practices Act (FCPA) of 1977¹ in the US there has been a series of revelations about US corporations making corrupt payments to foreign government officials to win business (Earle, 1989; Kim and Kim, 1997; Wallace-Bruce, 2000). Some related cases were extracted from the US SEC prosecution of US MNCs for violating the anti-bribery provisions of FCPA (see Table 1 below). In 1995, Lockheed Corporation was charged with paying \$1 million to an Egyptian official to facilitate the sale of aircraft to Egypt. Lockheed Corporation pleaded guilty and was fined \$24.8 million, a figure representing double the amount it made on the transaction. One of the corporation's executives pleaded guilty and was fined \$125 000 and jailed for 18 months' (see Wallece-Brauce, 2000). The US

¹ The 1976 Act forbids American citizens or corporations from paying bribes to foreign officials to obtain business. The experts therefore described the James' case as 'the largest investigation of bribery abroad since the US started prosecuting such cases a century ago' (Holmes, 2006, p. 55). In April it was also alleged that far larger sums amounting to almost \$80 million had been paid to very senior Kazakh officials one of whom was the President (*Wall Street Journal*, 23 April 2003). The facts of the case are also available on-line at <http://www.tuscaloosaneews.com/apps/pbcs.dll/article?AID=/20061105/ZNYT01/611050402>, accessed on 6 November 2006.

conglomerate Baker Hughes Incorporated pleaded guilty to three charges of corruption and was fined \$44 million for hiring agents to bribe officials in Nigeria, Angola, Indonesia, Russia, Uzbekistan and Kazakhstan. It was reported that Baker Hughes paid approximately \$5.2 million to two agents while knowing that some or all of the money was intended to bribe government officials of state-owned companies in Kazakhstan (*SEC Press Release*, 26 April 2007). In 2007, three wholly-owned subsidiaries of Vetco International Ltd. plead guilty to violating the foreign bribery provisions of FCPA in connection with the payment of approximately \$2.1 in bribe. The company agreed to pay a total of \$26 million in criminal fines.

The US SEC complaint also alleges that between 1996 to 2001, Dow's subsidiaries, DE-Nocil Corp Protection Ltd. made approximately \$200,000 in improper payments to a variety of Indian officials. As a consequence, Dow consented to a \$325,000 civil penalty and to the entry of a cease and desist order. Turk Deltapinc, Inc. was indicted for making illegal payments totalling \$43,000 to officials of the Turkish Ministry of Agricultural and Rural Affairs. Turk Deltapinc Inc., consented to a cease and desist order and agreed to pay \$300,000 penalty. Paradigm B. V., A Dutch company based in Houston admitted that it and its subsidiaries made or promised corrupt payments to officials of state-owned gas and oil companies to obtain business in Kazakhstan, Mexico, China, Indonesia, and Nigeria. In common with other companies, Paradigm B. V. also agreed to pay \$1 million fine in exchange for prosecution by US SEC.

Table 1 US MNCs indicted for Violating US Federal Corrupt Practices Act 1977

Holding Company's	The Subsidiary	Bribe Paid \$	Penalty \$
Lockheed Corporation	Lockheed Corporation	1 million	24.8 million
Vetco Gray	Vetco International Ltd.	2.1 million	26 million
Dow Chemical Company	DE-Nocil Corp Protection Ltd.	200,000	325,000
Baker Hughes Inc.	Baker Hughes Services Int. Inc.	4 million	44.1million
Turk Deltapinc Inc.	Delta and Pinc Land Co.	43,000	300,000
Paradigm B. V.			1 million

Source: Extracted from various US SEC complaint and Administrative Proceedings

IBM and Boeing, and more than 400 other US corporations, including 117 Fortune 500 companies, had made corrupt payments in their global business transactions (see Salbu, 1997; Wallace-Bruce, 2000). The involvement of Canadian and German companies has already been documented (AAPPG, 2006). Moreover, the World Bank had to suspend contracts to a German company found guilty of paying, and Lahmeyer was fined \$10 million rand (\$1.63 million) in 2003 after being found guilty of bribing Musupha Sole, former head of Lesotho Highlands Development Authority (*Reuters*, 6 November 2006)².

Reflecting the contemporary enterprise culture, many MNCs aggressively sought to increase their profits through financial engineering and corruption. The social, economic and political effects of corrupt practices are significant as huge amounts, often dwarfing the gross domestic product (GDP) of many nation states, are involved. The World Bank estimates that between \$1-1.6 trillion is lost each year to various illegal activities, including corruption, criminal activities and tax evasion (World Bank, 2007). Corruption cost an estimated \$2.6 trillion globally in bribes, inflated budgets and legal and other expenses. It has been estimated that every year between \$500-\$800 billion leaves developing countries due to criminal activities, corruption, tax evasion and tax avoidance practices (Baker, 2005).

2.2 The Impact of MNCs Corrupt Practices in Developing Countries

The above section provided an overview of the literature, which drew attention on a number of cases involving big MNCs engaging into corrupt practice. Although major corporations increasingly produce brochures and reports containing promises of socially responsible conduct, but their involvement in large scale bribery and corruption especially in developing countries open a clear room for debate over the nature of the acclaimed social responsibility. Developing countries, often some of the poorest, received around \$120 billion in foreign-aid from G20 countries, but are estimated to be losing between \$1 and \$1.6 trillion annually (Baker, 2005). As a result of corrupt practices, African countries have been estimated to be losing \$500

² Reuters, 6 November 2006, World Bank Block German Firm over Lesotho Graft, available on-line at <http://www.alertnet.org/printable.htm?URL=/thenews/newsdesk/L06339094.htm> accessed on 10 November 2006.

billion (£270 billion) a year in revenue (Christian Aid, 2005). Corruption and the transfer of illicit funds have therefore contributed to capital flight from Africa, with more than \$400 billion having been looted and stashed away in foreign countries (UN Office on Drugs and Crime, 2005). The former Chairman of the Economic and Financial Crimes Commission (the EFCC), Nuhu Ribadu, disclosed that pervasive corruption in Africa bleeds the Continent of \$148 billion each year, representing 25 per cent of its gross national product (GNP) (EFCC Report, 2006). It is also estimated that 'African political elites hold somewhere in the range of \$700 to \$800 billion in accounts outside the continent' (AAPPG, 2006, p. 15). Corrupt practice is continually depriving the African economy of sums large enough to make a real difference in social investment in education, transport, pensions, housing, healthcare and for freeing people from poverty and squalor (Oxfam, 2000; Filling and Sikka, 2004; Sikka, 2008).

Corruption has entrenched hunger and poverty in developing countries. Corruption has been a critical obstacle for social development in such countries because of the devastating effect the deprivation of funds has had on them. The funds leaving developing countries to Western countries have prevented developing countries from investing in both the social and economic spheres of development (Otusanya, 2010).

Corruption obstructs development, harms the poor and impedes business growth (Onimode, 1983; Osaghae, 1998; AAPPG, 2006; Ologbenla, 2007). It is the biggest impediment to investment, as much of the proceeds are banked overseas (AAPPG, 2006; World Bank, 2006; Annual Integrity Report, 2005-2006). Corruption can also reduce tax revenues by as much as 50 per cent thereby reducing the funds available to governments for public spending. Thus, corruption lowers the quality of public services and infrastructure, distorts government spending decisions, decreases tax and customs revenues and damages confidence in the rule of law (US Department of State, 2004; AAPG, 2006; Otusanya, 2010).

Analysis shows that, if more is spent on education, this ensures enhanced human capital development, which is crucial to poverty eradication through good leadership; but corruption, for example, has robbed the developing countries' governments of their political legitimacy (*Sunday Times*, 5 November 2006). Corruption and the transfer of illicit funds have therefore contributed to capital flight in Africa, with more

than \$400 billion being looted and stashed away in foreign countries. Of that amount, around \$100 billion has been estimated to have come from Nigeria (UN Office on Drugs and Crime, 2005).

There are numerous cases that demonstrate the role played by Western countries in facilitating corrupt financial practices in developing countries to secure contracts and competitive advantages which contradict their corporate claims of social responsibility. A number of studies have examined the role that MNCs have played in the socio-political and economic development of Nigeria (Onimode, 1983; Akinsanya, 1986; Osaghae, 1998; Omotoso, 2006; Otusanya, 2010; 2011ab). There is the suspicion that a large volume of the corporate social responsibility reports are self serving and are primarily linked to the ability of MNCs to make profits (Unerman and O'Dwyer, 2007; Sikka, 2010). Their behaviour indicates they don't really concern themselves with their victims, and corporation often refuse to accept responsibility for their own actions and are unable to feel remorse. Bakan (2004) noted that even 'if [corporations] get caught [breaking the law], they pay big fines and they ---continue doing what they did before anyway. And in fact in many cases the fines and the penalties paid by the organisation are trivial compared to the profits that they rake in' (p. 57).

3. International Initiatives in Curbing Corrupt Practices

Corruption is a global phenomenon which requires both local and global solutions. A number of international initiatives³ have been established to criminalise the bribery of public officials (to address the supply side of corruption) and to provide mutual legal assistance, as opposed to the real practices of multinational companies globally and in Nigeria. This section therefore examines anti-corruption law globally, regionally and in Nigeria.

The laws designed to deter bribery and corruption which are harmful to development and a source of criminal activities are addressed to some extent in the UK by the 1906 and 1916 Prevention of Corruption Acts, and the Public Bodies Corrupt Act of 1989 (Gottschalk, 2010). It has been argued that even when taking all these into

³ These includes; Federal Corrupt Practices Act 1977, OECD Anti-Bribery Convention 1997; UN Convention Against Corruption 2005, World Bank Anti-Corruption Strategies, and the UK Bribery Act 2010.

considerations they are perceived to be outdated, unclear and lacking in scope and they are applicable only to corporations subject to UK laws and unincorporated institutions and overseas subsidiaries are excluded (Xenakis, 2007; Yeoh, 2012). Yeoh (2012) noted that the severe criticisms for failure to comply satisfactorily with the obligations under the OECD Convention on Combating Bribery of Foreign Public Officials in cross-border commercial and related activities and its handling of the BAE System Plc. led to the passage of Bribery Act 2010. The British Act 2010 is intended to consolidate the statutory and common law offence of bribery.

The corruption scandals of the 1970s involving illicit payments by US multinational companies (MNCs) and foreign politicians led to the passage of the US Federal Corrupt Practices Act (FCPA) in 1977⁴ (Pieth, 1997; Elliott, 2002). FCPA prohibited US corporations and US nationals from making improper payments to foreign officials, parties or candidates, in order to assist a company in obtaining, retaining or directing business to any person. It also imposed record-keeping and internal controls requirements on all companies subject to Securities and Exchange Commission ('SEC') jurisdiction. The 1998 amendment of the Act, expanded its jurisdiction and empowered the United States government to:

'Prosecute foreign companies and nationals who cause, directly or through agents, an act in furtherance of a corrupt payment to take place within the territory of the United States. In addition, US parent corporations may also be liable for the acts of foreign subsidiaries where they have authorised, directed or controlled the activity of US citizens or residents who were employed by or acting on behalf of such foreign incorporated subsidiaries'. (Foreign Corrupt Practices Act, 1977, as amended.)

The Department of Justice ('DOJ') has primary responsibility for enforcing the anti-bribery provisions of the Act while the SEC generally enforces the accounting (books and records and internal controls) provisions. Both institutions have authority to seek permanent injunctions against present and future violations. In the process of constructing the new regulatory web, the accounting and auditing practice was enlisted to provide the necessary assurance of fairness in the conduct of MNCs business in developing nations.

⁴ The Foreign Corrupt Practices Act (the 'FCPA' or the 'Act') was enacted in 1977 in the wake of a series of overseas and domestic bribery scandals involving 400 major corporations.

This unilateral nature of the FCPA and US export disincentive calls for a negotiation and agreement with other Organisation for Economic Cooperation and Development (OECD) members in addressing transnational bribery. This brought the fight against corruption into the international policy agenda since the mid-1990s, despite its long-known effects on democratic institutions and economic and social development (Ampratwum, 2008). One of such initiative is the 1998 OECD Anti-Bribery Convention:

‘The main contribution by the OECD has been in the area of fighting corruption in international business transactions among OECD countries and five non-OECD countries. It is a legally binding document, the implementation of which is systematically monitored. This convention has since become a powerful tool in controlling international bribery’. (OECD, 2005.)

The convention obliges the signatories to criminalise bribes for business across borders and to install a detection, transparency and enforcement regime that would enhance effective compliance (OECD, 2005). Yeoh (2012) noted that: ‘this flexible approach enables the convention to accommodate the different constructions of jurisdictions across different national legal systems’. (p. 38). The more larger Western economies, including the USA, Germany, France, Italy and UK upon signing up to this convention showed within the first few years some distinctive difference in complying to the requisite obligations.

Since 1994, when 26 OECD countries initially vowed to take concrete and meaningful steps against bribery of foreign public officials⁵, several other international organisations – including the Council of Europe, the European Union and the Organisation of American States (OAS), as well as large money-lending institutions such as World Bank, have also keyed into this global drive to contain bribery and corruption across economies (Pieth, 1997; Yeoh, 2012).

In addition, the United Nations in 2005 introduced the first international instrument that attempts to regulate corruption in one complex legal act – United Nations Convention Against Corruption (UNCAC). The UNCAC is also a manifestation of international consensus on what the states should do to prevent and criminalise corruption, and to improve international cooperation in combating corruption and

⁵ 34 of the signatories are from industrialised nations (Yeoh, 2012, p. 38).

recovering assets globally. The convention highlights the importance of distributing responsibility among states for the occurrence of trans-boarder corruption crimes. The major landmark by UNCAC has been the asset recovery, which consists of measure for direct recovery of property, international cooperation for purpose of confiscation, and return and disposal of assets. The trust of these conventions was to address:

‘The supply side of international corruption with the main exporting nations, provides for mutual legal assistancerequires accounting and auditing standards that prevent hiding bribery of foreign public officials’. (OECD, 2005.)

These conventions offer all countries a comprehensive set of standards, measures and rules that they can apply to strengthen their legal and regulatory regimes to prevent and control corruption. Despite the Organisation for Economic Cooperation and Development convention on corruption (OECD, 1997), which has been implemented by many countries, the level of corruption and bribery has increased and is estimated to be over \$1 trillion each year (AAPPG, 2006).

Riley (1998) argued that the success of anti-corruption measures depends on political will, which in much African and Latin America has not been readily forthcoming, largely because of the potential threat that it poses to the political and bureaucratic establishment. Institutional corruption perhaps has most potential for support from external actors, such as international donors, but institutional reforms may not be as effective as political reforms for reducing corruption. Institutional reforms may be appropriate and effective in countries where corruption is not entrenched and where anti-corruption laws, agencies and organisations are in place or have a broad public support (Robinson, 1998). Robinson (1998) argued that:

‘Such countries invariably tend to have the institutional trappings of democracy with governments that are subject to electoral contestation and popular accountability. Where corruption is entrenched, it limits the scope of effective intervention in short term since it is deep-set and related to a complex set of social features which may only change gradually over a long term’. (p. 10.)

It has also been argued that one-off initiatives often lack credibility, either because they cannot be legally enforced or are approved by parliaments that are perceived to be illegitimate. In other cases political initiatives may appear credible but are not

feasible because they require a high degree of political commitment and administrative and legal capacity to implement.

At the local level, legal and judicial institutions can be influential in curbing corruption in democratic states. It has been argued that Parliament plays a crucial role in curbing corrupt practices, both in enacting appropriate laws to counter anti-social practices and in seeing through its committees that these laws are enforced (see Pope, 2006). In Nigeria, successive governments have sought to combat corruption by enacting a wide variety of laws since independence. Prior to 1966, the Criminal Code was the primary source of law dealing with anti-social practices in Nigeria. However, due to the limited nature of the Criminal Code in dealing with corruption, it was replaced by the Criminal Justice (Miscellaneous Provision) Decree in 1966. In 1975, the Corrupt Practices Decree No. 38 of 1975 was enacted to deal with corruption. These provisions, however, failed to curb corruption, and little success was recorded in the fight against corrupt practices (Obayelu, 2007). On return to civil rule in 1979, the various military decrees dealing with corrupt practices were replaced with a Code of Conduct and these were enshrined in the 1979 Constitution to address the major problems arising from the unprincipled government sector⁶ (see Osaghae, 1998; Obayelu, 2007). The review of the Law of the Federation from 1990 to 2006 showed that 11 different Acts⁷ were enacted after independence for the purpose of combating corruption-related practices in Nigeria. The plethora of laws⁸

⁶ Details of the Code of Conduct for public officials which ranges from conflict of interest, restrictions on specified officers, prohibition of foreign accounts, retired public officers gifts or benefits in kind, bribery of public officers, abuse of power, membership of societies and declaration of assets among others, can be found in section 1-14 Fifth Schedule, Part 1 of 1999 Constitution (pp. 151-154).

⁷ Nigeria had military rule until the 29 May 1999 and the legislation – main and subsidiary – made from year to year by the military were named ‘Decrees’. These Decrees are part of the laws of the Federation of Nigeria. Laws made since 29 May 1999 are also named ‘Acts’, available on-line at <http://www.nigeria-law.org/LFNMainPage.htm> accessed on 21 March, 2008.

⁸ Past failed interventions against corruption included: the Corrupt Practices Decree of 1975; the Public Officer (Investigation of Assets) Decree No. 5 of 1976; supplemented by the Code of Conduct Bureau and the Code of Conduct Tribunals as provided for in the 1979 Constitution; the Jaji Declaration in 1977 by General Olusegun Obasanjo; the ethical Revolution of President Shehu Shagari (1979-83); the War Against Indiscipline by General Muhammadu Buhari in 1984; the National Committee on Corruption and other Economic Crimes by General Ibrahim Babangida in 1987, Corrupt Practices and Economic Decree of 1990 and War Against Indiscipline and Corruption in 1996 by General Sani Abacha (Agbu, 2003; ICPC, 2007).

seems to have failed to control or reduce corrupt practices (ICPC, 2007, Obayelu, 2007). As Agbu (2003) observed:

‘It is not that corruption has not been recognised as the “enemy within,” it is however, that the political will to begin to tackle the problem in Nigeria has been non-existent, except for the Muhammadu Buhari/Tunde Idiagbon regime (1984-85) and the former civilian government of former President Olusegun Obasanjo⁹’.

A renewed effort to stem corruption was made in 2000 by the then President Obasanjo, by setting up the Independent Corrupt Practices and Other Related Offences Commission (ICPC) chaired by a retired judge¹⁰, and in 2004 the Economic and Financial Crimes Commission (EFCC)¹¹ was established to investigate and prosecute cases of corrupt and other anti-social practices. This institution was complemented by other structures, such as the Budget Monitoring and Price Intelligence Unit (BMPIU) and the principle of ‘due process’. Despite the positive nature of these developments, and subsequent arrest and indictments, it has been argued that too many high-ranking officials were either not prosecuted or were merely fired (Fawehinmi, 2004; Ikubaje, 2005).

3.1 Methods

This paper recognises that it is only possible to discuss evidence which is available in the public domain, in other words material that can be gathered from court cases, confirmed reports and whistle-blower accounts of corrupt financial practices. For this reason, this paper does not pretend to offer any comprehensive analysis, but instead provides some cases in order to show that bribery and corruption by MNCs is one of the most significant examples of irresponsible business behaviour in developing countries particularly in Nigeria, often contradicting their corporate social responsibility claims of good conduct. The data was obtained from archival documentation from the media, documents published by the regulators (The Economic and Financial Crimes Commission (EFCC), the Independent Corrupt

⁹ Available on-line at <http://www.africaresource.com/war/vol14.1/agbu.html> accessed on 10 March 2008.

¹⁰ The Commission was formerly chaired by a retired judge, the Honourable Justice Mustapha Akanbi, and is now chaired by another retired judge, the Honourable Justice Emmanuel Ayoola.

¹¹ The EFCC was headed by Mallam Nuhu Ribadu, an Assistant Commissioner of Police (2004-2007), former acting Chairman, Ibrahim Lamorde (2007-2008), Mrs. Farida Wasiri (2008 to 2011), and now Ibrahim Lamorde (2011-date).

Practices and other Related Offences Commission (ICPC), the US Securities and Exchange Commission and the US Department of Justice), court judgments and other documentary sources, in order to provide evidence of corrupt financial practices in the Nigerian private sector.

Most financial crime requires secrecy and lack of a paper trail, but occasionally some evidence emerges in the public domain and this paper intends to explore such evidence. The analysis will show that various actors have been involved in these corrupt and anti-social financial practices using a variety of schemes which have resulted in the reduction of government revenue and cost of government contracts. As this paper focuses on corrupt practices of corporations through their offering of bribes and inducements to government officials to secure contracts and competitive advantages which contradict their CSR Claim. The cases chosen and described in this paper provide evidence of predatory practices which have acted as impediment to development in Nigeria over the years. The following section explores the role performed by MNCs in Nigerian corrupt practices.

4. Corruption Practices: The Involvement of Multinationals in Nigeria

This section draws attention to a number of cases where MNCs had pledged to behave ethically and in socially responsible way, but they have been indicted for offering bribes and alleged of corrupt practices to secure competitive advantages. These cases relate to MNCs from the field of engineering, oil and gas, telecommunication, oil service and freight forwarding operating in developing countries. All the entities discussed in this section claim to be observing the code of business conduct, integrity, ethical standards and social responsibility, but the cases illuminate the gap and contradictions between corporate anti-corruption policy and their act.

Halliburton is one of the World's largest providers of products and services to the energy industry. It has 55,000 employees in approximately 70 countries and the company serves the upstream oil and gas industry (*Company Annual Report, 2008*). Halliburton's global revenue for the year 2008 was \$18.3 billion, a 20 per cent increase on 2007; and its operating income was \$4 billion, a 15 per cent increase on 2007. The company's 'Code of Business Conduct' states that the company policy requires 'Directors, employees and agents to observe high standards of business

and personal ethics in the conduct of their duties and responsibilities. It further states, 'when acting on behalf of the company, Directors and employees shall not take unfair advantage through manipulation, concealment, and abuse of privileged information, misrepresentation of material facts or other unfair dealing practices'¹². The company's policy enabled it to win a number of competitive government contracts around the world.

In 1990s KBR, a Halliburton subsidiary, and its partners (TSKJ (of which KBR owned a 25 per cent share) and Technip SA of France, ENI SpA of Italy and Japan Gasolin Corporation and all the companies parented in member countries of the transparency-preaching G-8 group (*ThisDay*, 22 February 2004) who bid to build two LNG trains¹³ for Nigeria Liquefied Natural Gas Ltd (Nigeria LNG)¹⁴. An investigation by the US Security and Exchange Commission (SEC) into the corrupt financial practices of Halliburton's subsidiary, Kellogg Brown and Root (KBR) and its partners in the TSKJ Consortium incorporated in Madeira (Portugal) implicated the consortium of having paid bribes totalling \$180 million to secure a natural gas project contract in Nigeria during the 1990s. The SEC therefore charged a former KBR executive for violating the anti-bribery provision of the Federal Corrupt Practices Act (FCPA) 1977 (US District Court Southern District of Texas, 2009). The SEC alleged that:

'Between 1995 and 2004, senior executives at KBR and others, devised and implemented a scheme to bribe Nigerian government officials to assist in obtaining multiple contracts worth over \$6 billion to build Liquefied Natural Gas ("LNG") production facilities on Bony Island, Nigeria'. (US District Court Southern District of Texas, 2009, p. 2.).

To conceal the illicit payments, KBR and others, through the joint venture, entered into sham 'consulting' or 'services' agreements with intermediaries who then funnelled their purportedly legitimate fees to Nigerian officials. KBR and others,

¹² Available on-line at <http://www.halliburton.com/AboutUs/default.aspx?navid=976&pageid=2343>, accessed 23 June 2011.

¹³ An LNG train is a facility to convert raw natural gas into pure liquefied natural gas ready for delivery to a tanker.

¹⁴ The Nigerian government owned 49 per cent of Nigeria LNG with three other MNCs that owned the remaining 51 per cent. The Nigerian government controlled Nigeria LNG through the directors it had appointed to the Board of Directors of Nigeria LNG (US District Court Southern District of Texas, 2009).

through the joint venture, implemented this scheme by using a Gibraltar shell company controlled by (Jeffrey Tesler) a solicitor based in the United Kingdom ('the UK agent',) and a phony service contract with the Japanese trading company ('the Japanese agent') as conduits for the bribes (US District Court Southern District of Texas, 2009). Despite a code of business ethics, Halliburton Group financial statements made no mention of any of its subsidiary of having paid bribe in foreign countries.

In 2008, a former officer and director of the KBR company based in Houston pleaded guilty to conspiring to violate the Foreign Corrupt Practices Act (FCPA) 1977. The plea agreement, which the court accepted, stated that:

'Stanley faces a sentence of seven years in prison and payment of \$10.8 million in restitution'. (US Department of Justice Release, 3 September 2008.)

Four months later, KBR and Halliburton agreed to pay \$177 million in disgorgement to settle the SEC's charges. KBR and Root LLC also agreed to pay a \$402 million fine to settle parallel criminal charges brought by the US Department of Justice (*US Department of Justice Release, 3 September 2008*).

Siemens AG is a German corporation with its executive office in Munich, Federal Republic of Germany. It is one of the world's largest manufacturers of industrial and consumer products, specialising in locomotives, traffic control systems and electrical power plants, medical equipment, electrical components, and communication networks. Siemens employs approximately 428,200 people and operates in approximately 190 countries worldwide. Siemens reported a net revenue of \$116.5 billion and net income of \$8.9 billion in 2008 (US District Court of the District of Columbia, 2008). The company's 'Code of Conduct' states:

'Siemens conduct business responsibly and in compliance with the legal requirements and governmental regulations of the countries in which we operate..... We have set ourselves globally binding principles and guidelines that require all employees and managers to behave in an ethical law-abiding manner. They form the basis for our work and the way in which our employees interact with each other and with our customers and partners' (Code of Conduct for Siemens Suppliers, Version 1.0 2008-9, p. 6).

Siemens AG has a long business history in Nigeria, having secured telecommunications contracts over the years (*The Punch*, 17 November 2007). In 2007, Siemens AG was indicted for paying millions of euros in bribes to cabinet ministers and dozens of other officials in foreign countries (Venezuela, China, Israel, Bangladesh, Nigeria Argentina Vietnam Russia Mexico and Iraq (US District Court of the District of Columbia, 2008). The four telecommunications projects won in Nigeria were one of the 14 categories of transaction in respect of which Siemens was indicted for bribery. Paragraph 49 of the court charge states that:

‘Siemens COM made approximately \$12.7 million in suspicious payments in connection with Nigerian projects, with at least £4.5 million paid as bribes in connection with four telecommunications projects with government customers in Nigeria, including Nigeria Telecommunication Limited and Ministry of Communications’. (US District Court of the District of Columbia, 2008, p. 20).

Further evidence shows that in the four telecommunications projects, approximately \$2.8 million of the bribe payments was routed through a bank account in Potomac, Maryland, in the name of the wife of the former Nigerian Vice-President. The Vice-President’s wife was a dual US-Nigerian citizen living in the United States (US District Court of the District of Columbia, 2008, p. 20). In order to conceal the corrupt payment, the wife of the Vice-President served as the representative of a business consultant who entered into a fictitious business consulting agreement to perform ‘supply, installation and commissioning’ services but who did no actual work for Siemens (US District Court of the District of Columbia, 2008, p. 20). Other corrupt payments included the purchase of approximately \$172,000 in watches for Nigerian officials designated in internal Siemens records as ‘P’ and ‘VP’, which probably referred to the President and Vice-President of Nigeria (US District Court of the District of Columbia, 2008, p. 20-21). Siemens was also accused of failing to keep accurate books and records by, *inter alia*: which included:

‘Generating false invoices and other false documents to justify payments; disbursing millions in cash from cash desks with inaccurate documentation and authorising or supporting the withdrawal; and using post-it notes for the purpose of concealing the identity of persons authorising illicit payment (US District Court of the District of Columbia, 2008).

In 2007, a former Manager in the telecommunications-equipment unit of Siemens, Reinhard Siekaczek, who was indicted of embezzlement charges by the court in Munich, Germany, admitted that the company had paid the bribes to win lucrative telecommunication equipment contracts in the affected countries (*The Punch*, 17 November 2007). Siemens accepted responsibility for the misconduct and agreed to pay the €201 million (\$292.86 million) fine decreed by the court (*Wall Street Journal*, 16 November 2007; *ThisDay*, 17 November 2007).

In December 2008 Siemens agreed to the violation of the anti-bribery, books and records and internal controls provisions of the FCPA 1977 in the United States and offered to pay a total of \$1.6 billion in disgorgement and fines, the largest amount a company has ever paid to resolve corruption-related charges (*US SEC release*, 15 December 2008). US SEC stated that:

‘Siemens has agreed to pay \$350 million in disgorgement to SEC. In related actions, Siemens will pay a \$450 criminal fine to the US Department of Justice and a fine of €395 million (approximately \$569 million) to the Office of Prosecutor General in Munich, Germany. Siemens previously paid a fine of €201 million (approximately \$285 million) to the Munich Prosecutor in October 2007’. (*US SEC release*, 15 December 2008).

Siemens CEO Peter Löscher, who took over in May 2007 also admitted and commented on the gap in company’s claims of sound code of conduct and its actions thus:

‘It is completely clear that management culture failed. Managers broke the law. But this has nothing to do with a lack of rules. Siemens had and still has an outstanding set of rules. The only problem is that they were apparently being violated on an ongoing basis’ (*Control Risks*, 2009, p. 15.).

In addition, the US Department of Justice pointed out that:

‘Siemens had received a series of warning signs and ‘red flags’ following its listing on the New York Stock Exchange, but had failed to respond’ (*Control Risks*, 2009, p. 15.)

This perhaps confirms the view expressed by the Frankfurt prosecutor that the company’s compliance programme existed ‘only on paper’.

The Willbros Group conducts its operations outside North America through its wholly-owned subsidiary, Willbros International Inc. Like the Willbros Group, Willbros Inc is incorporated in Panama and maintained its administrative headquarters in Tulsa until 2000, when it moved to Houston, USA. Willbros International Inc. provides construction and engineering services to more than 400 clients in over 55 countries with 2,030 to 4,750 employees (Company webpage, 2009). Until it sold its Nigerian assets in February 2007, Willbros Inc had conducted business in Nigeria for over 40 years, primarily through three affiliates¹⁵. Before the sale of Nigerian assets in 2007, the company's operation in Nigeria frequently represented a sizeable per cent of the company's global revenues. In 2004, for example, the Nigerian operations produced roughly 25 per cent of the global company's revenue (US District Court Southern District of Texas, 2008). The company's code of business conduct states that:

'Willbros takes very seriously its responsibility to its shareholders, its employees and the customers and communities it serves. The Company enforces strict internal policies with respect to conflicts of interest and the ethical conduct of its business with customers, partners, vendors and subcontractors'. (Willbros CSR Report, 2009).

In 2003 through to early 2005, the Willbros Group was indicted for having violated the Federal Corrupt Practices Act 1977 (FCPA 1977) by authorising bribery schemes through hired agents (consultants) based in Western countries valued at \$6 million to make corrupt payments to public officials in Nigeria in order to assist in obtaining and retaining business for the Willbros Group and its subsidiaries (*The Punch*, 26 July 2007; United States District Court Indictment Sheet, 2007; US District Court Southern District of Texas, 2008). It was established by the court that:

'The purpose of the conspiracy was to make corrupt payments to officials of the Nigerian National Petroleum Corporation (NNPC), the National Petroleum Investment Management Services (NAPIMS), senior officials in the Executive Branch of the Nigerian Government, and to a Political Party, as well as the officials of the Shell Petroleum Development Company of Nigeria Ltd. (SPDC)'. (United States District Court Indictment Sheet, 19 July 2007; *The Punch*, 26 July 2007; US Department of Justice, 5 November 2007).

¹⁵ Willbros West Africa, Inc, a wholly-owned subsidiary of Willbros International; Willbros Nigeria, Ltd., a majority-owned subsidiary of Willbros West Africa; and Willbros Offshore Nigeria Inc., a wholly-owned subsidiary of Willbros West Africa.

In 2006 Brown, the former Divisional Manager of Willbros Nigeria Limited, pleaded guilty to aiding and abetting the violations of the Exchange Act 1934 and the Federal Corrupt Practice Act 1977 (FCPA 1977) (US District Court Southern District of Texas, 2006). In 2007, after the indictment, Steph pleaded guilty to his involvement in violation of the FCPA 1977 for conspiring to bribe government officials with more than \$6 million (US Department of Justice, 5 November 2007; *Business Day*, 3 October 2007). As a consequence, the Willbros Group and its subsidiary, Willbros International Inc., accepted responsibility for its employees who had violated the FCPA 1977 and agreed to pay \$22 million by way of fines in connection with the corrupt payment to the Nigerian and Ecuadoran government officials (US SEC Litigation Release, 14 May 2008; US Department of Justice Release, 14 May 2008).

Sagem SA of France is a French-based high-technology company in the Safran Group¹⁶. It is a world and European leader in solutions and services in optronics, avionics, electronics and critical software for the civilian and military market, and maintains a presence in more than 20 countries. The Group has 54,500 employees in over 30 countries. The Safran Group reported a €10.329 billion revenue and a net profit of €256 billion in 2008¹⁷ (2008 Annual Report). The company's code of ethics states that:

'The group's goals are founded on values shared by all personnel. It is corporate policy to ensure that the conduct of business complies with high standards of honesty, integrity and professional excellence. By upholding these values the group remains worthy of the trust placed in it by its customers, personnel, shareholders, suppliers and partners'. (Safran Group, 2009.)

The Sagem SA case illustrates how the process of the awards of government contracts is used by MNCs to bribe public officials in order to gain competitive advantages which contradict their ethical claims of high standards of honesty and integrity.

¹⁶ During the 2005 fiscal year, Sagem SA merged with Snecma in order to create the Safran Group.

¹⁷ The Group's operation covers: aerospace propulsion which accounted for €5.8 billion of 2008 revenue; aircraft equipment, €2.86 billion; and defence and security, €1.65 billion (2008 Annual Report). It has derived its income from its operations across the globe, including its operation in Africa (France, 29 per cent; Europe (excluding France), 24 per cent; North America, 28 per cent; Asia, 9 per cent; and rest of the World, 10 per cent (2008 Annual Report).

The Nigerian Federal Government in 2001 awarded the contract for the National Identity Card (NIC) project to the French firm Sagem SA for the sum of \$214 million (N26.75 billion). Despite its claim of ethical business conduct, high standard of honesty and integrity, it was alleged in 2003 that Sagem SA spent huge funds on supporting the ruling party (the People's Democratic Party) in the form of campaign donations and special Obasanjo/Atiku campaign billboards (*ThisDay*, 14 December 2003). Upon further investigation by the Independent Corrupt Practice and other Related Offences Commission (ICPC), it was discovered that some government officials were actually bribed through the company's business partner in Nigeria. The ICPC reported that:

' . . . Sagem SA agents in Nigeria including the Regional Area Manager, Identification Systems, Mr. Jean Pierre Delarue, a French man and Niji Adelagun, organised and executed a scheme through which bribes were distributed to these top government officials'. (*ThisDay*, 14 December 2003; *The Punch*, 24 December 2003).

The ICPC investigations revealed that the contract was actually won by Sagem SA having funnelled sums of money totalling \$1.8 million (N225 million) to a number of government officials in the supervisory ministry¹⁸ (*The Punch*, 20 December 2003; *ThisDay*, 25 March 2004) and who were alleged to have collected huge sums of money in local and foreign currencies in the course of prosecuting the NIC scheme (*ThisDay*, 14 December 2003).

In 2010, the US Securities and Exchange Commission, charges six oil services¹⁹ and freight forwarding companies for widespread bribery of customs officials and tax officials to receive preferential treatment and improper benefits during the customs process and tax assessment in a number of developing countries including Nigeria. US SEC alleges that these MNCs perpetrated the corrupt practices through:

¹⁸ The affected officials were: the late Chief Sunday Afolabi, former Minister of Internal Affairs; Hussaini Zannuwa Akwanga, former Minister of Labour and Productivity; Ms R. O. Akerele, the then Permanent Secretary, Ministry of Internal Affairs; Dr. Hahmud Shata, former Minister of State Dr. Okwesilieze Nwodo, former Secretary of the People Democratic Party (PDP); Christopher Orumgre Agidi, former Director, Department of National Civic Registration (DNCR); and Mr. Naji Adelagun, the Business Partners of Sagem SA in Nigeria (*ThisDay*, 14 December 2004).

¹⁹ These companies are GlobalSantaFe Corp., Noble Corporation, Transocean Inc., Tidewater Inc. Pride International Inc., Royal Dutch Shell Plc., and Panalpina Inc.

‘Avoiding applicable customs duties on imported goods, expediting the importation of goods and equipment, extending drilling contracts, and lowering tax assessments. The companies also paid bribes to obtain false documentation related to temporary import permits for oil drilling rigs, and enable the release of drilling rigs and other equipment from customs officials’. (US SEC Press Release, 4 November 2010.)

These cases are fully discussed below to show the involvement of MNCs in corrupt practice despite their claims of behaving and conducting their business ethically in their host countries. Table 2 show the extent of US MNCs role in perpetuating corrupt practices in Nigeria and the penalty and criminal fine they have agreed to pay for violating US Foreign Corrupt Practice Act, 1977 (FCPA) confirming their involvement in this practices.

GlobalSanteFe Corp. (‘GSF’)²⁰, was incorporated in the Cayman Islands and had its headquarters in Texas. GSF provided offshore oil and gas drilling services for oil and gas exploration companies. GSF, acting through its direct subsidiary Global Offshore Drilling Ltd., engage in activity in West Africa²¹. In 2010 GSF was alleged to have made illegal payments through customs brokers to officials of Nigerian Customs Service (‘NCS’) from approximately January 2002 through July 2007, in order to obtain preferential treatment during customs process for the purpose of assisting GSF in retaining business in Nigeria (*US District Court for the District of Columbia, 2010*). The US SEC report noted that:

‘By making the payments GSF profited in the amount of approximately \$2.7 million by avoiding customs-related costs, including those associated with actually physically moving the rig out of Nigeria waters, and gaining revenue from not interrupting its drilling operations during a move’ (*US District Court for the District of Columbia, 2010, p. 2*).

It was further alleged that GSF, through its customs brokers, also made a number of other payments during the relevant period totalling approximately \$300,000 to government officials in Gabon, Angola and Equatorial Guinea. The US SEC complaints to the US District Court of Columbia, noted that GSF, disguised these illegal transaction:

²⁰ GlobalSantaFe was merged with the large rival Transocean in 2007 and the combined company is known as Transocean.

²¹ These countries include Nigeria, Gabon, Angola and Equatorial Guinea.

'None of the above-referenced illegal payment in Nigeria, Angola, Gabon and Equatorial Guinea was accurately reflected in GSF's books and records. Instead, the payment were recorded as legitimate transaction costs such as 'additional charges for export', 'intervention', or 'an authorities fees', and thus were not fairly reflected or accurately recorded in its books, records, and accounts'. (p. 9.)

Following the US SEC investigations, GSF admitted to criminal wrongdoing and agreed to an injunction to pay disgorgement of \$3,758,265 and a criminal penalty of \$2.1 million (*US SEC Press Release*, 4 November 2010)²².

Noble Corporation is a Swiss company whose common stock is registered on the New York Stock Exchange under the symbol 'NE'. Prior to March 2009 and during the relevant period, the parent company of Noble Corporation was a Cayman Islands corporation with headquarters and principal executive officers in Sugar Land, Texas, but the place of incorporation of the parent of Noble group of companies later changed and was established in Switzerland in March 2009. Noble reported a net revenue of \$3.6 billion and net income of \$2.0 billion in 2009 (Noble Corporation 2009 Annual Report). Noble corporation²³, operate in Nigeria through its wholly-owned subsidiary Noble Drilling (Nigeria) Ltd., 'Noble-Nigeria'²⁴. Noble Corporation Code of Conduct and Business Ethics states:

'We seek to outperform our competition fairly and honestly. We seek competitive advantages through working smarter and harder than our competition, never through unethical or illegal business practices..... No employee should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other intentional unfair dealing practice' (p. 3.)²⁵

The code of business conduct and ethics state further that 'if a law, local custom and policy conflict with the code, the employee must comply with the code. The code

²² Available on-line at <http://www.sec.gov/litigation/litreleases/2010/lr21724.htm>, accessed 15 March 2011.

²³ Noble, through its subsidiaries is a leading provider of diversified services for the oil and gas industry and performs contract drilling services with its fleet of mobile offshore drilling units located around the world (*US District Court for the Southern District of Texas Houston, 2010*).

²⁴ Noble-Nigeria was incorporated in Nigeria in September 1990 as an oil industry company. Its financial results are consolidated into the financial statements of Noble. Noble's and its subsidiaries' operational structure in Nigeria was also referred to as the 'West Africa Division' (*US District Court for the Southern District of Texas Houston, 2010, p. 4*).

²⁵ Available online at http://www.noblecorp.com/Docs/Code_ConductEthics.pdf accessed on 10 March 2010.

shall serve as a touchstone for every employee in the conduct of his or her day-to-day work activities' (p. 1). Yet, Noble-Nigeria authorised its customs agent to submit false documents to the Nigerian Customs Service (NCS) to reflect physical export and re-import of its grilling rigs when in fact the rigs never moved (the 'paper process'). The US SEC alleges that:

'Noble-Nigeria obtain Temporary Importation Permits (TIPs) with paper process exports and re-imports of rigs eight times from January 2003 through May 2007, and made a total of at least \$79,026 in payments to the customs agent that were designated by the agent as 'special handling charge' on invoices associated with the paper process TIP renewals. Noble also made payments in 2005 and 2006 to obtain two discretionary extensions' (US District Court for the Southern District of Texas Houston, 2010, p. 5).

The SEC further noted that:

'Although Noble had an FCPA policy in place, Noble lack sufficient FCPA procedures, training and internal controls to prevent the use of paper process and making of payment to Nigerian government officials to obtain TIPs and TIPs extensions' (US District Court for the Southern District of Texas Houston, 2010, p. 6).

Through the alleged bribery scheme, Noble Corporation, wrongfully obtained profits and avoided a cost of at least \$4,294,933. After investigations by US SEC into this corrupt allegation and its subsequent indictment, Noble agreed to pay a disgorgement and prejudgment interest of \$5,576,998 and criminal fine of \$2.59 million for hiring agents to bribe officials in Nigeria (*US SEC Press Release*, 4 November 2010).

Pride International, Inc. ('Pride') is one of the world's largest offshore drilling companies. Pride is a Delaware corporation headquartered in Houston Texas. Pride operated its global business through more than 100 subsidiaries that employed as many as 14,000 people and operated more than 300 rigs in approximately 30 countries (*US District Court for the Southern District of Texas, Houston, 2010*). Pride International Code of Business Conduct and Ethical Practices states that:

Pride is committed to conducting its business in an open, vigorous and competitive manner. The United States, the European Union and many other countries regulate and some instances prohibit certain types of anti-competitive behavior. The Company's policy is to comply with both the letter and the spirit of the antitrust and competition laws of the jurisdictions where it

operates. Violations of the law can result in severe penalties, including personal criminal liability'. (p. 1.)²⁶

Despite Pride's anti-corruption commitment as extracted from its report, US SEC alleges that:

Pride and its subsidiaries paid approximately \$2 million to foreign officials in eight countries from 2001 – 2006 in exchange for various benefits related to oil services (US SEC Press Release, 4 November 2010).

For example, Joe Summer, Pride's former country manager in Venezuela authorised bribes approximately \$414,000 to state-owned oil company to secure extensions of drilling contracts. The finance manager of the US based Eastern hemisphere, India, made three payments totalling \$500,000 to an administrative judge to favourably influence an ongoing custom litigation relating to the importation of a rig into India. Bobby Benton, Pride's Vice President, western hemisphere operation, also authorised \$10,000 to a third party to be paid to customs officials in Mexico (*US District Court for the Southern District of Texas, Houston, 2010*). In addition, Pride paid \$150,000 to customs and \$204,000 to Kazakh tax consultant. \$10,000 was paid in Saudi Arabia for clearance of rig, \$8,000 in Congo for maritime certification, and \$116 was paid in Libya for INAS assessment (*US District Court for the Southern District of Texas, Houston, 2010*).

Pride Forasol Drilling Nigeria Limited and Somaser S. N. C., majority owned subsidiaries of Pride Forasol which operated in Nigeria (hereinafter collectively 'Pride Forasol Nigeria'). The SEC report noted that Pride Forasol Nigeria played a key role in the bribery scheme designed by Pride's managers by authorising illegal payment through agents and tax consultants. Pride forasol Nigeria through its agent paid between \$15,000 and \$93,000 for Temporary Importation permits (TI), \$15,000 for new TI intervention and \$35,000 for importation of rigs without completing certain legally required steps. In addition, Pride Forasol Nigeria, also paid \$55,000 and \$65,000 to Rivers State Internal Revenue and Bayelsa State Internal Revenue tax officials to reduce the amount of PAYE taxes. The sum of \$52,000 was also paid to

²⁶ Available on-line at http://www.prideinternational.com/_filelib/FileCabinet/Docs/Code_of_Business_Ethics/Pride_ConductEnglish.pdf?FileName=PrideConductEnglish.pdf accessed on 15 April 2011.

Federal Inland Revenue Service of Nigeria (FIRS) for resolution of VAT tax audit (*US District Court for the Southern District of Texas, Houston, 2010*).

The document examined by US SEC showed that Pride's Managers in Nigeria knew the nature of the transaction but still chose to engage the services of the agent and tax consultant in funnelling the bribes to government officials which contradict their corporate claims of social responsibility. Through these several bribery practices, Pride was reported to have obtained improper benefits totalling approximately \$19.3 million. Pride was later indicted by US SEC, for violating the provisions of FCPA. As a consequence, Pride agreed to pay disgorgement and prejudgment interest of \$23,529,719 and Pride and its subsidiary Pride Forasol agreed to pay a criminal fine of \$32.625 million (*US SEC Press Release, 4 November 2010*) (see Table 2 below).

Tidewater Inc. is a US company based in New Orleans, Louisiana that operates offshore service and supply vessels designed to support all phases of offshore energy exploration, development and production industry. Tidewater Inc. operates through its wholly owned subsidiary Tidex Nigeria Limited (Tidex). Tidex provided agency and operational support for all vessels that Tidewater Marine L.L.C. (TMII) operated in Nigeria. The code of business conduct and ethics of Tidewater states:

'The company shall comply with applicable laws, rules and regulations.... Full, fair, accurate, timely and understandable disclosure in reports and documents that the company files with, or submits to SEC and in other public communications made by the company, and accountability for compliance with the code'. (Code of Conduct and Business Ethics, May 2009, p. 1.)²⁷

The company through its code of business conduct and ethics promised to behave ethically and to observe all laws, rules and regulations, but in 2010 the US SEC alleges that:

'In 2002 through March 2007, Tidewater, through its subsidiaries and agents also authorised the reimbursements of approximately \$1.6 million to customs broker in Nigeria used, in whole or in part, to make improper payments to Nigerian Customs Services (NCS) employees to induce them to disregard certain regulatory requirements in Nigeria relating to the temporary importation of company's vessels into Nigeria waters'. (US District Court of the Eastern District of Louisiana, 2010, p. 2.)

²⁷ Available on-line at <http://tdw.ehclients.com/images/uploads/Code-of-Business-Conduct-and-Ethics.pdf> accessed on 15 March 2010.

As a consequence of the violation of the provisions of US FCPA, Tidewater agreed to pay \$8,104,362 in disgorgement and a \$217,000 penalty and Tidewater Marine International agreed to pay a criminal fine of \$7.35 million (*US SEC Press Release*, 4 November 2010) (see Table 2 below).

Transocean Inc. (Transocean) was a Cayman Islands corporation with its principal offices in the Cayman Island and Houston, Texas. Transocean is the world largest international provider of offshore drilling services and equipment. Its clients are leading international oil companies as well as many government controlled and smaller independent oil companies. Transocean has offices throughout the world, including Nigeria and the United States (*US District Court for the District of Columbia*, 2010). Transocean global revenue for the year 2010 was \$9.58 billion, and its operating income was \$1.89 billion (*Transocean Annual Report*, 2010). The Transocean Inc. Code of Integrity (2011) states:

'In accordance with the expansive scope of global anti-corruption laws, including the FCPA and the U.K. Bribery Act, Transocean's policy prohibits all bribes from being paid or promised, regardless of whether the recipient is a foreign government official or a private individual (commercial bribery). Transocean personnel are also prohibited from accepting or agreeing to accept improper benefit or bribe'. (p. 9.)²⁸

Specifically, Transocean does not permit its funds, assets or property to be used in an illegal manner and therefore does not permit bribery, any form of money laundering or the support of terrorism. The US SEC alleges that: 'Transocean made illicit payments through its custom agent to Nigerian government officials in connection with paper moves, thus avoiding moving cost approximately \$1,008,985 and gaining profit of approximately \$3,172,378. The reported gain made from the illicit payments amounted to \$4.2 million' (*US District Court for the District of Columbia*, 2010, p. 6). Despite the company's claims and commitment to the global anti-corruption laws and code of integrity, 'Transocean's management failed to stop the illicit conduct and in some cases even approved it'. (*US District Court for the District of Columbia*, 2010, p. 6.) After the investigations into the role Transocean's

²⁸ Available on-line at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9ODMwMDJ8Q2hpbGRJRDR0tMXxUeXBIPtM=&t=1> accessed on 15 March 2010.

have played in bribing government officials in developing countries, particularly in Nigeria, and for violating the US FCPA, Transocean agreed to pay disgorgement and prejudgment interest of \$7.27 million and Transocean Ltd. and Transocean Inc. agreed to pay criminal fine of \$13.44 million (*US SEC Press Release*, 4 November 2010) (see Table 2 below).

Royal Dutch Shell Plc. ('Shell'), an English-chartered company headquartered in The Hague, Netherlands, focuses, through its subsidiaries, on oil, gas, and power production and exploration. Shell reported a net revenue of \$368.056 billion and net income of \$20.47 billion in 2010 (*Shell International Annual Report*, 2010). The code of conduct of Royal Dutch Shell Plc. states that:

'Shell does not tolerate bribery, insider dealing, market abuse, fraud or money laundering. Facilitation payments are bribe and must not be paid. You must also avoid any real or potential conflict of interest (or the appearance of a conflict) and never offer or accept inappropriate gifts or hospitality'. (*Shell Code of Conduct*, 2010, p. 10.)²⁹

The US SEC through the administrative proceedings instituted against Shell in 2010 alleges that:

'From September 2002 through November 2005, SIEP³⁰, on behalf of Shell, authorised the reimbursement or continued use of services provided by a company acting as a customs broker that involved suspicious payments of approximately \$3.5 million to officials of the Nigerian Customs Service in order to obtain preferential treatment during the customs process for the purpose of assisting Shell in obtaining or retaining business in Nigeria on Shell's Bonga³¹ Project'. (*US SEC Administrative Proceedings*, 2010, p. 2).

The SEC Administrative Proceedings (2010) further states that 'as a result of these payments, Shell profited in the amount of approximately \$14 million. None of the improper payments was accurately reflected in Shell's books and records, nor was Shell's system of internal accounting controls adequate at the time to detect and prevent these suspicious payments, (p.2). The above illegal payments violate the

²⁹ Available on-line at http://www-static.shell.com/static/aboutshell/downloads/who_we_are/code_of_conduct/code_of_conduct_english_2010.pdf accessed on 15 March 2010.

³⁰ Shell international Exploration and Production Inc. (SIEP), a Delaware company with headquarters in Houston, Texas, is a wholly owned indirect subsidiary of shell.

³¹ Bonga, was discovered by a Shell subsidiary in 1995, was the first deepwater offshore oil and gas project in Nigeria.

FCPA and contradict Shell code of conduct that forbids payment of bribery and facilitation payment. In anticipation of the institution of the proceedings, Shell and SIEP submitted offer of settlement with the US SEC and US Department of Justice and agreed to pay disgorgement and prejudgment interest of \$18,149,459 and Shell Nigeria Exploration and Production Co. Ltd. agreed to pay a criminal fine of \$30 million (*US SEC Press Release*, 4 November 2010) (see Table 2 below). It was also reported that in February 2007, one of the Bonga Project Contractors pleaded guilty to violations of the Foreign Corrupt Practices Act and agreed to pay \$26 million in criminal fines in connection with the payments to Nigerian customs officials through Courier Subcontractor to obtain preferential treatment during the customs process (see *US v. Vetco Gray UK Ltd.*, 2007).

The gap between anti-corruption policy and action of MNCs is not just confined to the oil and gas industry as illustrated in the above cases. Panalpina, Inc., a freight forwarding company. Panalpina, Inc. is a New York corporation, with its principal place of business located in Morristown, New Jersey. Panalpina, Inc. is a wholly owned subsidiary of Panalpina World Transport (Holding) Ltd. ('PWT'), a global holding company located in Basel, Switzerland, whose subsidiaries and affiliates (collectively known as the 'Panalpina Group') provides global freight forwarding and logistics services in approximately 160 jurisdictions through a network of local affiliate (*US District Court for the Southern District of Texas, Houston, 2010, p.3-4*). Panalpina reported a net revenue of \$5.96 billion and a gross profit of \$1.38 billion in 2009 (Panalpina Annual Report, 2009). The code of conduct of Panalpina Inc. states that:

'Panalpina employees do not give any undue advantage to influence the judgment or behaviour of a person in a position of trust whether in government or in private business. Similarly, Panalpina employees do not accept or solicit such undue advantages. This applies regardless of the geographical location and also includes undue advantages directed to or coming from a foreign government official or a foreign business partner'.³²

Despite the company claims of ethical code of conduct, the US SEC alleges that:

³² Available on-line at http://www.panalpina.com/www/global/en/about/corporate_responsibility/ethical_conduct.-Slot3-11176805099687-DownloadRef.pdf accessed on 15 March 2010

‘Between 2002 and continuing until 2007, Panalpina, Inc. engaged in a series of transactions whereby it directed business to affiliated companies within the Panalpina Group, which then used part of the revenues generated from this business to pay a significant number of bribes running to hundreds of thousand dollars to government officials in countries including Nigeria, Angola, Brazil, Russia, and Kazakhstan’. (US District Court for the Southern District of Texas, Houston, 2010, p.1.)

Panalpina, Inc. Was also reported to have obtained improper benefits totalling at least \$11, 329,369 from the illegal conduct. The US SEC reports show that these companies specifically provide false invoices with line items to mask the nature of the bribes. The illegal payments were made to government officials in a number of countries which contradict the company claim that it does not give undue advantage to influence the behaviour of people in position of trust. As a consequence of the violation of anti-corruption provisions of FCPA, Panalpina, agreed to pay disgorgement of \$11,329,369 and PWT and Panalpina agreed to pay a criminal fine of \$70.56 million (*US SEC Press Release*, 4 November 2010) (see table 2 below).

Table 2 Lists of MNCs Charged with Corrupt Practices

Name of Company	Extent of Bribe \$	Disgorgement & Interest \$	Criminal Fine \$
GlobaSantaFe Corp.	-	3,758,165	2.1 million
Noble Corp.	-	5,576,998	2.59 million
Pride Inc.	2.7 million	23,529,718	32.625 million
Tidewater Inc.	1.6 million	8,321,362	7.35 million
Transocean Inc.	-	7,265,080	13.44 million
Royal Dutch Shell Plc.	3.5 million	18,149,459	30 million
Panalpina Inc.	-	11,329,369	70.56 million
Total		77,930,151	158.665 million

Source: Extracted from the US SEC Complaint and Administrative Proceedings 2010

Despite claims of serving the public interest, ethics and integrity in the offshore operations around the world, none of the above activities were explained in any of the companies report. Rather they were brought to public knowledge by the US SEC investigations of the US MNCs operations in developing countries and their compliance with the provisions of FCPA. The persistent of organised hypocrisy is a double-edged sword and can be become a liability. As the reviewed cases has shown, rather than a resources for social legitimacy, non compliance with the anti-

corruption policy, code of business conduct , integrity and ethics of the company becomes a liability and can threaten the survival and welfare of the company and the executives. For example, the penalty to be paid by the companies under the settlements total \$236.5 million comprising of \$77.9 million in disgorgement and interest and \$158.67 million in criminal fine (see Table 2). According to Robert Khuzami, Director of the SEC's Division of Enforcement:

'Bribing customs officials is not only illegal but also bad for business, as the coordinated efforts of law enforcement increase the risk of detection every day. These companies resorted to lucrative arrangements behind the scenes to obtain phony paperwork and special favours, and they landed themselves squarely in investigators' crosshairs'. (US SEC Press Release, 4 November 2010.)

Cheryl J. Scarborough, Chief of the SEC's Foreign Corrupt Practices Act Unit, added:

'This investigation was the culmination of proactive work by the SEC and DOJ after detecting widespread corruption in the oil services industry. The FCPA Unit will continue to focus on industry-wide sweeps, and no industry is immune from investigation'. (US SEC Press Release, 4 November 2010.)

While the contradictions between corporate policy and acts may be exposed in developed countries, the same is very difficult in developing countries as they frequently lack administrative, financial resource and enforcement. Despite the Federal Corrupt Practices Act 1977 and the Organisation for Economic Cooperation and Development (OECD) convention on corruption (OECD, 1997), which has been implemented by many countries, the level of corruption and bribery has increased and its estimated to be over \$1 trillion each year (AAPG, 2006).

5. Summary and Discussion

This paper had sought to stimulate debates about the contemporary enterprise culture and corporate claims of socially responsible conduct by examining their role and involvement of MNCs in corruption and bribery. Bribery, corruption, money laundering practices are carefully structured transactions which are concealed in the company's reports. Despite the claims of transparency, integrity and ethical business conduct, none of the MNCs examined in this paper communicated their anti-social practices to stakeholders, or explained the possible social consequences of paying bribe. The illustrations provided how MNCs have used a variety of corrupt practices

in securing public contracts and deceptively reduce its social obligation as a way of gaining competitive advantages which has a huge social consequence (Otusanya, 2010). The cases provided in this paper have shown the huge gap between corporate claim of socially responsible and the social expectations. The contradictions have been exposed by regulators and MNCs pleading guilty which have resulted in imposition of a huge penalty.

MNCs have used the political elite in developing countries to seek to advance their global earnings and competitive advantages by offering bribes and other inducements to secure government contracts in Nigeria and to reduce legally allowed taxes and custom charges. The paper has also drawn attention to a variety of strategies and processes (including the use of intermediaries, agent, and offshore entities) used by MNCs to advance this business agenda in developing countries. The cases provide some insight into the politics of international business and entrepreneur culture and into the opportunities created by the advance of globalisation and the deeper institutional structures in developing countries which facilitate corrupt financial practices (Wallace-Bruce, 2000; Sikka, 2008; Otusanya, 2011a). It is submitted that MNCs are the key actors in corrupt practices because Nigerian problems cannot easily be understood without considering the role of the 'supply side' (AAPP, 2006; Otusanya, 2010, 2011a). In other words, MNCs have been implicated in offering bribes and inducements to the political elite and government officials in Nigeria in contrast to their acclaimed adherence to code of business ethics.

Despite MNC appeals to codes of conduct, they have also sought to increase profits and gain competitive advantages through bribery and corruption. Their involvement in corrupt practices cannot therefore be reconciled with their business codes of conduct. Evidence also shows that despite MNC violations of anti-corruption and money laundering laws in Nigeria, none of the companies examined in this paper has been prosecuted by anti-corruption agencies in Nigeria (Bakre, 2007; Otusanya, 2010). The public have only become aware of the bribery scandals because of the actions of whistleblowers and foreign regulatory authorities such as US SEC and US Department of Justice. While the Nigerian government is constrained from pursuing administrative policies which might minimise the incidence of bribery and corruption,

they seem to have a considerable discretion in deciding whether or not to institute investigations. Furthermore, the Nigerian state lacks the political and financial resources to impose sanctions on these MNCs because the country relies on foreign direct investment (FDI) to drive the economy, but only mobilise to gain public legitimacy after external prosecution have been conducted.

In fact, the corporate social responsibility discourses often ignore the anti-social practices of MNCs in developing countries. As Briloff (1976) notes, these corporations no longer can be viewed as mere profit-generating centres, instead they must be seen as having a profound effect on the survival of the communities in which they operate and corporation affect the lives of the great masses of individuals in our midst (p.19). The corrupt practices of MNCs hamper economic development and divert investment away from infrastructure, institutions and social services, which forces ordinary consumers to pay higher prices and also degrades the quality of life of millions of people (Otusanya, 2011b). It also makes public contracts more expensive as it increases the cost of doing business. As Adedeji (2009) puts it: 'contracts in Nigeria have been said to cost eight times higher to execute when compared with other countries, the citizenry suffer from lack of due process and disrespect for the rule of law whilst the nation is now classified as one of the corrupt nations in the world' (p. 22).

As a result of bribery and corruption, the loss of government revenue constrains investment in education³³, healthcare, the provision of clean water and the fight against disease (see Sikka, 2008; Otusanya, 2010). This has therefore created a huge gap in the standard of living in Nigeria³⁴ compared to other nations with recorded government revenues (*The Punch*, 4 April 2008; CBN, 2006; Human Development Report, 2007/2008). While the average life expectancy in some

³³ It is estimated that 10 million children of school age were begging or hawking on the streets. Also, enrolment data on the nation's primary school system from the Federal Ministry of Education put the number of children out of the school system at 3 million (*The Punch*, 27 May 2008).

³⁴ In 2004, only 34 per cent of households in Nigeria had access to electricity. About 52 per cent of the population did not have access to safe drinking water, while an estimated 56 per cent lacked adequate sanitation, placing Nigeria among those countries with the most unfavourable social-environmental conditions in the World (Human Development Report, 2007/2008). The United Nation's Habitat has estimated that about 80 million Nigerians, representing 79 per cent of the population, are living in slums (*Nigerian Tribune*, 16 April 2008).

Western countries is over 80 years, a United Nation's report put the life expectancy at birth of Nigerians at 47 years (UNICEF, 2006).

The evidence in this paper shows that corrupt practices are widely perpetuated by foreign MNCs operating in Nigeria. Moreover, the private sector is often at the centre of corrupt financial practices either as enablers or as victims disadvantaged by corruption (see Otusanya, 2011a). Although some have suggested that involving the private sector in the fight against corrupt financial practices might be helpful, the difficulty is how to reconcile the systemic pressures to increase private profits with social welfare. To this end the state may review the Companies Act (Companies and Allied Matters Act 1990) to compel a corporation to explain and publish in its financial reports that it has paid a bribe under a related party transaction. The accounting standards dealing with related party transactions may need to be strengthened (by compelling MNCs to disclose information about: which entities make up the MNCs; where those entities are located and what they do; what values of sales they make in each states amongst others) in order to promote greater transparency. However, as the standard-setters have been colonised by the local and global economic elite, they are likely to lobby against its inclusion in any reform agendas.

Despite recurring corrupt financial practices arising as a result of corporate power, successive Nigerian governments have shied away from introducing effective reforms which are capable of checking corporate excesses and power. The difficulty is that, with the Nigerian state's reliance on private capital to stimulate the economy, its interests have become central to all domestic and foreign public policy-making. Despite the need to develop regulatory structures to satisfy social expectations (e.g. to health, transport and education) and to increase and protect government revenues, any attempt to do this has been frustrated by the close links between the economic elite (both local and international) and the political institutions.

The major challenge, therefore, is to develop a more proactive and viable regulatory agency in the host country, in order to complement the role played by the home countries (for instance, the US SEC and US Department of Justice) which have been attempting to sanction the hiring companies involved in foreign corrupt practices outside the United States. It should be a matter for the political agenda that governments from developing countries should be forced to discontinue business

with corporations involved in predatory financial practices. In principle, stricter penalties and sanctions have the potential to curb corrupt practices, but the prospect of these being introduced in Nigeria, as the evidence shows, is unlikely. More severe penalties should be imposed on directors of companies and threats of corporate closure should be entrenched in a global agenda against corruption, (as happened in the case of Enron). Further reforms could include the imposition on finance directors of companies of personal accountability for wrongdoing and the barring of private businesses involved in bribery and corrupt activities from doing business with the state.

The study of corruption offers rich possibilities for interdisciplinary research (see Bakre, 2007; Sikka, 2008, 2010; Otusanya, 2010), as it provides a window for studying some of the problems facing the world today. These practices raise major questions about the assumed social responsibility and ethics of MNCs and their managers, but such issues have attracted little attention in the corporate social responsibility (CSR) literature (see Sikka, 2008). For instance, MNCs have embraced CSR to show their commitment to the national and local economies, yet they have been implicated in anti-social practices. These companies have boosted their profits by abandoning their tax contribution and have engaged in bribery and corruption to gain competitive advantage. In order to understand how anti-social practices are perpetrated, further research could be conducted by examining the micro-practices (such as accounting technology and processes) which are often used by MNCs to advance their economic and financial interests. The claims of managers to be following ethical codes of conduct and to be serving the public interest are made when securing control of markets, niches and legitimacy, and yet those corporate managers continue to be implicated in bribery and corruption which contradict those claims. One area for future research may be the consideration of why such hypocritical practices flourish.

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