Human Rights Concerns and Corporate Social Responsibility in Nigeria

Under current international law, states, not corporations, are principally responsible for guaranteeing human rights. However, in reality all states are not created equal and corporations, being aware of this, have often adapted their human rights practices to the contexts in which they operate. In Nigeria, according to the constitution, the responsibility to protect human rights resides with the state yet existing institutional structures have rendered human rights violations banal.

Almost two decades after corporate involvement in human rights violations in the Niger Delta were brought to the fore by the Ogoni crisis, this paper examines the extent of integration of human rights concerns in CSR in Nigeria with a view to answering the following questions: What informs CSR in Nigeria? How does national context predispose corporations with respect to human rights? Could CSR contribute to the advancement of human rights?

Keywords: Human Rights, Corporations, Corporate Social Responsibility, Nigeria

Introduction

In the 1990s the Ogoni crisis brought to global attention Shell’s involvement in environmental damage and human rights violations in the Niger Delta. The incident also marked the beginning of contemporary CSR in Nigeria. Two decades later, CSR has become a trend in corporate Nigeria. It has emerged as an essential and significant component of business’s social communication. Virtually every big business organization communicates on its engagement in corporate social responsibility on its website, in daily newspapers and annual reports.

Two decades after the Ogoni crisis, a CSR bill was introduced in the National Assembly to establish a CSR commission. The objectives of the commission included, among other things, ensuring that companies “contribute to economic, social and environmental progress of affected communities”; and “respect the human rights of those affected by their activities” in conformity with the country’s international obligations. However, the provision that sparked controversy was that businesses should allocate 3.5 per cent of their annual profit to CSR activities. The ensuing debates

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2 A Bill for an Act to Provide for the Establishment of the Corporate Social Responsibility Commission. Available at: http://www.senatorchukwumerije.net/id64.html.
3 See Explanatory Notes on a Bill for an Act to Provide for the Establishment of the Corporate Social Responsibility Commission. Available at: http://www.senatorchukwumerije.net/id64.html.
4 Article 5(i) of A Bill for an Act to Provide for the Establishment of the Corporate Social Responsibility Commission: “[…] Provided the cost of a company’s total corporate social responsibility for a given year is not less than 3.5% of its gross annual profit for that year.”
ignored other non-financial provisions of the bill.\textsuperscript{5} They questioned the validity and rationality of obliging businesses to adopt government’s traditional socioeconomic responsibilities.

Notwithstanding, CSR has become widely accepted in Nigeria to mean corporate contributions to socioeconomic development. Based on the assumption that socioeconomic issues cannot be totally dissociated from human rights, this paper proposes an examination of the human rights' aspect of CSR in Nigeria. This paper argues that CSR in the area of human rights is not only dependent on the willingness of businesses themselves, the willingness and capability of governments, but also on the salience of the issues that civil society actors have focused on. It has three objectives. The first objective is to offer an overview of the conception and understanding of CSR in Nigeria by providing some historical background and perspective. Secondly, this study examines the relevance of human rights in evolving perspectives of CSR in the country. Finally, it identifies corporate strategies to dealing with human rights in order to evaluate the measure to which they contribute to the protection and realization of human rights. This paper relies mainly on secondary data.

**Corporate Social Responsibility and Human Rights**

Corporate Social Responsibility (CSR) is a polysemous concept. It is an essentially “contested concept” with “overlapping” interpretations which is “dynamic” in nature (Matten and Moon 2008). Variations in the meaning of CSR across different national contexts have been attributed to sociocultural differences (Matten and Matten 2008, Amaeshi et al. 2006, Doh and Guay 2006, Maignan and Ralston 2002, Aguilera and Jackson 2003), differences in government capacities (Frynas 2012, Steurer 2010, Moon and Vogel 2008, Albareda al. 2008, Albareda et al. 2007, Moon 2004) and economic priorities (Blowfield and Frynas 2005, Amaeshi et al. 2006, Vogel 2006, Jamali and Mirshak 2007). Regardless of the context, the underlying basis of the concept of CSR is that business has responsibilities to actors other than its shareholders and beyond its legal obligations (Carroll 1999: 274; Friedman 1970). CSR involves considering the impacts of business not only on shareholders but also on stakeholders which are “any group or individual who can affect, or is affected by, the achievement of the firm’s objectives” (Freeman 1984:47). The importance of stakeholders and the likelihood of them being taken into consideration vary according to their level of ‘salience’. According to Mitchell et al. (1997) salience is based on three variables: power, legitimacy and urgency. The possession of two or more of these attributes increases the salience of a stakeholder.

Furthermore, CSR is generally perceived to be voluntary in nature. Businesses could, at their own discretion, determine their forms of social engagement and the standards to which they could be evaluated. However, CSR also has mandatory aspects such as respecting legal obligations and customary ethics (Blowfield and Frynas 2005, Weinstein and Waddock 2005, Carroll 1991). This contradictory aspect of CSR is important when it comes to examining the human rights responsibilities of enterprises. Most CSR issues (environment, labor, working environment, transparency, stakeholder engagement, social investment) are related to human rights. Considering CSR from a human-rights perspective links it to international human rights laws which are rooted in

\textsuperscript{5} These according to Article 5 of the bill include conformity to international CSR standards (trade, environment, labor), national legislation and principles of equality and non-discrimination.
a legal framework. However, international human rights law is not applicable to business but to states. States, in turn, are responsible for applying it to non-state entities under their jurisdictions. This delineation of human rights’ responsibilities has been challenged by changes in the international system.

Until the 1970s, it was widely accepted that enterprises could only be involved in human rights violations through the intermediary of states. However, publicized incidents of corporate involvement in human rights violations in developing countries in the 1970s and 1980s led to a revision of this perspective (Utting 2000, Cutler 2006). Globalization has led to a consolidation of this view as the powers of business have expanded beyond the economic realm into political and social spheres (Strange 1996, Detomasi 2008). Businesses increasingly exercise direct influence over the lives and well-being of individuals (Matten, Crane and Chapple 2003, Scherer and Palazzo 2011, Ratner 2001: 461) while governments’ authority over enterprises is in decline. Also, international law, which specifies the human rights responsibilities and duties of state and non-state actors, has not evolved in response to these changes (Scherer and Palazzo 2011, Clapham 2006, Cragg 2000). International human rights law imposes binding obligations on states by requiring them to respect and protect human rights, while non-state actors such as corporations are only encouraged to respect human rights. For instance, with regards to States’ binding obligations, the Preamble of the Universal Declaration of Human Rights (UDHR) states that:

“Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms”.6

Wettstein (2012) identifies three major approaches used to address the problem posed by the contraction of states’ powers and the expansion of corporate power in the domain of human rights. First, international human rights documents were reinterpreted to apply to non-state actors. For instance the application of human rights provisions to non-state actors can be deduced from Article 30 of the UDHR:

“Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.”

As well as from Articles 5 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR) which state that:

“Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or [to]7 perform any act aimed at the destruction of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant”.

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6 See also article 1 (3), 2 and 3 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 1(3), 2 and 3 of the International Covenant on Civil and Political Rights (ICCPR).
7 “To” is only added in the ICESCR.
Secondly, the scope of domestic jurisdiction was expanded to apply to extraterritorial human rights liability incurred by corporate actors abroad. The most prominent example of this is the Alien Torts Claims Act\(^8\) (ATCA) of 1789 which grants jurisdiction to American federal courts over “any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States”.\(^9\) Over the last two decades, several cases, including those related to incidents that occurred in Nigeria\(^10\), have been filed in American courts against multinational corporations under the ATCA for violations of international law in other countries\(^11\). ATCA has a potential for promoting corporate responsibility in countries with weaker human rights. However, the complexities of each case; and the risks of negative consequences for American foreign relations and foreign economic investments means that its greatest impact has been generating bad publicity for the companies concerned (Adamski 2011).

Thirdly, international norms have been developed to specifically address human rights’ issues of corporations. These include the 1977 OECD Guidelines for Multinational Enterprises\(^12\); 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy of the International Labour Organization (ILO)\(^13\); the 1998 Declaration on Fundamental Principles and Rights of Work of the ILO; the 2003 Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights; the Declaration on Social Justice for a Fair Globalization adopted in 2008 by the ILO; the Protect, Respect and Remedy framework developed by the Special Representative of the UN Secretary-General in 2008; and the Guiding Principles for Business and Human Rights which was adopted in 2011.

Moreover, corporate actors also recognize their own significance as human rights actors (Waddock et al. 2002). However, they eschew being subjected to legally binding regulations like state actors (Murphy 2005, Masci and Tripathi 2005: 24). Rather, they have opted for voluntary self-regulation in the form of non-binding and voluntary declarations, codes of conduct, and adherence to international human rights’ norms and standards (Weissbrodt and Kruger 2003, Newell and Levy 2006). They have participated, alongside public-sector organizations and civil society actors, in the development of voluntary initiatives which mainstream human rights. These include the OECD Guidelines for Multinational Enterprises, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy; the UN Global Compact; Global Reporting Initiative; and the ISO 26000 standards. Business membership organizations such as the Caux Roundtable have also developed voluntary principles applicable to a broad range of companies.

Nevertheless, the engagement of corporate actors in voluntary initiatives does not exempt them from being answerable to national governments in the domain of human rights. States are still required by international law to implement laws protecting human rights within their jurisdictions (Ratner 2001: 497 – 8). According to paragraph 18 of the 1997 Maastricht Guidelines on Violations of Economic, Social and Cultural Rights:

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\(^8\) Also known as the Alien Tort Statute (ATS)

\(^9\) The ATCA is a single sentence in the Judiciary Act of 1978.

\(^10\) These include Bowoto v. Chevron, Kiobel v. Royal Dutch Petroleum Co., and Wiwa v. Royal Dutch Shell.

\(^11\) The first case was Doe v. Unocal Corporation filed in 1996. See other cases at: USA Engage, http://usaengage.org/Issues/Litigation/Alien-Tort-Statute/.

\(^12\) These were revised for the fifth time in May 2011.

\(^13\) Revised in 2000.
“The obligation to protect includes the State’s responsibility to ensure that private entities or individuals, including transnational corporations over which they exercise jurisdiction, do not deprive individuals of their economic, social and cultural rights. States are responsible for violations of economic, social and cultural rights that result from their failure to exercise due diligence in controlling the behaviour of such non-state actors”.

The debate on the human rights responsibilities of businesses have evolved beyond questioning whether enterprises have human rights responsibilities (Wettstein and Waddock 2005) to what the extent of these responsibilities should be and how they should be integrated in businesses’ activities.

A minimal human rights approach to CSR requires businesses to respect the laws of countries in which they operate or, if there are no laws, ensure that they do no harm. However, in many developing countries there are noticeable discrepancies between legal obligations and concrete action. On the one hand, the legal framework might guarantee protection and promotion of human rights, and impose related obligations on non-state actors in its jurisdiction. On the other hand, mechanisms that are supposed to promote and guarantee these rights, if they exist, might be ill-equipped or lacking the will to carry out their obligations. This situation has been often attributed to states’ willingness to ignore human rights issues in their bid to attract foreign investment (Ratner 2001).

Moreover, the dichotomy between government and business responsibilities might not always be so clear-cut. This is often the case in mineral and oil resource-dependent developing countries where political and economic interests are often intertwined. Governments are more likely to ignore, or even promote, human violations by businesses because of their links to them. In such contexts, civil society plays an important role in demanding a higher level of corporate responsibility. Civil society can engage with state and corporate actors through various strategies including advocacy, mobilization, partnerships and dialogue.

In the particular case of Nigeria, because of the close links between business and government, the onus falls on civil society actors to demand corporate accountability for human rights. However, the specificities of the institutional context, in addition to other factors, has resulted in the deprioritization of human rights issues by both businesses and civil society actors. This outcome can be traced to construction of CSR during the Ogoni crisis in the 1990s.

The Ogoni Campaign: From political and economic grievances ……

Nigeria is the tenth largest oil producer and has the ninth largest natural gas reserves in the world (OPEC 2013: 22-23). Nigeria is highly dependent on oil and gas revenues which account for eighty per cent of government’s revenues and 95 per cent of foreign exchange earnings. Royal Dutch Shell discovered oil in commercial quantities at Oloibiri in present-day Bayelsa State in 1956. The discovery of oil led to heightened expectations for economic development especially in the Niger Delta region where most of the oil reserves are located (Falola and Genova 2003:134). Oil
production started in 1958. Other companies\textsuperscript{14} entered the oil industry from 1961 but Shell produces most of Nigerian oil and accounts for 40 per cent of daily production. Oil production by multinational oil companies takes place in partnership with the Nigerian government under a series of joint venture agreements, production sharing contracts and service contracts.

According to Watts (2004) oil capitalism in Nigeria can be understood in terms of an oil complex\textsuperscript{14} that is a restructuration of the political economy of oil exploitation. This restructuration had four dimensions: government’s establishment of a legal monopoly over mineral exploitation; establishment of a national petroleum company to partner with international oil companies (IOC); collaboration of the state security forces with the security forces of the IOCs; and, creation of a mechanism of distribution of oil revenues. The key features of the oil complex are its enclave nature and its militarization due to its importance to national income and security. The complex highlights the centrality of oil and government’s overwhelming dependence on it. This dependence, according to Frynas (2001:30) led to a situation in which:

“[…] the interests of the oil companies came to play a much greater role in government policy than those of the farming and fishing communities in the Niger Delta and elsewhere. In this context, it is perhaps not surprising that the development of the oil industry took precedence over the interests of the local people”.

In a similar vein, Naneen (1995) used the notion of “internal colonialism” to describe a situation in which the interests of the minorities were overridden by majority ethnic groups, political elites and oil companies. Accordingly, oil revenues derived from minority areas benefited mainly non-oil producing ethnic groups who had access to government and oil revenues. Furthermore, oil extraction in the Niger Delta occurs in the context of “petro-violence” whereby state security forces collaborate with security forces of oil companies to secure oil installations (Watts 2001). In doing so, they employ violence as a means of social control and perpetrate human rights violations.

It was against this background that the Ogonis, a minority ethnic group, formed the Movement for the Survival of the Ogoni People (MOSOP) in 1990. The Ogonis are mostly subsistence farmers and fisherman who live in Ogoniland in the Niger Delta region. Ogoniland is composed of three local government areas in Rivers State: Khana, Gokana and Tai-Eleme. Oil production began in Ogoniland in 1958 and the first oil refinery was established in 1965. There were two multinational oil companies, Shell and Chevron, operating in partnership with the government company, Nigerian National Petroleum Corporation (NNPC) in Ogoniland. Shell, the principal oil company in Nigeria, operated five major oil fields in Ogoniland at Bomu, Korokoro, Yorla, Bodo West and Ebubu. By 1994 Ogoniland had produced about 30 billion dollars’ worth of oil (Cayford 1996: 184), yet there was little to show for it. They had “no pipe-borne water, no electricity, very few roads, ill-equipped schools and hospitals and no industry”\textsuperscript{15}.

Rather, oil exploration and production activities were accompanied by oils spills and gas flaring which had negative ecological impacts for which the Ogonis were poorly compensated.

\textsuperscript{14} Mobil, Gulf, Agip, Statrap (now Elf), Tenneco & Amoseas (now Texaco/Chevron).

\textsuperscript{15} Statement by Dr G. B. Leton, President of the Movement of the Survival of the Ogoni People. Available at: http://www.mosop.org/Ogoni_Bill_of_Rights_1990.pdf.
Environmental degradation caused by oil spills and gas flaring led to deforestation as well as pollution of farmlands and water sources. Thereby destroying the means of livelihood of the Ogonis and causing several public health problems such as blood disorders, cancer, respiratory and cutaneous illnesses. Many fundamental human rights – right to health, life, adequate standard of living, food, water, are affected by environmental degradation.

In addition to the negative impacts of the oil industry, it has also been argued that social mobilization in the Niger Delta region can be linked to the harsh socioeconomic conditions. In the early 1980s, a glut in the international oil market caused a fall in oil prices. The oil revenues of the Nigerian government declined from 24.6 billion dollars in 1980 to 11 billion dollars in 1983 while the servicing of external debt rose from 5 to 30 per cent of foreign exchange earnings over the same period. The government adopted a Structural Adjustment Programme (SAP) in 1986. This led to domestic hardship and social mobilization against the state.

At the same time, the government adopted economic policies which were aimed at increasing the production of crude oil in order to gain more revenue. However, increased crude oil production was accompanied by increasing ecological damage. Consequently, by the early 1990s Niger Delta inhabitants and oil workers’ unions joined the protestations. They protested against the developmental neglect of their region which became more evident as the government spent huge sums of money constructing a new capital (Nwokeji 2007, Obi 1997). Moreover, even during the period of the oil boom, there had been no substantial spending on developmental programmes in the region (Watts 2005, Okonta and Douglas 2003: 32, Obi 2001:6).

In October 1990 MOSOP presented the Ogoni Bill of Rights (OBR) to the government. The OBR expressed the grievances of the Ogoni peoples. These were related to their political and ethnic marginalization; developmental neglect of their region; their cultural survival; Shell’s employment discrimination against them; and environmental degradation. The Ogonis requested “POLITICAL AUTONOMY to participate in the affairs of the Republic as a distinct and separate unit”. They asked for the “right to control and use a fair proportion” of their economic resources for their development; representation in all national institutions; “use and development” of their languages and culture; religious freedom and protection of their environment from further degradation (Ogoni Bill of Rights 1990).

Essentially the demands specified in the OBR, which was addressed to the government, were more political and economic in nature than environmental. Eighteen out of 20 articles dealt with political and economic grievances directed at the government and the majority ethnic groups. It was only in articles 8 and 14 that Shell was mentioned. It was cited in article 8 as a locus of responsibility:

“That oil has been mined on our land since 1958 to this day from the following oilfields: (I) Bomu (ii) Bodo West (iii) Tai (iv) Korokoro (v) Yorla (vi) Lubara Creek and (vii) Afam by Shell Petroleum Development Company (Nigeria) Limited”.

While article 14 could be understood as a call for government’s intervention, but more likely, it emphasized the above the law status of Shell in the country:
“That the Shell Petroleum Development Company of Nigeria Limited does not employ Ogoni people at a meaningful or any level at all, in defiance of the Federal government’s regulations”.

The issue of environmental pollution was not raised until article 16. Even then, it could be interpreted as an expression of disenchantment with the government:

“That neglectful environmental pollution laws and substandard inspection techniques of the Federal authorities have led to the complete degradation of the Ogoni environment, turning our homeland into an ecological disaster.”

In addition to being a statement of grievances, the OBR was an acknowledgement of government failure with regards to the expectations of the Ogoni people. Despite being a minority ethnic group, the Ogonis had higher expectations regarding their status, as a major oil producing region, within the Nigerian federation (Osaghae 1995). Their struggle was against control of their revenues by a distant federal government controlled by non-oil producing ethnic majorities. According to Obi (2009:116):

“Federal control of oil was seen as the result of an iniquitous political arrangement that enables the ethnic majorities to ‘colonise’, exploit and persecute the ethnic minorities, who they feel cannot pose any real threat to federal hegemony”.

……to a campaign for corporate responsibility

“Perhaps directly as a result of its tragic outcome, the Ogoni struggle against Shell is arguably the quintessential case that put the interconnectedness of business, the natural environment and human rights on the corporate agenda.”\textsuperscript{16}

The Ogonis addressed the OBR to the government expecting that they would receive an audience during which they would be able to negotiate their demands (Addendum to the Ogoni Bill of Rights). During the two-year period that followed, they did not receive any response. During this period, Ken Saro Wiwa, one of the leaders of MOSOP, used his international connections as a writer to promote the Ogoni cause abroad. This involved presenting the OBR to several international organizations\textsuperscript{17}. Initially their requests for international support were rejected because their objectives were perceived to be mainly political in nature (Clifford 2002, Obi 2010). Consequently, MOSOP leaders reframed their discourse by emphasizing the environmental and human rights dimensions of their cause. Doing so enabled them to benefit from the cooperation of international non-governmental organizations such as Amnesty International, Human Rights Watch, Rainforest Action Group, Sierra Club and Friends of the Earth. In the 1991 Addendum to the OBR, they

\textsuperscript{16} Wheeler et al. 2002: 301.

\textsuperscript{17} They presented the OBR to several international intergovernmental and civil organizations including: the United Nations sub-committee of Human Rights on the Prevention of Discrimination Against and Protection of Minorities, the African Human Rights Commission, the Unrepresented Nations and Peoples Organization, the Rainforest Action Group and the Green Peace Organization. The last two organizations actually wrote to Shell on specific aspects of environmental degradation (Osaghae 1995:335).
highlighted the role of Shell and Chevron in the degradation of their environment as well as the implication of Shell in human rights violations:

“\textit{That multi-national oil companies, namely Shell(Dutch/British) and Chevron (American) have severally and jointly devastated our environment and ecology, having flared gas in our villages for 33 years and caused oil spillages, blow-outs etc. and have dehumanized our people, denying them employment and those benefits which industrial organizations in Europe and America routinely contribute to their areas of operation}.”\textsuperscript{18}

As well as the complicity of these companies with the Nigerian government: “\textit{That the Nigerian elite [...] have colluded with all agents of destruction aimed at us}’’\textsuperscript{19}. Article 7 identified these “agents of destruction” to be “Shell, Chevron and their Nigerian accomplices”.

According to Boele et al. (2001:128) the OBR was heavily influenced by international documents such as the Universal Declaration of Human Rights. The fundamental rights demanded were: the right to self-determination; the right to development; the right to political participation; the right to language and religion; and environmental rights. It is also important to note that the internationalization of the Ogoni struggle occurred within the context of post-Cold War globalization. By centering their discourse on political, civil, economic, cultural and environment-related rights, the Ogonis were able to benefit from the changes in the international system. This was especially important given the fact that the Ogonis were protesting against a particularly repressive military regime. According to Osaghae (2008:191) human rights’ “perceived emancipatory and empowering attributes have endeared them to equity and justice-seeking groups” and facilitated “building of communities of interests” (Osaghae 2008: 195). Along the same lines, Falola and Genova (2003: 155) observed that ”the environmental destruction associated with the oil industry in Nigeria galvanized international environmental groups, just as human rights violations rallied international human rights groups”.

In particular, the role of Shell was emphasized for several reasons: Shell was the oldest and largest multinational oil company in the country. It accounted for almost half of government revenues which made it an excellent means of accessing government. Because of its heavy contribution to the government’s revenues, there was a mutually dependent relationship between the government and Shell. The government was dependent on Shell for its revenues while Shell was dependent on the government to secure its means of production and ensure good operating conditions. This entailed the use of state security forces, which often employed violent means to subjugate the population, leading to several human rights abuses.

Shell was also responsible for several oil spills for which it mostly denied responsibility. Between 1982 and 1992, Shell’s activities had resulted in 27 incidents of oil spills in which more than one and a half million barrels of oil were spilled. Though Shell attributed the spills to sabotage by the local population, a report of the Ministry of Petroleum Resources revealed that about two-thirds of the oil spills were due to equipment failure and a fifth of them to corrosion. Only four of the

\textsuperscript{18} Article 4, Addendum to the Ogoni Bill of Rights.
\textsuperscript{19} Article 5, Addendum to the Ogoni Bill of Rights.
27 incidents of oil spills were not caused by these two factors (Obi 1997). In cases in which Shell accepted responsibility, the victims were inadequately compensated.

Shell, as the operator of the largest joint venture, was the main beneficiary of the Land Use Act - the law dispossessing the Ogonis of their traditional lands in return for little or no compensation. Furthermore, Shell did not employ enough Ogonis. In 1995 only 85 employees out of 5,000 employees were Ogoni. But even more importantly, Shell was the international aspect of the Ogoni struggle (Monshipouri, Welch Jr and Kennedy, 2003: 977). Its involvement in the problems of the Ogonis was an effective means of attracting the attention of the international community to their cause. Taking into account the aforementioned reasons, it is not surprising that the Ogoni movement became a movement for corporate responsibility aimed particularly at Shell.

In December 1992, MOSOP leaders wrote to Shell, Chevron and NNPC requesting: six billion dollars for payments of rents and royalties for oil exploration since 1958; four billion dollars in compensation for environmental pollution, devastation and ecological degradation; an end to environmental degradation; the covering of all exposed high pressure oil pipelines; and the initiation of negotiations with Ogoni people. The companies were given an ultimatum of thirty days to meet these demands, failing which their operations would be disrupted. In response the companies increased security and government banned all public gatherings and demonstrations. The government decreed that demands for self-determination and disruption of oil production activities were treasonable offences punishable by death. Despite this, the Ogonis held a massive demonstration in January 1993 which was attended by about three hundred thousand people, about three-fifths of the Ogoni population.

In early 1993 Shell withdrew from Ogoniland for security reasons. However, in April of the same year, there were protests against a Shell contractor, Wilbros, for damaging farmlands without compensating the owners. Government security forces intervened and killed eleven people (Cayford 1996, Osaghae 1995). Shell, Chevron and NNPC later estimated that they had lost 200 million dollars due to the unrests (Cayford 1996: 191). This significantly affected governments’ oil revenues. Thus, the government embarked on a series of raids and measures to weaken the movement. This included harassment and arbitrary detention of Ogoni leaders as well as the orchestration of conflicts with them and neighboring communities. These conflicts provided opportunities for government security forces to engage in “psychological warfare” against the Ogonis. Over a thousand Ogoni were killed and several more became internally displaced persons (HRW 1995). Several human rights violations were committed with the knowledge and facilitation of the oil companies (Watts 2004b, Cayford 1996, Osaghae 1995).

The climax of the Ogoni struggle came in May 1994 when four pro-government Ogoni leaders were murdered by some youths. Ken Saro Wiwa, the leader of MOSOP and eight other Ogoni leaders deemed as ‘anti-governmental’ were arrested for allegedly instigating their deaths. In November 1995 the government executed the “Ogoni Nine” after a trial in a specially created military tribunal. The executions were attributed to the collaboration between Royal Dutch Shell and
the Nigerian government (Boele et al. 2001). Shell was accused of having refused to intervene to stop the execution of the Ogoni Nine until it was quite late.

Around the same time, Shell’s involvement in the Ogoni crisis gained worldwide attention because of the Brent Spar incident. In April 1995, Greenpeace started protesting against Shell’s decisions to sink the Brent Spar, a storage platform, in the Atlantic. Other protesters joined in and this led to a well-organized boycott of Shell’s products in Europe. Some Shell stations in Germany lost up to half of their sales (Greenpeace 2011). International organizations and media linked the Ogoni issue to the Brent Spar incident. Though Shell eventually reversed its decision on the Brent Spar issue, it continued to suffer from high reputational damage stemming from the Ogoni crisis. The company suffered temporary financial damage as well (Van Der Zwart and van Tulder 2006).

Shell therefore sought to overhaul its image. Starting from 1995 it engaged in ‘corporate repositioning’ by reframing its public discourse (Wheeler et al. 2002: 313). It updated its Statement of General Business Principles. For the first time it committed itself to respect for human rights. In 1998, Shell International published its first sustainability report entitled “Profits ad Principles – Does There Have to be a Choice?”. The title itself was a reappropriation of the three pillars (People, Planet and Profit) of the Triple Bottom Line concept coined by John Elkington in 1994. By so doing, Shell was communicating to the public its cognizance of non-economic concerns and aligning itself with the campaign for CSR.

It also embarked upon strategic CSR. This involved regular public communication (for instance the “Tell Shell” initiative and publication of annual sustainability reports), stakeholder engagement, self-regulation, and embarking on “community development” projects (infrastructural development, microfinance, professional training schemes, farmers’ cooperatives, etc.). These efforts paid off as its reputation recovered on the international scene. By the end of the decade Shell had become a model of a socially and environmentally responsible organization (Wheeler, et al. 2002: 301). However, in Nigeria, it was mainly business as usual.

Rather than addressing environmental and human rights problems, from 1997 onwards Shell re-oriented its community development in the Niger Delta. It improved upon its existing model of community assistance (that is giving communities what it thought they wanted, including cash payments) to community development. The latter involved collaborating with community members to identify and respond to their needs. Community development programmes have since evolved over time but they have been largely unsuccessful. A consultant hired by Shell concluded that the failure of the programmes was due to among other assumptions: “communities only want money and gifts” (Watts 2005: 400).

Zalik (2004: 407) further underscores the contradictions inherent in community development programmes. According to her, the social investment of oil companies is inconsistent with their ultimate goal of profit maximization: “an optimal level of security is necessary for maintaining

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20 Shell formally intervened two days before the execution. On 8 November 1995 Shell asked the Nigerian government to grant the Ogoni Nine clemency but they were executed on 10 November 1995.
production, at the same time ‘threats’ to production contribute to rising oil prices and thus rising profits” (p. 407, See also Platform 2012). She argues that oil companies have, under the guise of community development programmes, sponsored intercommunal conflicts in order to divert the attention of the local communities away from them. As a result the Niger Delta became “an exceedingly ‘difficult’ operating environment in which oil companies are but an external actor” (Zalik 2004:410). The strategy was successful to the extent that oil companies gained international recognition as epitomes of socially and environmentally responsible organizations (Zalik 2004, Wheeler 2002) even though their image in the Niger Delta remained different.

Thus, in the aftermath of the Ogoni crisis, Shell adapted its CSR strategy so as to maximize its legitimacy in Nigeria and abroad. In Nigeria, where the Ogonis were engaged in a demand for access to political power in order to acquire economic control of oil revenues, Shell engaged in community development programmes aimed at increasing the developmental returns from the oil industry and promoting ‘economic empowerment’. Abroad, where Shell had suffered reputational damages as a consequence of the Brent Spar incident and the Ogonis’ exposure of environmental and human rights violations in Nigeria, it engaged in a discourse of sustainable development and responsibility (Livesey 2001).

CSR in the post-Ogoni period

Nigeria started a democratic transition in 1999. With its transition to democracy, it was expected that more importance would be accorded to human rights and environmental issues as the government would be more representative of and responsive to popular concerns. However, this did not materialize as “democratization does not constitute democracy” (Iwilade 2012: 159). According to Iwilade (2012: 159) while there exists “effectively institutionalized accountability (social, political and economic) and participation beyond elections” in a democratic state, democratization is but “an arena of competition between forces of the ancien régime – who seek to maintain the autocratic status quo - and those with democratic ambitions.” Since 1999 the main characteristics of the democratic transition in Nigeria has been voting in periodic elections and greater freedom of speech. In essence, the essential nature of the state did not change, it was only its discourse or portrayal that did. A consequence of this is that other minority ethnic groups have formed ethnocentric social movements demanding increased access to and control of their economic resources.

Meanwhile, the country remains highly dependent on oil revenues. In spite of the entry of international oil companies from Asia, Western multinational oil companies (Shell, Chevron Texaco, Exxon Mobil, Total, Agip and ENI) still control 96 percent of the country’s oil and gas reserves. Shell still accounts for almost half of government’s revenues. Thus, the fundamental structure of oil capitalism in Nigeria has remained unchanged. The oil industry still relies on the state for protection and privileges which helps to perpetuate human rights and environmental violations. Between 2000 and 2010 Shell and its associated companies financed government forces and armed groups that were responsible for extra-judicial killings, torture, violence and internal displacement in several Niger

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21 For instance the Ijaw Youth Council, Movement for the Emancipation of the Niger Delta.
22 This includes its contractors: Daewoo and Halliburton and Kellogg Brown & Root.
Delta communities including Ogoniland, Koko Creek, Otuaasega, Oru Sangama, Rumuekpe, Joinkrama 4, Ogu, Elelenwo (Platform 2011). The major oil companies still dictate best practices and policies on CSR in Nigeria. There is a predominant emphasis on community development programmes while other forms of corporate responsibility are minimized.

This situation is not helped by the fact that socioeconomic issues have acquired greater importance for the majority of the Nigerian population. Despite an average growth of seven percent in annual GDP over the past decade (OECD 2013), the proportion of Nigerians living in poverty increased by sixty per cent between 2004 and 2010 (UNDP 2013). Thus, the average Nigerian still prioritizes economic concerns. As aptly expressed by Zalik (2004:402): “We now have the freedom to assemble,’ some Nigerians say, but people do not have enough to eat.” The few available public welfare programmes benefit only a small proportion of the population in need. Thus, companies are increasingly becoming social welfare actors. They are not only employers of labor but also put in place infrastructure and other social programmes in the communities in which they operate. Adewumi and Adenugba (2012) also establish that workers in the three main economic sectors (banking, oil and gas and telecommunications) are more aware of their economic rights than other rights.

Even the government recognizes the importance of the contribution of the private sector to social welfare and development:

“The private sector will be expected to become more proactive in creating productive jobs, enhancing productivity, and improving the quality of life. It is also expected to be socially responsible, by investing in the corporate and social development of Nigeria...” (NEEDS 2004).

Companies themselves perceive CSR as contributions to socio-economic development as revealed in an analysis of a hundred leading companies randomly selected from seven sectors of the economy23. 92 percent of them perceived CSR as social investment (community development and philanthropy); 35 percent of them understand it to mean a good working environment (health and safety, employee training, grievances procedures, labor unions); 42 per cent of them defined CSR as care for the natural environment (recycling of wastes; conservation of fauna and flora; reduction of contributions; greenhouse emissions; and, environmental sanitation); and 65 per cent of them defined it as conducting business in an ethical manner (transparency, honesty, quality services and goods). While these four dimensions of CSR were related, in one way or another, to human rights, the words “human rights” did not often explicitly feature in their definitions of CSR. Notwithstanding, these cognitive dimensions of CSR, it is as social investment that CSR is mostly implemented.

Enterprises have therefore taken advantage of prevailing socio-economic and cultural contexts (Amaeshi & al. 2006; Limbs & Fort 2000) to structure their CSR practices to best respond to existing social expectations and thus legitimize itself. As noted by the chairman of Shell in Nigeria:

“The challenge we face in terms of embedding SD\textsuperscript{24} in the Nigeria environment is not cultural. Rather, I think it is circumstantial. If we look at the areas in which we operate and the level of poverty in the communities, it is such that the emphasis is on survival and for the short term, for that matter. So the present is more important to someone who is struggling to put three square meals on the table, than the future.”\textsuperscript{25}

According to Suchman (1995: 578), the pragmatic legitimacy of an organization is determined by its most proximate public. Legitimacy is obtained when an organization takes the proximate public’s standard of performance as its own. Applied to the Nigerian context, the most important societal preoccupations are socio-economic in nature and businesses respond accordingly. Hence, there has been greater corporate engagement in more publicizable aspects of CSR such as social philanthropy and community development projects which bring greater returns for corporate reputation and legitimacy, than in less publicizable aspects of CSR such as human rights, environment and ethical behavior. Nonetheless, there is a high degree of awareness in the oil industry that human and environmental rights are part of CSR.

**CSR as Human Rights: Approaches and Limitations**

When it comes to CSR and human rights concerns in Nigeria, oil companies have adopted mandatory and voluntary approaches.


The mandatory approach has not been very effective for a number of reasons which include outdated laws, legal loopholes and poor enforcement. For instance, The HWA and the NESREA do not provide for corporate corrective measures in cases of environmental pollution. Under these laws individuals do not have the right to sue companies for damages. It is the NESREA, not the individual who has suffered the damage, who can apply civil liability. According to the ICJ (2012: 38-39) there is no evidence that NESREA, or its predecessor organization the Federal Environmental Protection Agency (FEPA), has ever applied civil liability in cases of dumping of hazardous waste.\textsuperscript{26} Victims of

\textsuperscript{24} ‘SD’ here stands for Sustainable Development.

\textsuperscript{25} Interview with Mutiu Sunmonu in Trucontact, 2012, p. 83.

\textsuperscript{26} It is only the National Environmental (Pollution Abatement in Mining and Processing of Coals, Ore and Industrial Minerals) Regulations of 2009 that provide for the right to sue in order to prevent, stop or control a breach of its provisions.
environmental pollution can only convince the NESREA to compel the polluter to compensate them. While, the *Oil Pipelines Act* makes provision for right of access to justice for individuals, this right is limited to the disputes concerning the amount of compensation payable. Moreover, laws like the *Oil Pipelines Act* and the *Petroleum Act* which confer rights and protection to local communities are difficult to implement. This is because it is difficult to determine what constitutes a “fair and adequate” compensation.

In addition, regulatory penalties do not have a sufficiently dissuasive effect. For instance, the *Oil Pipelines Act* and the *Petroleum Act* only require companies to take precautions to prevent pollution of soil and water. According to the EGASPIN guidelines, the Minister may revoke an operating license if a company does not conform to the best environmental practices. But no license has been revoked for this reason (Amnesty International 2012). In addition, low fines make it cheaper for companies to pay fines for the violation of environmental laws, rather than implement preventive or corrective measures (Ezeudu 2011:39, Idemudia 2009). The penalty for failing to report a spill is 3500 dollars while that for failing to clean up a spill is 7000 dollars (Eboh 2013). In August 2011, the fines for gas flaring increased from 0.06 to 3.50 dollars per cubic meter. But the amount is low enough that the oil companies have preferred to continue gas flaring.

The public bodies responsible for enforcing rules and regulations do not have the necessary capacities to carry out their functions. For instance gas flaring companies do not always pay fines because the *Department of Petroleum Resources* (DPR), the public body charged with regulating the sector, is unable to enforce such payments. For instance in 2012 none of them paid fines for gas flaring even though gas was flared (Daniel 2012). Likewise, NOSDRA does not have proactive capacity to detect oil spills. Public agencies still rely almost entirely on oil companies for logistical support during their inspection visits to contaminated sites. They also depend on oil companies to evaluate and analyze oil spills (Amnesty International 2012:3, 2009: 44, UNEP 2011: 12, 44, 46). This consequently creates leeway for oil companies to exert undue influence on the process of monitoring oil spills.

Furthermore, the legal and regulatory framework is difficult to implement because victims are often poor; are not always aware of their rights and do not have the means to enforce their rights in court. Their plight is worsened by the fact that schemes such as Legal Aid Scheme, the National Human Rights Commission are underfunded. Thus they provide limited assistance to victims who wish to litigate oil companies (SERAC 2006). Even when victims are successful in obtaining legal remedy, companies do not always respect court decisions and the government does not have the will to enforce the law. This was aptly demonstrated in the case of *Gbemre vs Shell Petroleum Development Company Nigeria Limited and Others* (ICJ 2012, Ezeudu 2011, Amao 2011: 139 -140). The court stated that legal provisions allowing companies to continue gas flaring under certain conditions were in contradiction with the fundamental rights to health and clean environment guaranteed by the Nigerian constitution and the African Charter on Human and People’s Rights which was ratified by the government. Victims are no match for multinational oil companies which employ various strategies to prolong cases or refuse to pay compensation. Victims are often advised to settle damages out of court (ICJ 2012). This explains the low frequency of litigation against oil companies in Nigeria.
The principal reason for the limitations of a mandatory approach to corporate responsibility is the overwhelming dependence of the government on oil revenues and its complicity with the multinational oil companies. The government’s stake in the oil industry results in a conflict of interest for DPR. It is responsible for both the regulation and promotion of the sector (Amnesty International 2012). The DPR has to ensure that the government obtains maximum benefits from the oil industry. At the same time it must ensure that oil corporations are interested in investing in the Nigerian oil industry.

On the one hand, the partnership between the government and the oil companies makes it difficult to attribute responsibility for problems. Both parties blame each other in order to relieve themselves of their responsibilities. For example, Shell declares its readiness to reduce emissions but insists that the Nigerian government, its partner, does not support such measures because they would reduce production levels (Shell Report 2009:12). It also insisted that the government, through NNPC has not contributed its own share of the funding needed to install equipment that would reduce gas flaring (Shell Report 2010:18).

On the other hand, the application of rules and regulations is compromised as it would affect not only the oil companies but also the government as well. This explains why sanctions have not been enforced or have been designed to have minimal impact. The complicity between government and oil companies was highlighted by the court of justice of the Economic Community of West African States (ECOWAS)\(^27\) in its ruling on the case of SERAP\(^{28}\) v. The Federal Republic of Nigeria. In December 2012, the Court ruled that the Nigerian government was responsible for human rights violations by oil companies. It noted that Article 21 (right to wealth and natural resources) and Article 24 (right to a satisfactory environment) of the African Charter on Human and Peoples’ Rights (ACHPR) were violated when the Niger Delta communities were not protected against the repercussions of oil companies’ activities. The court noted that the government did not: enact effective laws; establish effective regulatory institutions; or prosecute the companies that were involved in human rights violations. Therefore, it facilitated human rights and environmental violations by oil companies (Amnesty International 2012).

In light of the foregoing, victims prefer to prosecute multinational oil companies in foreign courts where there are lower risks of regulatory capture and they have higher chances of obtaining satisfactory outcomes. After trying unsuccessfully over several years to obtain a fair compensation from Shell for an oil spill in Nigeria, the Bodo community took the case to the High Court in London in 2012 (Amnesty International 2009; Vidal 2012). In 2012, four Ogoni farmers, with the help of two NGOs, Environmental Rights Action and Friends of the Earth filed a lawsuit against Shell in the Netherlands for the loss of livelihoods following the environmental damage caused by activities of Shell between 2005 and 2008 (Vanguard 2012, FOEI 2012). However, attempts to seek redress abroad are not always successful. In the case of Bowoto v. Chevron which went before a federal jury in San Francisco, the court was not convinced of the responsibility of Chevron for an incident of torture that occurred in Nigeria in 1998 (Leonard 2012), in spite of public opinion to the contrary.

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\(^{27}\) ECOWAS is a regional grouping of sixteen countries to which Nigeria belongs.

\(^{28}\) SERAP stands for Socio-Economic Rights Project, a Nigerian Non-Governmental Organization.
Moreover, the use of extraterritoriality is being compromised by the reluctance of countries to openly infringe on other countries national sovereignty.29 Overall, the above mentioned factors contribute to violations of human and environmental rights and reinforcing impunity. Companies take advantage of the weak institutional environment, their relationship to the Nigerian government and the difficult socio-economic situation to not comply with the legal and regulatory framework pertaining to human and environment rights. This renders the mandatory approach largely ineffective.

**The voluntary approach** or self-regulation is considered to be a solution in contexts of weak legal and regulatory frameworks (Mikler 2013, Cragg 2010). It occurs when companies adopt corporate codes of conduct (CoC) which include principles, norms and values that guide the policies and practices of an enterprise, its employees and in some cases, other stakeholders (e.g. suppliers, employees and contractors).30 CoCs cover several issues including human rights, environment and ethical conduct. CoCs also serve as means of communication of company policy to stakeholders and the public (Eweje 2006:43). CoCs may also be guidance documents for subsequent moral conflicts (Brinkmann 2002). There are two types of CoCs: internal CoC which is developed by the companies themselves and external CoC which is developed by external parties.

**Internal codes of conduct** developed by companies are the most popular form of self-regulation in Nigeria. They generally articulate the vision and mission of the company concerned. Enterprises which possess CoCs suggest that they are committed to certain ethical and moral values. At the same time, CoCs define the extent and limits of these responsibilities (Muchlinski 2001). CoCs may be developed from the laws and regulations of the home or host country and international norms and best practices. They may be in one document, several documents or even on companies’ websites. They often cover a wide range of activities including: labor relations, health and safety conditions, environment, corruption, quality of products and services, treatment of customers, fraud, corruption and money laundering. They are aimed at the employees and management of the company and other external parties such as suppliers and contractors.

In Nigeria major oil companies such as Shell, Exxon Mobil, Chevron and Total all commit themselves to respect of human rights and environmental stewardship. Shell and Total specify that their CoCs and corporate values are based upon the principles of the Universal Declaration of Human Rights; United Nations Guiding Principles on Business and Human Rights; OECD Guidelines for Multinational Enterprises; United Nations Global Compact and core conventions of the International Labour Organisation (ILO).

**External codes of conduct** may be specific to professional associations or industries (American Petroleum Institute/International Petroleum Industry Environmental Conservation Association), intergovernmental codes (such as OECD Guidelines for Multinational Enterprises, EU Codes of Conduct, UN Norms of Responsibilities of Transnational Corporations and other Business

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29 In the case of *Kiobel v. Royal Dutch Petroleum* (Shell Oil) victims sought to obtain reparations in line with *Alien Tort Claims Act* (ATCA). In April 2013 the Supreme Court decided that the ATCA did not apply to enterprises unless the act took place on American soil.

30 According to IFAC (2007: 6) CoC are: “principles, values, standards, or rules of behavior that guide the decisions, procedures and systems of an organization in a way that (a) contributes to the welfare of its key stakeholders, and (b) respects the rights of all constituents affected by its operations.”
Enterprises with Regard to Human Rights); NGO codes (such as Global Reporting Initiative (GRI), AccountAbility) and multi-stakeholder initiatives such as (ILO Tripartite Declaration of Principles concerning MNEs, Extractive Industries Transparency Initiative, Voluntary Principles on Security and Human Rights, United Nations Global Compact). Like internal CoCs, they do not cover all areas of business operations but they complement and guide internal CoCs (Utting 2005).

Shell, Chevron, Exxon Mobil, Total and other oil companies in Nigeria participate in several initiatives including American Petroleum Institute/International Petroleum Industry Environmental Conservation Association (API/IPIECA)\textsuperscript{31}; Voluntary Principles on Security and Human Rights (VPSHR)\textsuperscript{32}; UN Global Compact\textsuperscript{33}; Global Reporting Initiative\textsuperscript{34}; Green House Gas Protocol\textsuperscript{35} and Carbon Disclosure Project\textsuperscript{36}.

While self–regulation appears to be a laudable exercise, it is also subject to several shortcomings. CoCs are statements of principles which are aspirational rather than directive. Thus companies may not necessarily act in accordance with their provisions. CoCs also promote the perception that human rights obligations are voluntary and businesses can freely choose the human rights that they prefer to respect (Cragg 2010: 283). This perception of human rights runs contrary to their universal, indivisible and interdependent nature. In addition, the commitments made in CoCs, especially internal ones, are sometimes vague and ambiguous. This makes them hard to implement and subject to manipulation. For instance, it is not uncommon for employees to discover a different interpretation of CoCs when they are using them to assert their rights during an industrial dispute.

For their implementation and compliance mechanisms, companies often rely on internal monitoring systems (that is often human resources department and management). Though in some cases, they enlist third parties but the objectivity of these is questioned as they may be partial to their employers. In effect, companies are both “maker” and “enforcer” of laws pertaining to themselves (Amaeshi and Amao 2008). Similarly, external CoCs do not always have compliance, verification and implementation mechanisms. While those that do often let the companies play a predominant role in the process and do not always make their findings available to the public.

In addition, the participation of businesses in external CoCs has a potential for fraud as participation might be a way of eschewing public criticism. In this regard, external CoCs permit “free riding” – businesses benefit from joining an initiative without having to incur the costs of compliance. They might also be a means of “whitewashing” – enterprises make minimum changes to their policies and practices in order to project an image of reform (Utting 2005). It is for these reasons that CoCs are regarded as “figleaves to cover up the unseemly parts that businesses prefer to keep out of sight” (Frankental 2013).

Closely linked to this is the fact that CoCs are often tools for crisis management. They are often adopted in response to a crisis, such as the Ogoni crisis, which puts pressure on companies to

\textsuperscript{31} Chevron, Exxon Mobil, Shell, Total as well as other oil companies in Nigeria (CNOOC, Eni, Nexen, Statoil, Petrobas, Noble Energy)
\textsuperscript{32} Chevron, Exxon Mobil, Shell, Total, and Statoil.
\textsuperscript{33} Shell, Total
\textsuperscript{34} Chevron
\textsuperscript{35} Shell, Statoil, Chevron finances it*
\textsuperscript{36} Chevron.
act more responsibly. Western multinationals, such as the major oil companies in Nigeria, are more susceptible to public pressure and home country government regulation, which may have extraterritorial reach. Thus, they might adopt CoC in a show of good faith or to escape regulation. However, they also have to internalize local contexts in order to engage in more relevant ways. Doing so might make them act in ways that are contrary to the principles and values stated in their CoC.

Besides, it has been argued that companies’ profit maximizing objectives might make them act contrary to the values and principles communicated in their CoCs if they distract them from their economic objectives. They would rather amplify small changes to products, services and processes to give the impression that they take into consideration noneconomic issues (Freeman et al. 2008). Thus, while oil companies might declare their respect for human rights and highlight the measures and structures put in place to support this, they might also engage in obscure contradictory actions such as financing armed groups in a bid to drive up world oil prices and by so doing their profit margins (Platform 2012). As Utting (2005: 383) points out: “The capacity of big business to modify its discourse is often considerably greater than its capacity to improve its social and environmental impacts”.

In Nigeria, voluntary self-regulation by oil companies has not had a positive impact on their behavior in the areas of human rights and environment stewardship. For instance, despite its participation in the VPSHR, Shell and Chevron have been involved in cases of in human rights violations in the Niger Delta. Between 2000 and 2006 Shell was involved in 27 conflicts resulting from its operations in Nembe (Tuodolo 2009: 538). Between 2007 and 2009, Shell spent at least 383 million dollars on security in Nigeria. More than a third of the money was spent on government security forces and armed militant groups which were responsible for insecurity and human rights violations in the Niger Delta (Platform 2012). In 2005 Shell was implicated in an attack on the community of Odioma in Bayelsa state in which the JTF killed at least 17 people, displaced more than a 100 and burnt a village (Omeje 2006: 82 - 83). Between 2009 and 2010, Shell was involved in five incidents of human rights violations in local communities. Chevron has also asked the JTF in 2005 and 2008 to deal with protests against it (Earthrights and CEHRD 2013, Amnesty International 2005). Oil related environmental degradation has continued almost unabated. Between 1995 and 2006, Shell recorded more than three thousand oil spill incidents and daily gas flaring of about 604 million standard cubic feet of gas (Tuodolo 2009:537).

The impact of voluntary self-regulation is limited by the duality of the context in which oil companies are embedded. On the one hand corporations are representatives of their home countries and they are supposed to conform to the norms and regulations of these countries even when abroad. On the other hand, they operate in a different local context whose specificities need adapting to. Companies therefore adopt various legitimation strategies in the differing contexts. This accounts for divergences between their corporate positioning and operational reality. Thus, engagement of companies in voluntary self-regulation legitimizes them in their home countries and abroad while engaging in corporate philanthropy gives them a social license to operate in the poor communities of the Niger Delta.
Furthermore, companies remain most sensitive to the most salient stakeholders. In Nigeria, their most salient stakeholder remains its shareholders, including the government. Thus, while companies might be constrained by international norms to adopt a certain front, their privileged partnership with the Nigerian authorities relieves them from the similar responsibilities in Nigeria. This situation is not helped by the fact that domestic civil society has predominantly continued to mobilize for self-determination and resource control rather than corporate responsibility. As Ratner (2001: 543) notes: “The changing of expectations regarding appropriate behavior by transnational actors must often begin with civil society before governments can be expected to respond”. However, the very existence of CoCs is a positive development. As civil society realizes its socio-economic objectives, its aspirations are likely to evolve to a point where companies would be requested to conform to the international norms and principles expressed in their CoCs.

Conclusion

CSR in Nigeria owes its origins to the Ogoni Crisis in the 1990s. The incident was essentially a mobilization for political autonomy and resource control by a minority ethnic group. In an effort to gain international recognition, it reframed its discourse to become a movement for CSR. It emphasized the role of oil companies, especially Shell, in environmental devastation and human rights abuses in Ogoniland. In response to the crisis, Shell refurbished its image by also reframing its discourse to depict itself as a responsible corporate citizen mindful of human rights and the environment. However, in Nigeria, it has been mainly business as usual.

This is due to the difficult socio-economic situation in the country. Society places higher value on the economic aspects (such as philanthropy, social investment, higher salaries) of corporate responsibility than on human rights and environmental issues. These last two issues only become relevant when they impinge on the economic rights. Secondly, social movements which have taken up the struggle for resource control have in most cases aligned their interests with partaking in oil revenues. More significantly, the continuing dependence of the government on oil revenues has contributed to the persistence of the symbiotic relationship between the state and the oil companies to the detriment of the ordinary people. Consequently, this has led to the inadequacy of the current human rights’ approaches to CSR as well as the relegation of human and environmental rights in cases where oil business interests are concerned.

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