

**SOCIAL RESPONSIBILITY IN PRACTICE IN THE OIL PRODUCING NIGER
DELTA: ASSESSING CORPORATIONS AND GOVERNMENT'S ACTIONS**

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ABSTRACT

Corporate Social Responsibility (CSR) appears to be a well-settled concept, albeit without precise definitions, with several multinational companies acceding to its components. Against this background, this paper explores two main issues. The first is whether the main components of CSR are being practiced in reality by these companies in developing countries? Secondly, has the focus on CSR made companies the obvious scapegoats, while national governments have been allowed to abdicate their traditional responsibility to its citizens? In essence, what is the relationship between CSR and the social responsibility of governments? Furthermore, what is the role of national governments in ensuring that companies operate in a socially responsible manner? In answering these questions, the paper focuses mainly on the operations of the oil industry in the Niger Delta of Nigeria.

Key Words: Social Responsibility, Oil Pollution, Niger Delta, Environment

INTRODUCTION

It is now common knowledge that the activities of extractive industries potentially have significant negative environmental and socio-economic impacts. However, adoption of techniques which adhere to sound environmental management systems and standards, taking into consideration the ecology of the area and the economic and social patterns of the host communities mitigates, if not completely avoids, these impacts (UNEP/E&P, 1997; World Bank, 1998). This, in essence, is at the core of the concept of CSR which places the onus on companies to achieve this goal. Interestingly, companies have accepted this role, affirming a commitment to CSR, and making their performance in this area a key feature of corporate annual reports, websites, and other public relations documents (OECD, 2001; Chevron, 2005; SPDC, 2006). But how well are these policies implemented in developing countries? This becomes a pertinent question in light of the numerous examples of severe environmental degradation and socio-economic problems in some of the major minerals and petroleum rich communities, such as OK Tedi in Papua New Guinea, the Niger Delta in Nigeria, and Oriente region in Ecuador (Pring, 1999). A further question is the relationship between CSR and the role of national governments, including their responsibility in ensuring that companies operate in a responsible manner. This paper explores these issues, using the practice of companies and the government in the Niger Delta as a case study.

The choice of the Niger Delta as a good case study is based on several factors such as sensitive nature of the environment in which the oil industry operates, well publicised impacts of its activities, and a general period where companies claim to adhere to CSR can be identified and therefore actions afterwards assessed. The paper draws from both primary and secondary sources of information in the form of first hand experience of living in the Niger Delta, official sources of oil spills statistics, interviews with monitoring agencies, and other secondary sources. Before looking more closely at CSR in the Niger Delta, it is important to discuss briefly what the CSR entails.

WHAT IS CORPORATE SOCIAL RESPONSIBILITY?

Corporate social responsibility is a departure from what is perceived to be the traditional responsibility of corporate entities – that of satisfying the economic interests of their

shareholders (Dickerson, 2002; Gordon and Pestre, 2002). While discussions on corporate ethics and regulation of the corporate form is by no means a recent phenomenon, the origins of the current concept of CSR, which focuses on the responsibility of corporations to the communities and environments in which they operate, can be found in academic discussions in the 1960s (Epstein, 1998; Ostas, 2001). Since then, there has been sustained interest and debate on the issue by all stakeholders. There is at yet no binding international law instrument on CSR, although various voluntary initiatives and instruments exist (such as the UN Global Compact, the International Labour Organisation Tripartite Declaration of Principles concerning Multinational Enterprises, and Organisation for Economic Co-Operation and Development Guidelines on Multinational Enterprises) with some of these drawing from principles in basic international law documents, such as the Universal Declaration of Human Rights and the Rio Declaration on Environment and Development. Moreover, it can be argued that by their affirmation, companies themselves have legitimised CSR in spite of the absence of positive law.

Broadly, CSR requires companies to alleviate the negative impacts of their operations by acting in a socially responsible manner. However, its exact meaning and ambit is still rather ambiguous because what is perceived as CSR by various contributors is defined by several factors such as time, the nature of activity, and the communities where they operate (Stone, 1986). For instance, there have been some attempts to provide alternative models for corporate citizenship in Africa in light of the peculiar problems of the continent (Visser et al., 2006). Similarly, resource development companies have received particular attention in the CSR debate because of the very nature and scale of their impacts (Elkington, 1998). Nevertheless, it can be gleaned from these, the debate, and various documents that the core issues in CSR are labour, environmental, human rights, and social issues (including public participation and anti-corruption). A commitment to CSR would, therefore, mean adherence to these principles, although this paper focuses on mainly on the environmental and social components.

IMPLEMENTATION OF CSR IN THE NIGER DELTA OF NIGERIA

The Niger Delta is home to the oil industry in Nigeria, a country which is the 7th largest net exporter of oil in the world. The environment in which the industry operates is an ecologically sensitive wetland, a dynamic ecosystem rich in freshwater resources, and a very wide variety of flora and fauna. Most of the industry's onshore operations take place in rural communities where

the people's main source of livelihood is subsistence fishing and farming. There is very high levels of poverty and lack of basic infrastructure (Ashton-Jones, 1998; Human Rights Watch, 1999). The need to operate in a responsible manner is, therefore, manifestly obvious.

The Trigger for CSR in the Niger Delta

Although the industry has operated here for several decades, with the first exports being in 1957, it was only in the early 1990s, following the Ogoni crisis, that attention has been paid to CSR. The crisis followed intimidation and suppression by state security agencies of activities of the Movement for the Survival of the Ogoni People which highlighted the serious environmental and socio-economic impacts of oil operations on the environment and people of the area. The grim picture that emerged was worsened by allegations of complicity by the oil company in the human rights abuses on of the state security agents (Idowu, 1999; Worika, 2001). The international condemnation that followed led to the companies, especially Shell, which was the company directly involved in the crisis, ostensibly taking steps towards a more proactive approach to addressing its environmental, human rights, and social obligations (Royal Dutch/Shell Group of Companies, 1997). The question though is what form does CSR by these companies take in the Niger Delta and has it had any real impact on the environmental and socio-economic problems?

Response to Human Rights and Social Issues

Perhaps one area where there is a marked difference in the corporate practice of the oil companies is the allegations of complicity with the Nigerian State in human rights abuses. Whereas these were rife in the period leading up to and immediately after the Ogoni crisis, with a notable example being the Umuechem massacre of 1991, it is now rare to find such reports of complicity even though the Nigerian State routinely is involved in such as exemplified by the Kaima and Odi massacres of 1998 and 2000, respectively (Human Rights Watch, 1999, 2003).

By far the most visible form of CSR by the oil industry in the Niger Delta is their undertaking of various community development projects, such as the building of health centres, primary school blocks, provision of water, scholarships, etc. ostensibly to alleviate the poverty and underdevelopment of the region. Companies usually report very huge spending on this head. For instance, Shell reportedly spent US\$32 million in 2005 (SPDC, 2006) and Chevron about \$130

million in the past ten years (Chevron, 2006). Although laudable theoretically as an important aspect of CSR aimed at addressing the peculiar social issues in such poor communities, its practice in the Niger Delta is unsustainable as projects are selected ad hoc, communities have no real input, long term viability of projects not built into plans, and thus no real impact is seen.

It is, however, questionable whether this indeed is a role for the companies. Social responsibility in this regard should involve active participation by the local communities in the decision making process on resource development in their communities. This can be seen, for example, in the responsibility of mining corporations in indigenous communities in Canada where public participation in the decision making process of the mining development is central (Matiation, 2002). Although there is no direct statutory requirement for this in Nigeria, there are other avenues, such as the EIA process, which companies can actively involve the communities they intend to operate in, so that they collectively discuss on measures to be taken to mitigate impacts, such as destruction of traditional occupations and erosion of traditional cultures and institutions. Long term sustainable development programmes can then be built into the project with communities having a more direct role in decisions about choice and implementation as can be found in some Rio Tinto community projects amongst Aborigines of Australia. Even in the Niger Delta, an example of this exists in the experiment of the Statoil funding of the Akassa Community Development Project (ACDP) in the Niger Delta.

Some companies in the Niger Delta have admitted that their approach has contributed to dependency, corruption, and violence in the region (IRIN, 2005), necessitating Shell to change the name of its programme from community development to sustainable community development in 2003. However, it appears very little has changed and the focus is still on philanthropic gestures rather than carefully thought out self sustainable projects with the involvement of communities.

Environmental Responsibility

Although there are environmental impacts at all stages of operations of the oil industry, attention in the Niger Delta has been focussed mainly on the relatively more visible forms of pollution-oil spills and gas flaring. Research carried out before the 1990s crisis showed a very high number

and volume of oil spills with attendant environmental, economic, and health implications (Asuno, 1982; Adeniyi, 1983; Powell *et al.*, 1985; Snowden and Ekweozor, 1987; Akinbami *et al.*, 1996). Over 90% of these spills were from avoidable sources directly linked to the company's environmental management practices, such as equipment failure and corrosion from old worn out pipelines (Awobajo, 1981; Fekumoh, 1998; Human Rights Watch, 1999). Nigeria also flared the most gas of any oil producing company, with several flares situated very close to local communities. There was indication that flame temperatures were low, thereby resulting in partial combustion of gaseous components with more severe environment implications (World Bank, 1995; Ashton-Jones, 1998). Environmental degradation has, therefore, been at the core of communities' agitation and international condemnation.

It is not surprising that addressing this has become a very important part of company averred commitment to CSR in the Niger Delta. In 1995, Shell admitting the use of outdated facilities and equipments (particularly pipelines) that had outlived their life span, promised to replace these and bring its operations in line with Nigerian regulations by 1999. In 2001, it announced that it had met most of the environmental targets set since 1995, achieving 98% percent compliance with industry regulations (although perhaps due to the revised DPR Guidelines in 2002, the company's compliance level has dropped, with the more recent 2005 annual report posting a 92% compliance level). It further claimed to have made significant progress on other areas, such as ISO14001 certification of its facilities, improvement of EIA process on all new projects in accordance with international standards, efforts to reduce gas flaring, improvement of waste management schemes, increased preparedness to respond to oil spills and other environmental disasters, and increased remedial actions to rehabilitate environmentally devastated areas.

Other companies report similar commitment to good environmental practices. For instance, Chevron is reported to have invested an average of \$88m annually between 1995 and 1998 to upgrade of oil production facilities (Odogwu, 1998). In 2002, the company claimed to have committed \$360m to upgrade its production facilities in order to reduce discharges and risk of oil spills and made a commitment to reduce and eventually end gas flaring in Nigeria by 1998 (Chevron, 2001). Similarly, in 2003 another company, Elf Petroleum, made a commitment to

stop onshore and offshore gas flaring by 2003 and 2005, respectively (Daily Trust, 2003). Both Chevron and Shell continue to report continued investment in environmental management and general improvement in environmental performance (Chevron, 2005; Shell, 2006).

However, the reality on ground is that not much has changed in the Niger Delta Environment. Analysis of official sources between 1989 and 2001, show that oil spills are still commonplace, with an increase in number of incidents and volume, a very high percentage (95.63) of which is lost to the environment (Emeseh, 2006). The Niger Delta is dotted with polluted sites which have either not been or has inadequately been cleaned up. This is in spite of the fact that each of the companies has their own plans as required by DPR for dealing with minor spills. In addition, a company, the Clean Nigeria Associates (CNA), which became fully operational in 1985, was set up by all the oil companies to deal with larger spills. Nigeria still flares more gas than any other country in the world, both in absolute and proportionate terms (UNDP/World Bank, 2004) and Shell (SPDC, 2005) and all the other companies have reneged on the new deadline of 2008 to stop flaring gas. A new recurring source of environmental problem is pipeline fires with the first major incident being in Jesse in 1998.

Companies have blamed sabotage for a very high number of oil spills. While there is no doubt that this is a contributory factor, the actual number that is attributable to it is questionable. Interviews with spill site inspectors from the various enforcement agencies showed that suspected sabotage was the usual entry made if the cause of spill could not immediately be attributed to any of the other factors. As these are not then further investigated, the claims are largely unproven. Moreover, the perception of communities is that this is an allegation that is made for companies to get out of their obligation to compensate the victims of an oil spill. There is some credibility in this assertion as is borne out by the case of *Shell Petroleum Development Company of Nigeria Ltd. v. Abel Isaiah and others* - (1997) 6 NWLR (Pt. 508) 236. In that case, Shell's allegation of sabotage was contradicted by its own defence witnesses, with three of them admitting in court that the damage to the pipeline was as a result of a fallen tree, and the Court of Appeal finding that "the defence of sabotage raised by Shell was an afterthought." In any event, although companies have programmes for replacing aged pipelines, this is a long term project

that is still ongoing. It stands to reason, therefore, that a major cause of spills was due to corrosion of old pipelines; as these get older, even more spills are likely to occur.

The Role of Government

From the above, it is obvious that the companies in the Niger Delta have not fulfilled their social responsibility to the communities in which they operate. However, perhaps too much focus has been placed on the companies, while the Nigerian State has abdicated its responsibility to the people of the oil producing regions. Historically, it is governments who traditionally have responsible for the welfare of its citizens. This includes ensuring law and order, security, provision of public infrastructure, and other basic amenities. Regarding resource development, all of the various UN Declarations, such as the Principle of Permanent Sovereignty over Natural Resources, require that states should use the resources for the benefit of its citizens. Thus, while companies have a social responsibility to the communities they operate in, the framework within which this is to effectively work and have to be provided by the government.

Against this background, as already in various soft law environmental instruments, such as Principle 11 of the Rio Declaration and chapter 8 of Agenda 21, it is the responsibility of government to ensure that an adequate regulatory and enforcement framework exists which ensures that companies carry out their operations in an environmentally responsible manner and in the event of non-compliance, that the laws are enforced. In this respect, the Nigerian government has failed in its social responsibility to its citizens. There is still no comprehensive law regulating the environmental impacts of the oil sector, and provisions in the various oil industry and environmental laws are weak and sometimes in conflict. The institutional framework for enforcement has not fared any better, as they are ill equipped to discharge their functions. The current government promised, since 1999, to prosecute companies for environmental violations. Almost eight years later, there is still not one single criminal prosecution despite the very visible incidents of pollution. Similarly, two main draft environmental laws – the Response, Compensation, and Liability for Environmental Damage (RECLD) Act, and the Nigerian Environmental Management Act - are yet to see the light of day. When communities protest, it is the government which should be the protector of its citizens that is the main aggressor, violating human rights in the Niger Delta.

Also, with respect to the social aspects of its CSR obligations, it is the failings of the government which allows companies to be involved (mainly philanthropic gestures), as there is no framework providing for how they should discharge this responsibility, nor any requirement to engage with communities in oil development projects. Moreover, it is the failing of the government in using oil revenues to develop the Niger Delta that has made companies step into the role of the primary provider of basic infrastructure. As stated in the Rivers State Government, Report of the Judicial Commission Inquiry into the Umuechem Disturbances, companies do not owe any legal obligation to the community to provide social amenities, but was under obligation to ensure adequate compensation for lands acquired, carry out their operations in an environmentally responsible manner, and to provide adequate remedy in the event of damage arising from environmental pollution.

CONCLUSION

The evidence from the Niger Delta indicates a variance between practice and implementation of the core components of CSR. However, it is not only companies who have abandoned their responsibilities as governments has failed in its responsibility to provide a framework within which companies can effectively meet their obligations or be made to do so. Not much is paid to this, however, in the conflict ridden Niger Delta where both the companies and local youths are the convenient scapegoats being blamed for the problems. Although perhaps this in itself is why CSR is so important, as it could help alleviate the suffering of local communities in the face of governmental incompetence and nonchalance; in truth, far too much responsibility and freedom is placed on companies whose traditional role is not governance. Only when the government performs its role can we perhaps see a proper commitment to CSR which ensures effective measures to reduce the environmental impacts, and active engagement of the communities to address the causes of conflict.

REFERENCES

- Adeniyi, E. O. (1983). "Environmental and Socio-Economic Impact of Oil Spillage in the Petroleum Producing Riverine Areas of Nigeria" in The Petroleum Industry and the Nigerian Environment: Proceedings of 1983 NNPC Seminar 233 (Lagos: Federal Ministry of Works and Housing/NNPC, 1983)
- Akinbami, J. F. K.; Akinwumi, I. O.; and Salami, A. T. (1996). "*Implications of Environmental Degradation in Nigeria*" 20 Natural Resources Forum (1996) 319.
- Ashton-Jones, N. (1998). The Human Ecosystems of the Niger Delta: AN ERA Handbook (Ibadan: Kraft Books, 1998).
- Asuno, B. A. (1982). "Impact of Oil Industry on the Environment," in Proceedings on Environmental Awareness Seminars for National Policy Makers 51 (Lagos: Federal Ministry of Works and Housing/NNPC, 1982).
- Awobajo, S. A. (1981). "An Analysis of Oil Spill Incidents in Nigeria: 1976-1980" in The Petroleum Industry and the Nigerian Environment: Proceedings of an International Seminar sponsored by the Nigerian National Petroleum Company 60 (Lagos: Federal Ministry of Works and Housing/NNPC, 1981).
- ChevronTexaco (2001). "Nigeria Fact Sheet 2001"
http://www.chevrontexaco.com/news/press_kit/docs/chevrontexaco_fact_sheet.pdf
(visited 15/02/02).
- ChevronTexaco (2006). "Nigeria Fact Sheet 2006"
<http://www.chevron.com/operations/docs/nigeria.pdf>. (Visited 12/12/06).
- Daily Trust* (2003). "Elf Petroleum to End Gas Flaring this Year", *Daily Trust Newspapers*, Tuesday, 12 February, 2003.

- Dickerson, C. M. (2002). "Human Rights: The Emerging Norm of Corporate Social Responsibility," 76 *Tulane Law Review* (2002) – 76 *TLNLR* 1431. pg. 4 & 13 footnote 11.
- Elkington, J. (1998). "The Triple Bottom Line of Twenty- First Century Business" *in* Mitchell, J., ed. Companies in a World of Conflict (RIIA: London, 1998) 32.
- Emeseh, E. (2006). "Limitations of Law in Promoting Synergy between Environment and Development Policies in Developing Countries: A Case Study of the Petroleum Industry in Nigeria, 24 (4) *Journal of Energy and Natural Resources* (2006) 574.
- Epstein, E. M. (1997). "Business Ethics and Corporate Social Policy: Reflections on an Intellectual Journey, 1964-1996 and Beyond," 37 *Business and Society* (1997) 7.
- ERA/FoE Nigeria and Climate Justice Programme (2005). Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity (A report by the Climate Justice Programme and Environmental Rights Action/Friends of the Earth Nigeria, June 2005).
- Fekumoh, J. F. (1998). Disturbance and Injurious Affection in the Nigerian Petroleum Industry (Owerri: Springfield Publishers, 1998).
- Gordon, K., and Pestre, F. (2002). "Moving toward Healthier Governance in Host Countries: The Contribution of Extractive Industries" (2002) Available online at <http://www.oecd.org/dataoecd/62/54/2066545.pdf>.
- Human Rights Watch (HRW) (1999). Nigeria: Crackdown in the Niger Delta Vol. 11, No 2 (a) (Human Rights Watch, 1999) <http://www.hrw.org/reports/1999/nigeria2/index.htm#TopOfPage> (Visited 20/12/12).
- Human Rights Watch (HRW). (1999). The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities (New York: Human Rights Watch, 1999).
- Human Rights Watch (HRW). (2003). The Warri Crisis: Fuelling Violence (Human Rights Watch, Vol. 15, No.18 (A), November 2003), available online at <http://hrw.org/reports/2003/nigeria1103/nigeria1103.pdf> (Visited 09/05/05).
- IRIN (2005). "*Nigeria: Oil Giant Admits Aid Policies Helped Fuel Violence*" IRIN, Wednesday, May 4, 2005.

<http://www.alertnet.org/thenews/newsdesk/IRIN/c08c9e73b0d66b3cbd8210fceddcd5da.htm> (Visited 04/05/05).

- Knight, W. D., and Alagoa, N. C. (2000). "Akassa: A New Approach to the Problems of the Niger Delta" paper presented at Society of Petroleum Engineers' International Conference on Health, Safety and the Environment in Oil and Gas Exploration and Production (Stavanger, Norway, 26- 28 June, 2000).
- Matiation S. (2002). "Impact benefits Agreements Between Mining Companies and Aboriginal Communities in Canada: A Model for Natural Resource Developments Affecting Indigenous Groups in Latin America," 7 Great Plains Natural Resources Journal (2002) 2.
- Odogwu, C. A. (1998). "The Benefits of a Good Risk Control Program in the Petroleum Industry: The Chevron Experience", paper presented at the 1998 International Seminar on the Petroleum Industry (Abuja, Nov. 30 – Dec. 3, 1998).
- OECD (2001). Corporate Responsibility: Private Initiatives and Public Goals. Available online at <http://www.oecd.org/dataoecd/58/54/35315900.pdf> (Last visited 12/12/06).
- Ostas, D. T. (2001). "Deconstructing Corporate Social Responsibility: Insights from Legal and Economic Theory," 38 American Business and Law Journal (2001) 261.
- Powell, C. B.; White, S. A.; Baranowska-Dutkiewicz, B.; Ibiebele, D. D.; Isoun, M.; Ofoegbu, F. U. (1985). "Oshika Oil Spill Environmental Impact: Effect on Aquatic Biology," in The Petroleum Industry and the Nigerian Environment: Proceedings of an International Seminar (Lagos: Federal Ministry of Works and Housing/NNPC; 1985).
- Pring, G. et al. (1999). "Trends in International Environmental Law Affecting the Minerals Industry" Part II 17(2) Journal of Energy and Natural Resources (1999)151-177.
- Royal Dutch/Shell Group of Companies (1997). Statement of General Business Principles (Shell: London and The Hague, 1997).
- SPDC (2005). 2004 People and the Environment: Annual Report.
- SPDC (2006). 2005 People and the Environment: Annual Report.
- Snowden, R. J., and Ekweozor, I. K. E. (1987). "The Effect of a Minor Oil Spillage in the Estuarine Niger Delta," 18 Marine Pollution Bulletin (1987) 592.

UNDP/World Bank (2004). Strategic Gas Plan for Nigeria, ESMAP Paper No. ESM 279/04 of February 2004.

UNEP E&P Forum/UNEP (1997). Environmental Management in Oil and Gas Exploration and Production: An Overview of Issues and Management Approaches (London: E & P Forum/UNEP, 1997).

World Bank Report (1995). Defining an Environmental Development Strategy for the Niger Delta, Vol. I (Washington DC: World Bank, May 1995).

World Bank (1998). Pollution Prevention and Abatement Handbook 1998: Toward Cleaner Production, (Report No: 19128, World Bank, 1998) Available online at http://www-wds.worldbank.org/servlet/WDSContentServer/WDSP/IB/1999/06/03/000094946_99040905052283/Rendered/PDF/multi0page.pdf (Last visited 11/06/05)

Visser, W.; McIntosh, M.; Middleton, C. (2006). Corporate Citizenship in Africa Lessons from the Past; Paths to the Future (Greenleaf Publishers: Sheffield, 2006).