Corporate Social Responsibility (CSR) and Human Rights Accountability in Nigerian Petroleum Industry: From Voluntarism to Legal Positivism

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The softness and non-bindingness of international law pose a hindrance in imposing binding human rights obligations on corporations. Corporate social responsibility (CSR) seems to leverage on this normative authority of softness of international law to prevent states from imposing human rights sanctions on corporations. This paper explores the dynamics of CSR strategies in the Nigerian petroleum industry and assesses its effectiveness towards corporate human rights responsibility. The paper makes a case for a new approach to CSR deployment for effective corporate human rights responsibility. The paper contends that the adoption of a National Action Plan (NAP) by Nigeria towards the implementation of the UN Guiding Principles on Business and Human Rights will change CSR paradigm from the domain of social voluntarism to the realm of legal positivism. By drawing inspiration from these international guiding principles, the paper proposes for a national legal positivist approach to CSR in the oil industry.

Keywords: human rights, obligation, corporate responsibility, voluntarism, corporate social responsibility

Introduction

One of the greatest challenges arising from the activities of the international oil companies (IOCs) in Nigerian petroleum industry is the devastation caused on the environment. The effects of this devastation, most often than not, have grave consequences on the enjoyment of human rights by the local population. One of the methods of ensuring good corporate human rights practices by the IOCs has been through corporate social responsibility (CSR) strategies.

However, this CSR strategy has often been criticised for not being effective. One of the reasons for this is embedded in the voluntary nature of the CSR strategies in Nigeria. More so, the perception of CSR in Nigeria has been that of a philanthropic gesture from the IOCs and the Nigerian state lack the legislative impetus to enforce CSR due to its non-bindingness.
This paper assesses these strategies and its inherent limitations and offers a new approach that will change the paradigm for better corporate human rights accountability in the petroleum sector. The paper explores the potential possibilities of deploying the CSR framework to enthrone corporate human rights responsibility.

**CSR and the Challenge of Self-Regulation**

The ineffectiveness of international legal framework and weak national regimes has subjected CSR to the domain of social voluntarism. This governance gap has given transnational corporations (TNCs) the impetus to cause harm to the environment with attendant impact on other social issues, such as climate change and human rights with less regard for any legal consequences. This is particularly so owing to poor legal regime and complicated access to human rights justice both from a constitutional and legislative stands-point. The CSR seems to leverage from the normative authority and guidance of the softness of international law which makes it almost impossible for states to assume a positive position to impose regulatory sanctions under it. One of the fundamental challenges being faced in economic globalisation is the fact that TNCs operate within an indeterminate legal vacuum between weak national laws and unenforceable, soft, self-regulatory international legal regime (Fowler, 1995).

Within the United Nations framework in the context of protecting and fulfilling human rights obligation, it is the responsibility of the state to ensure that citizens enjoy the standards established under the universal human rights law. Within this context of responsibility, TNCs are equally duty bearers with obligations to respect human rights within their sphere of operation. This is fundamental because not only does the economic activities of TNCs have direct effects on human rights of people within their areas of operation, they also affect the climate with transgenerational impact on the enjoyment of human rights. As a result, the need for actions in fulfilment of this state obligation has never been more needful.

Guided by the plethora of United Nations’ charters on human rights and other international conventions, these responsibilities have never been more expressive than the recent principles enunciated in the Declaration on Human Rights and Climate Change. It follows therefore that “all states and business enterprises have a duty to

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1 The Nigerian Constitution guarantees several rights. But most of the violations that occur in the petroleum industry are rights which although are provided but do not give rise to actionable rights under the Fundamental Objective and Directive Principles of State Policy. Other legislations, such as the African Charter on Human and Peoples’ Rights that cover some of those rights raise a lot of conflicting opinions as to their applicability in the face of direct conflict with the provisions of the Constitution. Please see Sections 1(3), 6(6)(c), 13-20, of the Constitution of Federal Republic of Nigeria, 1999 and Articles 4, 16, 22, and 24 of the African Charter on Human and Peoples’ Rights.

protect the climate and to respect the rights set out in the Declaration”\textsuperscript{3}. It has been argued that given the territorial limitations of the national laws, it has proved ineffective to regulate TNCs through national law (Amao, 2011). The author begins by presenting a divergent view on that line of thought. Since international law (except those which has risen to the status of customary international law) to this date remain soft, national laws appear to present a more potent opportunity for regulating activities of TNCs within the operational territory of the state through state obligatory measures. This can be achieved through the internalisation and effective application of the international human rights standards within the national judicial system.

CSR, as presently deployed under the current international law framework, appears ineffective. This framework together with weak and ineffective national law regime has rendered self-regulation the only surviving feature of what defines transnational corporate regulation. As a result, most corporations find it adequate to adopt CSR measures as a way of harmonising business and other competing objectives, such as human rights. In many instances, since there is no legal basis for non-compliance, most big corporations develop such CSR measures as a way of responding to some moral responsibility questions that may or have arisen in their operations. Additionally, a growing number of these corporations are equally designing and implementing specific human rights policies (Silverman & Orsatti, 2009). More than 9,000 companies are listed as active members of the UN Global Compact,\textsuperscript{4} a multi-stakeholder corporate sustainability initiative that commits businesses to respect universal principals relating to human rights, environmental issues, and other social practices.

Since these CSR strategies seem to draw normative authority and guidance from international law, it becomes impossible for states to assume a position to impose regulatory sanctions under it (McInerny, 2007). In many instances, human rights issues, environment and sustainable development, labour rights, and community activities have been incorporated and captured within the broader CSR strategies with no real practical impacts or effects. Since it is possible to draw up human rights and other environmental and sustainability standards within the CSR strategy, then it is possible that if effectively deployed and regulated, it can serve as a veritable tool of advancing corporate human rights compliance and responsibilities.

Therefore, the concept of CSR and its discourse has been confined within the compass of ethical, voluntary, and unenforceable rules. This has the capability of eroding its legal positivist potentials (Buhmann, 2006). As has been argued that CSR approach to human rights which also diverges considerably from the positivist approach is based on the understanding of human rights as moral and legal entitlements with corresponding legally binding obligations (Bijlmakers, 2018). It does appear that those who promote this idea are deliberately elevating the moral normativity of human rights above its obligatory potentials as a legal entitlement. In effect, CSR, as viewed in the voluntary sense of non-bindingness in the strict legal sense, is discretionary morally speaking, and thus “hardly a ‘must’ for companies” (Wettstein, 2016, p. 80).

Whereas legal positivists consider (“hard” law) obligations, compliance (through regulation) and corporate liability as departing point, the CSR narrative has been preoccupied on “softer” forms of responsibility, self-regulation, and sustainability. This is so because conventional conceptions of CSR perceive business enterprises as belonging to the domain of private entity with focus on profit orientation, which is separated from

\textsuperscript{3} See Article 17 of the Declaration.
the public domain, organized by the state (Wettstein, 2016). The question arises as to whether the apparent lack of international and national legal regulation imposing binding obligations upon business still holds any potential towards corporate human rights responsibility through CSR (Zerk, 2006). Is a legal positivist approach to CSR deployment and enforcement the necessary option towards corporate human right responsibility? These questions and related issues set the scene that determines the foundational basis upon which the argument in this paper is presented.

The UN Guiding Principles on Business and Human Rights

The United Nations Guiding Principles on Business and Human Rights (UNGPs) remain one of the most formidable propositions for corporate human rights responsibility.

Perhaps, the UNGPs present itself as an authoritative platform for guidance and action towards a legal framework for corporate human rights responsibility. The United Nation’s Human Rights Council (HRC) “endorsed” the UNGPs on 23 June 2011, marking the first time that the HRC and its predecessor, the UN Commission on Human Rights, had issued authoritative guidance on business and human rights (Ruggie, 2015). According to the Institute for Human Rights and Business,

The main achievement of the UN Guiding Principles has been the clarity it has provided about international human rights standards and the distinct but complementary roles and responsibilities of both governments and companies. There is now a common standard that businesses, governments and civil society alike understand and accept. Companies embracing their responsibility to respect have been grappling with the challenge of full and effective implementation. And by restating the role of governments, the UN Guiding Principles have brought the state back into action and made clear states cannot abdicate their duties.5

It is expected that out of this guiding principle would flow national legislations that would domicile these principles and bring into effect its legal potentialities toward corporate human rights accountability. From this perspective, the author makes a case that this movement is necessary to change and move the narrative of CSR from the domain of voluntarism to the realm of legal positivism. This is even more important especially within the context of developing countries where CSR is still mostly perceived as a philanthropic gesture.

CSR and Developing Countries

CSR within the context of developing countries raises unique questions and concerns, one of which relates to whether its practices are manifestly different from other developed world especially when the corporate actors are the same. In Europe, for instance, the European Union has responded significantly to the UNGPs through its codification under EU law to pursue effective implementation of CSR and businesses’ human rights responsibility (Bijlmakers, 2018). In 2011, the commission issued a communication which provides for the union’s internal policy framework for the promotion of CSR, and business respect for human rights and sets out renewed European strategy for CSR (European Commission, 2011).

This is indeed a positive deployment strategy worthy of emulation. This foretells a great potential towards binding CSR obligation. It conforms with the paper’s thematic views that international guideline can set the tone

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upon which national or regional CSR strategies can be deployed effectively. With respect to developing countries, it has been stated that CSR differs significantly depending on the social and economic priority—which themselves are dependent on cultural and historic factors as well as priorities of the social actors demanding for it (Amao, 2011). In South Africa, for instance, the apartheid regime played a part on the perception of CSR strategies. It was noted that the earlier CSR practice was hugely rooted in philanthropic gestures wherein businesses will hand in charity donations to communities and stakeholders to engender support and patronage from local communities and chiefs. However, following the elections in 1994, the government pursued some legislative agendas that changed the course of CSR in South Africa, influenced by the need to respond to apartheid and also address local needs. Generally, in most African countries, findings suggest that CSR is still associated to a large extent with philanthropy (Amaeshi, Adi, & Ogbechie, 2006; Kuvuitu, Yambayamba, & Fox, 2005).

In Nigeria, the concept of CSR has developed as a response to outcry arising from series of human rights and environmental violations involving Shell in the 1990s. Shell has been in the front burner of CSR issues in Nigeria not only because of its dominant role as the biggest player in the oil industry but also because its operations are onshore with greater interaction with human habitations (Omeje, 2006). Since then, CSR discourse in Nigeria has been on the oil industry with focus on the IOCs in the Niger Delta.

**IOCs and the Dynamics of CSR Strategies in Nigeria**

Decades of oil-related environmental degradation and human rights crises since the discovery of oil in the Niger Delta region has made the adoption of various CSR strategies by the IOCs, a veritable tool to maintain good corporate-community relationship that seem to have evaporated after the early oil exploratory years. Lack of social amenities, such as potable water, electricity, healthcare facilities, good roads, etc. due to government neglect exposed the IOCs to violence from the communities who amid oil wealth lack the basic means of survival. The violent attacks on oil installations and protests in response to the killings in the 1990s to which the IOCs have been indicted became the defining moment towards adoption of CSR strategies as a method of managing corporate-community relations in the Niger Delta (Idemudia, 2011).

Recognizing that adopting good CSR strategies was not only necessary as a business strategy to quell local grievances but also to mitigate international reputational crisis, IOCs adopted different approaches to their CSR obligations in Nigerian oil industry. Some of the major oil companies that dominate CSR discussion in Nigeria include Shell Petroleum Development Company (SPDC), Chevron ExxonMobil, etc.

**Shell Petroleum Development Company of Nigeria (SPDC)**

Shell, also known as the Royal Dutch Shell is acclaimed to be among if not the first transnational company to establish a general business principle that serves as a working template for all its companies globally. The purpose of these guiding principles—drafted in 1976—was to incorporate environmental and social consideration into corporate decision-making to cast a “balance” between business and other social

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6 International Institute for Sustainable Development, “Perceptions and Definitions of Social Responsibility” (Canada: May 2004) at p. 3.
7 See for instance the Black Economic Empowerment Initiative and other corporate involvement in HIV and AIDS.
considerations to promote sustainable development. Currently, its corporate sustainability strategy includes environmental, labour practices, and human rights.  

As early as from the 1950 through to the 1970s, the Royal Dutch Shell, which later became SPDC in Nigeria, claims to have been significantly involved in acts of philanthropy, such as training of thousands abroad through its scholarship schemes. This was before the concept of CSR came to limelight in Nigeria. Shell in addition works closely with all tiers of Nigerian government to deliver on some social investment programmes some of which are mandated by law.  

In 2010 alone, SPDC claims to have spent about nine billion Naira in community and youth development around the Niger Delta in the Shell LiveWire Programme which was set up in 2003. In the words of SPDC, this programme is “the biggest corporate social responsibility portfolios operated by a private company in sub-Saharan Africa” (Shell, 2011), and provides entrepreneurial training, business skills acquisition and start-up capital (Ajibo, 2014). In 2017, it is claimed that the Cradle-to-Career scholarship programme initiated in 2010 under the SPDC Joint Venture and SNEPCO has benefitted 480 and 268 students respectively. Other community-driven development programme has reportedly been delivered through global memorandum of understanding (GMoU) since its inception in 2006. Some of the acclaimed projects range from roads, hospitals, schools, pipe-born water, electricity, etc, in some host communities in the Niger Delta. A graphic representation of SPDC’s social investment contribution is shown in Table 1:

Table 1  

<table>
<thead>
<tr>
<th>Amount</th>
<th>Purpose</th>
<th>Year</th>
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<tbody>
<tr>
<td>$109.9 million</td>
<td>SPDC JV and SNEPCO contribution to Niger Delta Development Commission (Shell share $40.2 million)</td>
<td>2017</td>
</tr>
<tr>
<td>$60.2 million</td>
<td>SPDC JV, SNEPCO and Shell Nigeria Gas direct spending on social investment projects (Shell share $19.2 million)</td>
<td>2017</td>
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<tr>
<td>$228 million</td>
<td>Disbursed by the SPDC JV to GMoU clusters for financing of development projects and programmes</td>
<td>2017</td>
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All said, there is no claim that CSR strategies of SPDC have been able to reflect in the area given the enormous human rights and other developmental challenges in the oil producing Delta. It is conceded that the developmental and human rights challenges in the Niger Delta are partly as a result of protracted government neglect. It is however argued that SPDC should reinvent its CSR strategies towards addressing directly those human rights changes that fall directly under the fulcrum of its sustainability principles. This will help to restore trust and cordiality between it and the oil-bearing communities. For instance, the Ogoni crisis has remained unresolved. This is largely because of SPDC’s failure to own up and address the humongous human rights abuses

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9 Ibid.
10 For instance, Section 14(2)(6) of the Niger Delta Development Commission Act requires Oil and Gas companies in Nigeria to contribute 3% of their annual budget to the commission to fund social investments and other responsibilities of the commission.
11 Shell also holds the most significant interest in petroleum operation in Nigeria.
in Ogoniland. The most celebrated United Nations Environmental Programme Report of 2011 which suggests a clean-up exercise to restore the land has not been carried out. It is certainly a benchmark to measure SPDC’s efforts in restoring its corporate-community relationship in the Niger Delta in general and the Ogonis in particular.

**Chevron**

Chevron is a major oil explorer and producer in Nigeria with a large stake in the offshore and onshore assets in the Niger Delta under a joint-venture arrangement with the Nigerian State Oil company—NNPC. Apart from its extensive interests in multi-partner deep-water operations in the Agbami Field and a mono-operation interest in the Usan Field, the Aparo Field and the third-party-owned Bonga SW Field, Chevron holds 40% interest in eight concessions in the onshore and near-onshore regions of the Delta under joint-venture with NNPC.\(^{14}\) It has an average daily net production in 2017 207,000 barrels of crude oil, 223 million cubic feet of natural gas and 6,000 barrels of liquefied petroleum gas (LPG).\(^{15}\)

Like the SPDC, Chevron claims to have a robust guiding business principle that is socially responsible and ethical in the conduct of businesses. In this regard, its investment and conduct of business is pursued with respect to the environment and human rights and responsible social investment. According to its report, Chevron “makes strategic social investments that focus on education, health and better access to economic development” (Chevron in Nigeria, 2017). Captured in its corporate responsibility framework is the concept of trust and integrity through respect for human rights and community well-being (Chevron in Nigeria, 2017).

Chevron also claims to have improved its CSR strategies through the creation of multi-stakeholder partnership model also known as a global memorandum of understanding (GMoU) (Oil and Gas Republi, 2017). This model allows for stakeholder integration by bringing the host-community, through their leaders into CSR decision-making process. It allows communities to identify what project should be executed in order to address their basic needs (Oil and Gas Republi, 2017).

Through its shared value initiative, Chevron set up the Niger Delta Partnership Initiative (NDPI), partnering with the United States Agency for International Development (USAID), Department for International Development (DFID), among others for the purpose of fostering socio-economic development of the Niger Delta region as part of its corporate responsibility strategies (Hurst, 2016). Through this initiative, about 200 projects are said to have been executed in 425 communities affecting over 850,000 inhabitants. Empirical evidence seems to support this claim albeit with reservation:

> Chevron Nigeria Limited’s claim about various community development effort embarked upon as part of the company’s Corporate Social responsibility is undeniable, the findings however show the need for Chevron Nigeria Limited to carry out a re-appraisal of her community development efforts in the host communities in order to ensure that only projects that are directly relevant to the needs of the host communities are embarked upon as part of the company’s CSR effort. It could be necessary also for Chevron to adopt a bottom-up approach in its community development drives. This will ensure proper investigation into the relevant needs of the community, build local capacity, enhance confidence, build social capital and stimulate growth of the local economy. (Alabi & Ntukekpo, 2012, p. 373)


\(^{15}\) Ibid.
ExxonMobil

ExxonMobil is one among other IOCs with significant operational stake in the Nigerian petroleum industry. Through its upstream affiliates—Mobil Producing Nigeria Unlimited (MPN) and Esso Exploration and Production Nigeria Ltd. (EEPNL), the company is involved in the exploration and production of crude oil and natural gas and operates several joint venture concessions and deep-water production sharing contracts currently focusing on major secondary oil recovery projects; natural gas liquids and gas monetization.

In other to address the needs of the communities where they operate and to maintain sustainable business, ExxonMobil claims that its “approach to human rights is consistent with the goals of the United Nations (UN) Guiding Principles on Business and Human Rights” (ExxonMobil, 2016a, pp. 30-36). The company claim to run on the principles of community engagement, respect for human rights and strategic social investments ExxonMobil, 2016, pp. 30-36). It has also been stated that ExxonMobil holds a long tradition of addressing community challenges and creating opportunities in the communities where they operate through partnership with NGOs and other international organizations (Diara, Alilo, & McGuire, 2004). It was also reported that ExxonMobil in Nigeria was voted the 2015 Best Company of the Year in Corporate Social Responsibility by the Social Enterprise Report and Awards (SERAs). The company also reported to have received the awards for Best Company in Poverty Reduction and Best Company in Infrastructure Development (ExxonMobil, 2016b).

In line with its commitment, ExxonMobil claims to have contributed actively in the area of poverty reduction, healthcare, education, training and skills development through the establishment training centre in Eket, a host-community, to impart skills to the local workforce. It was reported that about 500 employees of the company specialised in mechanical and electrical engineering are said to be graduates of the centre. As regards supplier development, it is claimed that indigenous capacity building, manpower development, and utilisation remain its central strategy and focus. This was illustrated in 2,000 metric tons of specialised steel pipeline installed in Edop-Idoho field offshore said to have been the first locally manufactured pipelines used by the company in Nigeria (ExxonMobil, 2011).

Under the capacity development initiative of the company, the Arts and Skills Development Initiative for Bonny (oil and gas bearing community) Women, it has trained and empowered women in the community with entrepreneurial skills and start-ups to begin their own business (ExxonMobil, n.d.[a]). As well as working with partners in the area of healthcare provision, it is claimed that over 27,000 people in rural communities have benefited (ExxonMobil, n.d.[b]).

It is important to state that the social engagement of the IOCs operating in the Nigerian oil industry is without doubt widely reported. The contention, however, is in their ability to confront the humongous human rights challenges created by their activities in the oil communities. The CSR strategies of the oil corporations appear not to be altruistic but as a well-crafted business strategy to gain undisturbed and unrestricted access to the people’s wealth. The reason is that the major human rights crisis confronting the oil-producing area is violations linked to unsustainable business practices, pollution, gas flaring, oil spillages and environmental contamination, leading to loss of means of livelihood, contaminated water, health, disease, and death. According to UN Report:

At least twice as much oil has been leaked in Nigeria as in the BP oil disaster in the Gulf of Mexico. Unlike Deepwater Horizon, the Nigeria disaster has been a silent one, with disastrous consequences for people, wildlife, nature and the environment. (Gilligan, 2013)
These issues have remained unabated and none of the CSR strategies are deployed towards addressing them. Take for instance the UNEP recommendation for Ogoni clean up since 2011. There are no proofs that IOCs, particularly SPDC has fulfilled its responsibilities towards the required action.

Concluding Remarks

This paper concludes that CSR in Nigerian petroleum industry has not been effective. It is contended that the reason for ineffective CSR strategies is embedded in the voluntary and philanthropic nature of it in Nigeria. As a result, the IOCs are not under any obligatory standard of compliance. They pick and choose what strategies to deploy and enforce and at what time. Even where it is claimed to include stakeholder participations, there is no evidence to suggest that the participation is actual or that procedure is strictly followed since there is no monitoring index.

It is expected that the IOCs will conduct their investment in the industry in an ethical manner in line with best international practices. Not some curative measures through CSR strategies as a guiding principle for investment in the oil sector. The benchmark of standard created and set by the Global Oil and Gas Industry Association for Environmental and Social Issues (IPIECA) which covers issues, such as biodiversity, climate change solutions, human rights, environment, oil spill preparedness, etc.\textsuperscript{16}, should be followed. In following this standard, local circumstances and realities should be taken into considerations.

This paper submits that until there is a better reflection of these set standards in the oil-bearing communities of the Niger Delta, the legitimacy of the claims by IOCs in the oil sector regarding good corporate citizenship through CSR will remain questionable. It is further contended that the CSR as is currently deployed lack holistic and focused approach in preventing human rights violations in Nigerian petroleum industry. Considering that the IOCs are private actors in pursuit of business profit, they will always place their business far and above every other consideration. So long as the operational standards that ensure sustainability is benchmarked against self-regulatory CSR practices, corporate human rights accountability cannot be achieved. Self-regulation will remain an unfit tool to cure corporate human rights irresponsibility especially in the oil industry where the effect of oil activities in most cases lead to criminal violations.

The international regulatory framework for CSR towards sustainable and responsible investment in the petroleum sector may remain soft. It provides national law regimes with frameworks that appear universally coherent and acceptable. It is incumbent on national governments to deploy the CSR frameworks with positive legal obligations to compel responsible investment to protect human rights and enthron sustainable investment in the petroleum industry. The guidance provided under the UN guiding principles on business and human rights under its “protect, respect and remedy” framework should trigger States and corporations to fulfil human rights by performing their respective roles under it. This can be done by the State under the existing human rights responsibility climate under international law. All it requires are positive action to adopt National Action Plan. This can be achieved by infusing this responsibility into CSR strategy to impose binding corporate human rights obligation in the Nigerian petroleum industry.

References


