

A LEGAL X-RAY OF THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS (NGOS) IN SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL GOVERNANCE

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Abstract

The traditional state- centric nature of environmental governance across the globe usually does not allow non- governmental organizations the institutional latitude to realize their fundamental objectives and full potentials in pursuits of sustainable development. Notwithstanding, the rapid acceleration of globalization has moderately weakened the traditional governance processes and unnecessary procedures, while granting the non- governmental organizations both direct and indirect access to the global stage as key drivers and very essential partners in the sustainable development agenda of the United Nations. This paper undertakes a concise review of the role of NGOs towards sustainable development and environmental governance. It examines the influence of the European Community's Aarhus Convention in pursuit of sustainable development, and also analyses the successes and challenges of NGOs in environmental governance, its contribution in the United Nations policy development and the weakness of NGOs participation in environmental governance and justice advocacy.

Keywords: *Non-Governmental Organizations, Sustainable Development and Environmental Governance*

1.0 Introduction

The participation of Non-Governmental Organizations (NGOs) in environmental governance is increasing in significance, but is not unprecedented. NGOs involvement is usually considered a late- twentieth- century phenomenon, but in fact, it has occurred for over two centuries. The recent rate of proliferation of non- governmental organizations is however notable. For instance, in the year 1948, the United Nations listed forty- consultative groups that were formally accredited to participate in consultative processes; in 1998, there were more than 1,500 organizations with varying degrees of participation and access. Numerous factors, from

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the development of information technology to the greater awareness of global interdependence to the spread of democracy, explain the rise of NGOs.³

The United Nations is the intergovernmental organization that has most openly recognized and endorsed the need to collaborate with the non- governmental sector. ⁴Historically, the UN cooperated with NGOs primarily as partners in the implementation of certain programs, particularly in the areas of emergency response, human rights, and election monitoring. Due to this critical role in service delivery and implementation, civil society organizations have long been recognized as ‘partners’ of the UN system, especially in environmental negotiations. Over the past decades, environmental NGOs activity within UN processes has intensified. Prior to the 1990s, while various social movements may have utilized the UN as a global forum to call attention to particular agendas; the focus was not on influencing the official UN deliberations, but through the process leading up to the 1992 United Nations Conference on Environment and Development (UNCED). Environmental organizations began intense internal capacity building efforts to gain more sophisticated understanding of the international policy making process. It is now quite obvious that NGOs are very important actors within the global environmental governance system, that their importance is growing, and that there is the potential for them to contribute more to the effectiveness of environmental governance towards the realization of sustainable development, as NGOs participation in UN conferences are now a routine element of intergovernmental deliberations⁵. The UN Conference on Environment and Development was of particular significance to NGOs agenda and declared the need for new forms of participation:

The United Nations system, including international finance and development agencies, and all intergovernmental organizations and forums should in consultation with non- governmental organizations, take measures to... enhance existing or, where they do not exist, establish mechanisms and procedures within each agency to draw on the expertise and views of non- governmental organizations in policy and program design, implementation and evaluation⁶.

The 1992 Earth summit thus affirmed that the commitment and genuine involvement of non-state actors are critical to reaching sustainable development goals. Throughout the 1990s, NGOs continued to focus on official UN deliberations and the international policy arena. A

³ S Chamovitz, ‘Two Centuries of Participation: NGOs and International Governance’, Michigan Journal of International Law 18 (2) (1997): 183-286.

⁴ T G Weiss, ‘International NGOs, Global Governance and Social Policy in the UN Systems’ (1999) Globalism and Social Policy Programme, STAKES, Helsinki, Finland. Available at <http://www.stakes.fi/gaspp/occasional%20papers/gaspp3-1999-pdf> <accessed> 2nd August 2019

⁵ K Conca, ‘Greening the UN: Environmental Organizations and the UN System’ (1996) In NGOs, the UN and Global Governance, edited by Thomas G Weiss and Leon Gordenker. CO: Lynne Rienner; J Fomerand, ‘UN Conferences: Media Events or Genuine Diplomacy?’ Global Governance (1996) 2(3): 361-376

⁶ United Nations Conference on Environment and Development; Agenda 21 (1992) Adopted in Rio de Janeiro, Brazil, on 5 June 1992, entry into force on 29 December, 1993; Rio Declaration on Environment and Development, in report of the United Nations Conference on Environment and Development, UN Doc. A/CONF.151/26 (Vol. 1), 12 August 1992, Annex 1.

variety of channels has served NGOs in their purpose of participating and influencing international deliberations. NGOs sought accreditation at international intergovernmental conferences where they could lobby government delegates, organize briefings, and even officially address plenary sessions. A number of government delegations to international conferences are now formally including NGO representatives. In the preparatory process for the 1996 UN Conference on Human Settlements (Habitat II), for example, NGOs and local authorities participated in the informal drafting groups that drew up the declaration and programme of actions. Within the policy making circle of the United Nations Economic Commission for Europe (UNECE), NGOs had a say in establishing the agenda and other aspects of the negotiations process for the 1998 Aarhus Convention on public access to information, participation in decision making and access to environmental justice. In both of these case, a special, semi- official status was accorded to civil society representatives.

2.0 NGOs, Environmental Governance and Sustainable Development in Nigeria

NGOs are key players in the Nigerian environmental justice and sustainability movement. In Nigeria, environmental justice is seen as access to justice and NGOs activism or activities bring this premise to the force. Environmental justice in the African or Nigerian context is ‘the equitable distribution of environmental amenities, the rectification and retribution of environmental abuses, the restoration of nature, and fair exchange of resources’⁷ NGOs or civil groups are very prominent in the Niger Delta region of Nigeria. The Niger Delta has been rife with environmental pollution and armed conflicts. Professor Ikelegbe in his study of civil society in Niger Delta states that civil groups ‘have reconstructed the Niger Delta agitation into a broad, participatory, highly mobilized and coordinated struggle and redirected it into a struggle for self- determination, equity, civil and environmental rights.’⁸ NGO’s are an important constituent of the civil society movement in Nigeria. NGOs in Nigeria adopt different strategies in the environmental justice movement in Nigeria. The strategies may include litigation, negotiations with the Nigerian state and multinational companies (MNCs) and public campaigns amongst others.

NGOs have played major roles in the awakening of the international community to the plight of victim of environmental degradation in Niger Delta area of Nigeria. This was especially evident by in the Ogoni crisis, where an NGO/community based organization; Movement for the Survival of Ogoni People (MOSOP) in coalition with both local and international NGOs brought to the attention of the world, the human rights violations and environmental degradation in that part of Nigeria. The action by MOSOP also has an effect on the major multinational corporation (Shell) operating in Ogoni. Shell revised its code of conduct to

⁷ A Obiora, ‘Symbolic Episodes in the Quest for Environmental Justice’ *Human Rights Quarterly* (1991)21(2); 466-512 at 477.

⁸ A Ikelegbe, ‘Civil Society, Oil and Conflict in the Niger Delta Region of Nigeria: Ramifications of Civil Society for a Regional Resources Struggle,’ *Journal of Modern African Studies* 39(3) (2001): 437-469

include human rights, Shell and other MNCs now regularly organizes training and consultation with stakeholders in the Nigeria oil and gas sector.⁹

Furthermore, NGOs influence can be exerted by the use of litigations, publication, lobbying of the MNCs and the state, public awareness campaigns amongst other strategies. NGOs have been very proactive in litigation especially in areas dealing with oil pollution, environmental degradation and human rights. Two of such NGOs include the Social and Economic Rights Action Centre (SERAC) and the Centre for Economic and Social Rights. These NGOs petitioned the African commission on human and people's rights in the case of Ogoni people of the Niger delta who were alleged to be victimized by the Nigerian government and oil multinational companies operating in the Niger Delta. The African Commission held that the Nigerian government and its agencies, and not the MNCs were in violation of the African Charter on Human and People's Rights. Also, the ECOWAS Court of Justice (ECCJ) has been utilized by NGOs to seek redress for victims of environmental injustices in Nigeria.¹⁰ In *SERAP v Federal Government of Nigeria*, the claimant averred that Federal Government of Nigeria has been culpable for environmental degradation in the Niger Delta. It posited that:

...the government's obligation to protect the right to health requires it to investigate and monitor the possible health impacts of gas flaring and the failure of the government to take the concerns of the communities seriously and take steps to ensure independent investigation into the health impacts of gas flaring and ensure that the community has reliable information, is a breach of international standards.

The core of the reliefs sought by the applicant (SERAP) was a declaration that the Nigeria government had violated the tenets of the African Charter on Human and Peoples Rights (ACHPR) (and other relevant international measures) and that the Niger Delta communities should have a right to a clean or general satisfactory environment. The ECCJ held that Nigeria has violated articles 1 and 24 of the ACHPR and ordered the Nigerian government to take effective measures within the shortest possible period, to restore or remediate the environment of the Niger Delta. The ECJ further held that the Nigerian government must take steps to prevent the occurrence of damage to the environment in the Niger Delta and take measures to hold the architects of environmental damage responsible for their actions. The ECCJ further stated that the Nigerian government is expected to comply and enforce the decision by virtue of article 15 of the revised treaty and article 24 of the ECCJ supplementary protocol.

⁹ E Oshionebo, 'Transnational Corporations, Civil Society and Social Responsibility in Nigeria's Oil and Gas Industry' *African Journal of International and Comparative Law* 15 (1) (2007): 107-129.

¹⁰ *SERAP v Federal Republic of Nigeria*, Judgment No ECW/CCJ/JUD/18/12.

The above decision of the ECCJ will serve as the basis of a strategy by NGOs to promote and improve environmental justice in the Niger Delta region of Nigeria.¹¹ In pursuance of this objective, SERAP in conjunction with Amnesty International has filed a freedom of information request to Nigerian government ‘seeking information on the measures the government is taking to fully implement the judgment’ by the ECCJ. Such litigations have added to a growing jurisprudence on protection of the environment and access of justice in Nigeria. This is also evident in human rights protection in Nigeria. Here, the courts have produced ‘pro-human rights alterations and reformations’.¹² Thus, the Nigerian state has ‘become more sensitive to the environmental and social responsibilities of oil companies and MNCs are expected to ‘negotiate and reach memoranda of understanding with host commonalities, honour agreements, and be more responsive to their problems. Partly due to the pressure exerted by NGOs on MNCs in Nigeria, some MNCs now regularly consult the local communities in the design and implementation of projects in such communities. Also NGO pressure can lead to the cancellation of projects with potential negative consequences on the environment. Furthermore, NGOs have filed cases in foreign jurisdictions including the Netherlands, USA and United Kingdom to promote access to environmental justice for victims and stakeholders arising from the activities of MNCs in Nigeria¹³.

3.0 European Community’s Aarhus Convention: Fundamental Pillar of NGOs Participation in Environmental Governance

The Aarhus Convention was developed in 1998¹⁴ and it has been said to be the ‘most elaborate and binding international instrument on public participation in environmental matters,¹⁵ as envisioned by the United Nations Economics Commission for Europe (UNECE). The Aarhus convention has enjoyed widespread acceptance amongst European countries. The Aarhus convention is regional in nature and ratifying states include European Union (EU) countries and many former soviet states.¹⁶ However, the Aarhus convention is open to any interested state, Kofi Annan, the former Secretary-General of the UN posited thus: “although regional in scope, the significance of the Aarhus convention is global... it is the most ambitious venture in the area of environmental democracy so far undertaken under the auspices of the United Nations.¹⁷ The Aarhus convention has the ‘potential to serve as a global framework for

¹¹ E O Ekhaton, ‘Improving Access to Environmental Justice under the African Charter on Human and People’s Rights: The Roles of NGOs in Nigeria’ *African Journal International and Comparative Law* 22(2014): 74-75

¹² O Okafor, ‘Modest Harvest: On the Significant (but Limited) Impact of Human Rights NGOs on Legislative and Executive Behaviour in Nigeria’, *Journal of African Law* 48(1) (2004) 23-49, 24

¹³ *Milieudefensie and Others v. Royal Dutch Shell PLC* (ECLI: RBDHA: 2021; 5339, Rechtbank Den Haag, C/09/571932/HAZA 19- 379); De Rechtprepraak (2021) Shell Nigeria Liable for Oil spills in Nigeria, Retrieved from, <https://www.rechtspraak.nl/organisatie-en-contact/organisatie/gerechtshoven/Gerechtshof-Dan-Haag/Nieuws/Paginas/Shell-Nigeria-liable-for-oil-spills-in-Nigeria.aspx> Accessed June 28, 2022;

¹⁴ Adopted 25th December 1998 at Aarhus in Denmark, entered into Force on 30th October 2001

¹⁵ U Etemire, ‘Book Review of the Aarhus Convention at Ten: Interactions Between Conventional International Law and EU Environmental Law, Edited by Marc Pallemmaerts, Published by Europa Law, 2011’ (2013)22(3) *RECIEL* 371-373 at 371

¹⁶ P Birnie et al, *International Law and the Environment – 3rd Edition* (Oxford: Oxford University Press, 2008).

¹⁷ K Annan ‘Foreword’, UNECE, *The Aarhus Convention: An Implementation Guide*, Cited in Alan Boyle, ‘Human Rights and the Environment: Where Next? *The European Journal of International Law*, (2012) 23(3) 613-642 at 622

strengthening citizens' environmental right, pursuant to principle 10 of the 1992 Rio declaration on environment and development, which has been strongly argued to be the springboard of the Aarhus convention.

Article 4 of the convention provides that the public and NGOs can have access to environmental information. Access is not limited by 'being personally affected or having some right or interest in the matter. Also by virtue of article 3(9), foreign nationals and NGOs are not excluded from the public participation provision enunciated in the convention. A major limitation in article 4 is that access to information relates to information held by the public authorities.¹⁸ NGOs played major roles in establishing the agenda and participated during the negotiations for the Aarhus convention. During negotiations, NGOs had quasi- official roles, as they were formally invited to the negotiating tables, had the rights to lobby the state officials involved in the negotiations and were part of the negotiations at each stage.¹⁹ Kravchenko posited that 'the Aarhus convention is the first multinational environmental agreement that focuses exclusively on obligations of nations to their citizens and non-governmental organizations. The compliance mechanism of the convention includes capacity of NGOs to recommend experts for election to the compliance committee, the criterion that all committee members be independent members rather than state officials and the right of any citizen or member of public or any interested NGOs to file a complaint or communication with the compliance committee alleging a party's breach or non- compliance.

4.0 Successes and Challenges in NGOs Participation: Differing Roles and Rules for Engagement

New forms of NGO participation have changed the nature of international environmental policy making. The international community has begun to recognize that effective global action requires meaningful stakeholder involvement in international policy making and implementation. NGOs involvement in global environmental governance can take a variety of forms²⁰ such as:

- Expert advice and analysis. NGOs can facilitate negotiations by giving politicians access to competing ideas from outside the normal bureaucratic channels.
- Intellectual competition to governments. NGOs often have much better analytical and technical skills and capacity to respond more quickly than government officials.
- Mobilization of public opinion: NGOs can influence the public through campaigns and broad outreach;

¹⁸ U Etemire, 'Public Access to Environmental Information Held by Private Companies', *Environmental Law Review* (2012) 14(1): 7-25.

¹⁹ S Kravchenko, 'The Aarhus Convention and Innovations in Compliance with Multilateral Environmental Agreements', *Colorado Journal of International Environmental Law and Policy* (2007) 8 (1):1-50

²⁰ D C Esty and D Geradin, (2001) "Regulatory Co-opetition". In *Regulatory Competition and Economic Integration*, edited by Daniel C Esty and Damien Geradin. New York: Oxford University press

- Representation of the voiceless. NGOs can help vocalize the interests of persons not well-represented in policy making;
- Service provision. NGOs can deliver technical expertise on particular topics as needed by government officials as well as participate directly in operational activities;
- Monitoring and assessment. NGOs can help strengthen international agreements by monitoring negotiation efforts and governmental compliance;
- Legitimization of global scale decision making mechanisms. NGOs could broaden the base of information for decision making, improve the quality, authoritativeness and legitimacy of the policy choices of international organizations;

NGOs and civil society's involvement in global environmental governance has enriched the process and strengthened outcomes in a number of places and in a number of ways.²¹ In fact, it is the participation of non- governmental groups that makes the process "global" and not simply 'international'. While many governments agree that NGOs participation is indispensable, many also feel that the drawbacks of civil society participation may outweigh the benefits. Arguments and concerns abound on both sides. Some are afraid that NGOs might constitute special interest groups, and that their participation would invariably result in policy distortions. Others fear that intergovernmental decision making processes would become bogged down by NGOs, which are not necessarily representative of or accountable to their particular constituencies. Decision makers are also anxious that NGOs may seek to usurp the sovereign powers of governments.²²

However, some of these concerns may be overstated, considering the advantages of civil society involvement. Civil society can help build the political will for a new approach to development that integrates environmental and social goals. Non- governmental organizations can serve as alternatives to weak or inadequate democratic institutions, as avenues for more inclusive dialogues, and as conduits for disseminating information on activities and issues within the international system.

5.0 The NGOs Contributions in United Nations' Policy Development

In the past three decades, NGOs have assumed a more active role in the process of agenda-setting, policy formulation, development and implementation at the UN level, regionally and amongst states.²³ NGOs have been instrumental in notifying the public, governments, and international organizations of critical new issues for many years. In 1945, NGOs pushed for inserting human rights language into the UN Charter and have been active in that policy domain

²¹ B Gemmill and Others, 'Designing a New Architecture for Global Environmental Governance'. World Summit for Sustainable Development Briefing Paper (2002) International Institute for Environment and Development (IIED), London, Available from http://www.poptel.org.uk/iied/test/searching/ring_pdf/wssd_21_international_environmental_governance.pdf <accessed> 30th June 2020

²² T G Weiss, 'International NGOs, Global Governance and Social Policy in the UN Systems' (1999) Globalism and Social Policy Programme, STAKES, Helsinki, Finland. Available at <http://www.stakes.fi/gaspp/occasional%20papers/gaspp3-1999-pdf> <accessed> 2nd August 2019

²³ G Porter, 'Global Environmental Politics' (2000) Boulder CO: Westview Press.

since. Global environmental issues gained prominence in the 1970s also as a result of NGOs activities. In the 1980s, forestry concerns were included on the agenda of intergovernmental deliberations under the pressure of NGOs²⁴ In 1997; six NGOs played a key role, through the international committee to Ben Landmines, in convincing governments to embrace the successful intergovernmental landmine treaty.

The ability of NGOs to place issues on the global agenda does much to enhance their ability to participate in the later stages of decision- making. As pointed out by former Canadian Foreign Minister Lloyd Axworthy, “clearly, one can no longer relegate NGOs to simple advisory or advocacy roles... they are now part of the way decisions has to be made”.²⁵ The question of what constitutes meaningful civil society participation in decision making, however, is still being explored as NGOs and intergovernmental bodies continue to develop working relationship.

The influence of NGOs in the United Nations system and structures has expanded tremendously. A major catalyst for this was United Nations Conference on Environment and Development (UNCED) held in 1992. Prior to 1992, NGOs did not seek to influence official UN negotiations or deliberation.²⁶ However, during the process leading to the aforementioned conference, environmental NGOs began to engage in capacity building exercises or innovations such as organizing parallel NGOs conferences running in tandem with the UN conference.²⁷ The UN via the instrumentality of its charter which opened up the UN system to NGOs states that, ‘the economic and social council may make suitable arrangements for consultation with non- governmental organizations which are concerned with matters within its competence.’²⁸ It does this by drawing on NGOs expertise and views especially in the areas of policy and program design, implementation and evaluation. Instances of NGOs, participation in environmental governance include the 1996 UN Conference on Human Settlements (Habitat 11) where NGOs were members of the drafting committees that drew up the declaration and programme of action and in the negotiation process that led to the drafting of the 1998 Aarhus convention. Another example of NGOs participation was the 1992 climate change convention which had major contributions or inputs from NGOs and civil society.²⁹

²⁴ D Humphreys, ‘Forest Politics: The Evolution of International Cooperation’ (1996) London: Earthscan Publication

²⁵ P J Simmons, ‘Learning to Live with NGOs,’ *Foreign Policy* 112 (Fall) (1998) 82 – 96 available online at:

<http://carnegieendowment.org/1998/10/01/learning-to-live-with-ngos> last <accessed> 30th Nov. 2020

²⁶ UN 1994 Agenda 21: The United Nations Programme of Action for Sustainable Development, New York: United Nations. Available at <http://www.un.org/esa/sustdev/Agenda21text.htm>; United Nations Environment Programme (UNEP). *Negotiating and Implementing Multilateral Environmental Agreements (MEAs): A Manual for NGOs* (May 2007) available online at: <http://www.cbd.int/doc/guidelines/MEAs-negotiation-manual-ngo-en.pdf> <accessed> 28th June 2020

²⁷ *Ibid*

²⁸ United Nations Charter, Article 71

²⁹ E Emeseh et al ‘Corporations, CSR and Self- Regulation: What Lessons from the Global Financial Crisis’, *German law Journal* 11(2) (2010): 230-259.

6.0 The Weakness of NGOs Participation in Environmental Governance and Justice Advocacy

NGOs have become powerful entities in the international environmental governance paradigm. However, NGOs ‘rarely have established governance mechanisms whereby their members and supporters can hold them accountable for their activities.’³⁰ It is paradoxical that NGOs that are in the vanguard of holding companies and government accountable for their environmental misdeeds do not have good democratic or governance mechanism. The major question is: whether or not NGOs are accountable to anyone? In democratic countries boards, leaders are accountable to voters and corporate leaders are accountable to boards of directors or stake holders as the case may be. Jarvis argues that ‘NGOs are by definition undemocratic and unrepresentative organizations, since they are neither elected nor paid by the population of the countries where they operate.’³¹

Furthermore, it can be argued that, NGOs are not truly independent. The thrust of this argument is that when governments or multinational companies are the major providers of funds for certain NGOs, the independence of such NGOs is diminished and they cannot morally attack such governments or MNCs when they are in the wrong with regards to environmental issues. Thus, if governments through its agencies or foundations provide substantial funds to an NGOs, the ordinary member or supporter of that particular NGOs will exert little or no influence in comparison to the former, government or legal institution as the case might be. Thus, such an NGO will be accountable to the states or legal institutions and or foundations rather than its members.

Other criticisms of NGOs include lack of transparency, inefficiency, abandonment of original goals, lack of legitimacy, scandals in the NGOs sector and inadequate state regulatory control of NGOs amongst several others. The Aarhus convention in respect to NGOs participation provides to the effect that the promotion of environmental matters in the convention might not necessarily include social justice issues in respect of what constitutes the ‘public’.³² Most victims of environmental injustice are ethnic minorities and poor communities. Hence, many NGOs which are mainly composed of white and middle class official ‘fails to reflect the socio-economic, ethnic and cultural diversity of those suffering injustice. How can such NGOs adequately represent the interest of victims of the environmental injustice? Furthermore, a major criticism of the Aarhus convention is that it cannot guarantee the direct participation of environmental justice proponents.’³³

³⁰ M Weidenbaum, ‘Who will Guard the Guardians? The Social Responsibility of NGOs’, *Journal of Business Ethics* 78 (1) (2009): 147 – 155.

³¹ L Jarvis, ‘NGOs: A ‘New Class’ in International Relations’, *Orbis* 51(2) (2007) 217-238, 220

³² C Nadal, ‘Pursuing Substantive Environmental Justice: The Aarhus Convention as a Pillar’ of Empowerment’ *Environmental Law Review* 10(1): 28-45

³³ Aarhus Convention, Article 6(5)

NGO involvement in litigations in Nigeria regarding public interests is seriously hampered by the doctrine of locus standi. Here, Nigerian courts are hesitant to rule that NGOs or other non-state actors have legal standing to institute court cases especially in human rights and environmental issues. In *Oronto's* case³⁴ the court held that the plaintiff (a well-known environmental activist) lacked the standing to sue Shell with regards to Shell's failure to observe the provisions of the Environmental Impact Assessment Act. However, NGOs now make recourse to foreign courts not limited to the United States, United Kingdom and the Netherlands in trying to hold MNCs liable for human rights abuses and environmental degradation/pollution cases such as that of *Wiwa*³⁵ and *Botowo*,³⁶ which originated from occurrences in the Niger Delta region that tried to use the American Alien Torts Statute to hold their oppressors liable for their deeds.

7.0 Conclusion

NGOs are by no means a panacea or replacement for government regulations and programs, but they play a key role as catalysts, partners and innovators in sustainable development and environmental governance trajectory. NGOs are not the answer to all the problems of environmental governance and sustainable development. NGOs are just as susceptible as governments to issues of legitimacy, transparency and accountability³⁷. Similarly, there are limits of voluntary action by the NGOs in the absence of government regulations. Voluntary corporate social responsibility and codes of conduct are seen as important tools for environmental governance, but voluntary action has limitations. Critics argue that many voluntary codes are little more than public relations ploys. Voluntary codes are often declarations of vague business principles and lack independent performance monitoring. Others also argue that the sustainability partnership and the Global Compact are "green wash" and a mechanism through which states can avoid making binding commitments.³⁸ At the same time, it is becoming clear that businesses have started turning from opponents to partners and NGOs have become much more than stakeholders; they are driving the agenda at the national and international level and acting as "civil entrepreneurs", i.e experimenting with new ways of affecting social change, which can then be scaled up by government and the private sector³⁹.

Conclusively, there are a number of institutional obstacles preventing partnerships between the governments and NGOs, thereby preventing the realization of the NGOs full potentials. In

³⁴ *Oronto Douglas v. Shell Petroleum Development Company Ltd* (1998) LPELR-6457 (CA)

³⁵ *Wiwa v. Shell Petroleum Development Company Limited* 96 Civ 8386 (KMW) 2002 US Dist.

³⁶ *Botowo v. Chevron F. Supp. 2d* 1229 (N. D. Cal. 2004).

³⁷ A Najam, 1999, "World Business Council on Sustainable Development: The Greening of Big Business or a Greenwash?" *Yearbook of International Cooperation on Environment and Development*, 1999/2000. Pages 65 – 75, London: Earthscan.

³⁸ U Piest, 2003, "A Preliminary Analysis of the Interlinkages Between Type II Partnerships". *Work in Progress: A Review of Research Activities of the United Nations University*, 17(1).

³⁹ T Banuri and A Najam, 2002, *Civil Entrepreneurship: A Civil Society Perspective on Sustainable Development*. Islamabad, Pakistan: Gandhara Academic Press. Also Sponsored by Stockholm Environment Institute, United Nations Environment Programmes, and the Regional and International Networking Group (RING).



many UN organizations, partnership work remains “at the institutional fringes”, conducted parallel to, but disconnected from, the main lines of work”⁴⁰. UN bodies often do not have resources available specifically for partnership work and legal hurdles contribute to time lags in implementing partnerships. Furthermore, there is a need for greater transparency and consistency in partner selection and a mechanism for systematic and comparable assessment of partnerships. The integration of non- governmental organizations into intergovernmental environmental governance institutions has generally happened on an ad hoc basis. Consequently, there is an obvious need to re-examine institutional structures, which were created to serve a state centric system, and formalize mechanisms for allowing partnerships with non- governmental organizations to actualize their fundamental objectives.

⁴⁰ J M Witte and W Reinicke, 2005 Business as Unusual: *Facilitating United Nations Reform Through Partnerships*. United Nations Global Compact Office. Re-Accessed in June 2019 at: <http://globalpublicpolicy.net/businessUNusual/glob/>