The “Petro violence” in the Oil-rich Niger Delta of Nigeria: A Moral Assessment of the Conflict between Shell and Its Host Communities

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ABSTRACT

Niger Delta of Nigeria is a region characterized with conflict commonly conceptualized as ‘‘petro-violence’’. This violence between Shell and its host communities has lasted over four decades. While the activities of Shell and other oil companies destroy the ecology of the region, the oil producing communities demand improved explorative and exploitative activities of the companies, improved welfare for the people and compensation for the harm done to the ecology of the region. This work examines whether Shell can really be blamed for contributing to the conflict in the region and whether it is morally permissible for Business Corporation like Shell to engage in Corporate Social Responsibility.
CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

For more than four decades now, the Niger Delta region of Nigeria has been a region known for “petro violence”\(^1\), a violence that has been a result of the conflict between the oil producing communities and oil companies especially Shell. Niger Delta region is known for its huge oil deposit and oil worth billions of dollars are extracted from the region yearly, yet poverty is at its peak in the region. The people live below the national average. The oil producing communities blame Shell and other oil companies for their predicament. This is due to the fact that explorative and extractive activities of the oil companies have polluted the sea, air, land and indeed the whole ecosystem, depriving the people of their traditional occupations of farming, hunting and fishing. And not only that, the people are threatened by different types of diseases resulting from the explorative and extractive activities of the companies.

Some people of the region started demanding for improved social welfare for the oil producing communities for their ecosystem that is being destroyed every day by Shell, but Shell through the help of Nigerian police and military tried to suppress the people and the people resorted to violence as a way of showing disenchantment.

This work examines the ensuing conflict with a view to finding out whether Shell can really be blamed for contributing or causing the conflict and whether it is morally justified to make social welfare demands from oil companies. Chapter one is a general introduction to the work. Chapter two examines the development of the conflict in the region. It reveals that while Shell generates billions of dollars from the ecology devastated by its activities, there is little or nothing to show that they are socially responsible for the plight of the people. Chapter three examines what Corporate Social Responsibility is and it also examines whether it is moral duty for a corporation to engage in CSR. In doing this, it looks at Kantian and the Utilitarian positions and also on the contending views of different philosophers on the concept. Chapter

\(^1\)The term “Petro Violence” was first used by Michael Watts and Nancy Peluso to conceptualise the oil crisis in the Niger Delta region of Nigeria.
four discusses the United Nations Global Compact which is one of the main initiatives that portrays Shell as a socially responsible company on the international scene. The nature and its claimed goals which are tohumanize business through respect for human rights, maintain international labour standard, take precautionary approach to environment and shun corruption are also examined. In chapter five, Shell’s Code of Conduct which is its self-styled business principles based on honesty, integrity and respect for the people is discussed. Shell generally claims to abide by these principles in its country of operation. The Nigerian laws on oil exploration are also examined.

Chapter six analyses Shell's activities in the Niger Delta region. The framework of moral analysis is Shell’s code of conduct, the demand of Corporate Social Responsibility and the requirement of the UN Global Compact. The work is summarized and recommendations are made as a way of fostering peace in the region again.

1.2 Background of Study

Nigeria, the most populous and one of the largest countries in Africa is located at the western part of the continent. This country is the highest oil producing nation in Africa and eighth largest in the world and this precious resource is found almost exclusively in her Niger Delta region. This region covers about 70,000km2 and most of the inhabitants live in Nigeria’s present day River, Delta and Bayelsa States. These States own 80 percent of the area and the rest are scattered among other states as Cross River, Akwa Ibom, Abia, Imo and Ondo States. Due to the huge oil deposit in this region, Nigeria operates a mono economy which is heavily dependent on revenue accruing from crude oil exploration. It is estimated that crude oil accounts for the 80% of the Nigeria’s GDP and 95 % of its foreign exchange. For instance, the African Development Bank claims that “Nigeria’s total revenue from crude oil was estimated at $ 600 billion (USD) , about N84 trillion in the last 45 -50 years of oil production” The Central Bank of Nigeria and the Nigeria National Petroleum Corporation (NNPC) claim that the quantum of crude oil production and revenue to Nigeria are

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2 Okonta and Douglas 2003, p.18.
4 The African Development Bank report was cited in The Nigeria Extractive Industry Transparency Initiative (NEITI) Bill and the impact of Extractive Industry Activity on the Environment, written by Dike C.W.
- Crude oil production (1958 -2006) =23.2 billion barrels
- Total revenue from crude oil (1958 -2006) = N30 trillion or $ 250 billion.\(^5\)

Even though there are differences in figures of these reports, one sees clearly that the revenue involved is a staggering amount. And as a country heavily dependent on oil and presently has no major alternative source of revenue, Nigerian government does all that it can to protect the oil companies that operate in her territory, knowing fully well that any disruption in the production of crude oil in the country will adversely affect her economy in general. This protection of the Nigerian Government on oil companies ranges from the provision of the Army, Navy and Police to protect the oil installations to poor implementation of oil exploration guidelines which lowers the environmental standard and encourages ecological dumping\(^6\). Under the protection of the Nigerian Government, oil companies operating in the country are accused of paying little attention to the guidelines that govern their operations and having little or no regard for human dignity or the environment in which they operate\(^7\). Shell which is the epicentre of this research work is seen by the Niger Delta communities as the number one culprit in the economic and ecological war waged against them, hence it is always the prime target of the people in their quest for increased social welfare. This is because it was the first company to discover oil in Niger Delta at a place known as Oloibiri, now in the present day Bayelsa State in 1956. Nigeria was by then under the British colonial rule. The people welcomed them because they saw them as a source of development to their community. As a sign that it was welcome, some of the indigenes of the place named their children and places after Shell. It was a sign of hope for the people but Shell disappointed them when it waged its ecological war. Not only that Shell was the first oil company to start oil exploration in the Niger Delta region, the company has the largest oil acreages in the country from which it produces about 43 percent of Nigeria’s crude oil\(^8\) and it is estimated that it ‘‘operates in oil mining lease area of about 31,000 square kilometres, manages ninety-four oil producing fields and 3,800 miles of pipeline, and employs about 5,500 workers, including three hundred expatriates. A further 20,000 people work for the company either as

\(^5\)This annual report of Central Bank of Nigeria was published in Tell Magazine, a weekly independent news magazine, No 7, February 18, 2008, p.28.
\(^7\)Okonta and Douglas , 2003, pp 63 -64
\(^8\)Ofuegbu and Anierobi 2006, p.115.
subcontractors or temporary workers’. 9 And it produces between 800,000 to one million barrels of crude oil per day.

Unfortunately and very embarrassingly, poverty ravages this area which is the source of the entire wealth of the nation. The people of Niger Delta live below national average, owing to the fact that the natives have been dislodged from their traditional farming, hunting and fishing as a result of the pollution of their natural environment by gas glaring, oil spillage and other corporate activities of oil companies. Consequently, the environment of the oil producing communities were degraded, their lands and forest were destroyed along with wild lives and the rivers were contaminated, leading to the death of aquatic and wild animals. And because of weak regulations in the country, Shell has not stopped its environmental degradation nor does it give adequate compensation for its destruction, leading logically to the impoverishment of this region10. A recent study by Okechukwu Ibeanu and Robin Luckham reveals that:

Only about 27 percent of households in the Niger Delta have access to safe drinking water and 30 percent to electricity, both below the national average. There are 82,000 people per doctor, rising to 132,000 in some areas, more than three times the national average of 40,000. While 76 percent of Nigerian children attend primary school, only 30 – 40 percent attends in some parts of the Niger Delta.11

Looking at the sad paradox and contradiction involved in living in poverty caused by the oil companies, especially Shell, whereas so much wealth is derived from their endangered and degraded immediate environment, some people in the Niger Delta began asking so many questions about their condition. These questions provoked the people to agitation which took the form of non-violent protest to protect their endangered and fragile environment and their means of livelihood. The agitation metamorphosed to conflict when the government tried to suppress it with military might and neglect forcing the people resort to the only available option namely violent means involving the disruption and destruction of oil installations. The major issue in the conflict is not only the increasing poverty in the region but also the intense feeling among the people of the region that the region ought to have done far better than it

9Okonta and Douglas, 2003,p49.
10Ibid, p.2
11Ibeanu and Luckham 2006,p.27.
does presently. “This is based on the considerable level of resources in their midst, and the brazen display and celebration of the ill-gotten wealth in Nigeria, most of which derived from crude oil wealth.”

1.3 Statement of the problem

Shell Company projects its image to the world as a company that is socially responsible through its code of conduct and its membership of international initiatives like Global Compact. It claims also to be abiding to the Nigerian laws governing exploration and exploitation of oil. But for so many years now; there have been conflicts in the Niger Delta of Nigeria between Shell and its host communities. The host communities suffer from abject poverty as a result of the activities of oil companies operating in the region especially Shell which has most of the oil wells in the region. Consequently, the communities blame Shell for their predicament and demand improved exploration and exploitation activities and adequate compensation from the company for their ecology destroyed for over four decades now. The conflict between the host communities and Shell raises some questions which this research works intents to tackle:

- Should Business Corporations like Shell which is a legal entity created primarily for profit making for it stockholders as long as they keep the laws of the country in which they operate engage in Corporate Social Responsibility? If yes, should CSR be a charity or a moral duty for Shell to undertake.

- Shell is a voluntary member of UN Global Compact, an initiative that encourages corporations to be socially responsible in their areas of operations. But does Shell operate in accordance with the requirements of the UN initiative which it voluntarily joined?

- Shell has code of conduct which is self-styled principles meant to guide the company in its corporate activities. Does Shell abide by its code of conduct in its oil exploration and exploitation activities in the Niger Delta of Nigeria?

- Nigeria as a nation has guidelines to guide oil exploration and exploitation in the country and all the oil companies operating in Nigeria are expected to observe these

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guidelines in their business activities. Does Shell observe the rules guiding oil exploration in Nigeria?

In the bid to do justice to these research questions, my major sources of materials for this work will be the Shell’s web page from where I will get Shell’s code of conduct and some of the company’s claimed developmental programmes to its host communities, UN Global Compact web page and the Nigerian guidelines on oil exploration which will be gathered from their different sources because they are not in one document. I will also depend heavily on text books, articles from academic journals, reports especially books like WHERE THE VULTURES FEAST; Shell, Human Right and Oil which is a comprehensive documentation on Shell and its corporate activities that have adversely affected the ecology of the Niger Delta of Nigeria and the company’s involvement in human right abuses. The book was co-authored by Ike Okonta, a Nigerian journalist of great repute and Oronto Douglas, a Nigerian leading human right lawyer and a member of the team that represented the late environmentalist, Ken Saro-Wiwa, in court in 1995. Both of them are from Niger Delta region. Another source is Jedrzej George Frynas’ book, Oil in Nigeria; conflict and litigation between oil companies and village communities, here the authour discusses the social, economic and legal problems caused by multinational companies operational in Nigeria and he demonstrates how legal materials can be used to understand the conflict between oil companies and its host communities. This he did by using a large number of court cases on land conflicts, loss of lives and oil companies compensation efforts. In his article also, which I found to be of great value to this research, Political instability and business: focus on Shell in Nigeria, Frynas examines the contradiction of political instability in the Nigeria and Shell’s continuous business expansion in the country. He concludes that Shell adopts the instability because it is good for its business. Jedrzej Goerge Frynas is a professor of Economics who has written so extensively on the Niger Delta crisis. I will consult internet materials in few occasions.

1.4 Purpose and methodology of the study
The purpose of this research work is to answer the questions raised above. Thus, the study is meant to answer whether Shell which is a business corporation can engage in Corporate Social Responsibility and if yes, is it a moral duty or a charity? Does Shell live up to the expectations of UN Global Compact in its operation in the Niger Delta region? Does it abide by its code of conduct in its activities in the region? Does it observe all Nigerian laws on oil exploration? Along with the above purposes, the work will also to trace the origin and growth of the hostilities against Shell in the region, with a view to making recommendations that could help in realizing a workable and lasting solution to the problem in the region.

The method I adopted in the research work is library research work method because non of the data used in this research work was got in the field but were all based on written materials like books, reports, articles, journals most of which were found in the library. The work is expository, analytic and synthetic. The work is expository because I went historical, unveiling the cause of the conflict between Shell and the oil producing communities. It is analytical because I analyze the Corporate Social Responsibility, Global Compact ,content of Shell’s code of conduct and Nigerian laws on oil exploration and the actual events that happen in the Niger Delta region where they operate, to see if they are really parallel or not. It is synthetic because I gave some ethical recommendations that could lead to path of peace again in the region.
CHAPTER TWO

DEVELOPMENT OF THE CONFLICT IN THE NIGER DELTA OF NIGERIA

2.1 Shell’s Activities and their Impact on Niger Delta Region

Shell is the amalgamation of over 1,700 companies all over the world. 60 % of the Group is owned by Royal Dutch of Netherlands, and 40 % is owned by the Shell Transport and Trading Group of Great Britain. These two companies have worked together since 1903. Under the Nigerian indigenization and incorporation law which demands that companies operating in Nigeria should operate as indigenous or incorporated companies, Shell operates in Nigeria as Shell Nigeria. The Company started its crude oil exploration in the country since 1937 but struck its first oil in Nigeria at Oloibiri in 1956 and commercial exploration and exploitation started two years later. Since then, its oil acreages increased and today it is the ‘‘biggest Oil Company in Nigeria and Nigeria is Shell's third biggest country of production after the United States and the United Kingdom. In 1994 alone, 11.7 percent of Shell’s total crude oil production came from Nigeria’’. And 95 % of this oil comes from Niger Delta region.

The exploration and exploitation of oil in the region are carried out in an environment which includes land; mangrove swamps forests, fresh water swamps, coastal islands and low land forests. Some of the activities are also carried out within the area where people live and people’s farmlands while few others take place in the offshore of rivers or Atlantic Oceans. The process Shell undergoes in oil exploration is complex and it includes ‘‘cadastral and seismic surveys, transportation of men and materials on creeks, rivers and by roads and air, dredging of creeks and rivers, drilling of oil wells and associated activities like gas flaring / venting and discharge of effluent in to creeks / rivers.’’ Most of these activities of Shell have

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14Okonta and Douglas Ibid,p.50
15Nnamani 2004, p.72.
negative impact on the environment. For example, Shell like other oil companies searches extensively, perhaps comprehensively, different places before oil or gas is discovered. This is because oil and gas are not merely found on the surface of the earth, rather they are naturally buried far beneath the earth. To search for oil or gas, varied surveys are made by the workers with heavy equipments and sometimes roads are constructed to get to suspected sites. And most of the time, forests and people’s farmlands are deliberately destroyed with a promise of compensation. When eventually oil is spotted in a place, extraction and production of the oil involves the laying of pipes and Shell has many flow line routes from which it transfers oil from its well and drilling point to the export terminal. It is estimated that Shell has over 6,000 kilometres of pipelines and flow lines. The construction of such vast pipelines and flow lines has very strong adverse ecological impact on the number of ways. First, in swampy areas, it leads to dredging and often the heaps of mud from the dredging are abandoned along the site. Secondly, there is direct loss of land meant for agriculture within communities; of course paying compensation is not a substitute for the loss of land. Thirdly, where the pipelines and the flow stations cross the forest, economic trees are massively devastated. Finally, it affects hunting which is one of the traditional occupations in the region. This is because the noise coupled with the desertification that accompanies such construction, chases wild animals away from the vicinity.

Shell also flares gas during its oil drilling and extraction. Gas flaring is the releasing of excess gas, liquids associated with oil and gas production pipelines and refineries along with any other by-products into the atmosphere in order to protect the pipelines and infrastructure from over pressuring.¹⁶ In the Niger Delta region, gas is flared for 24 hours daily and has been on in many of it’s Communities for more than four decades now. Because of the gas flared in the region, Nigeria has been reported to be more responsible for greenhouse gas emission than the combined oil fields of the rest of the world. “World Bank estimated that 87 percent of all associated gas is flared in the Niger Delta atmosphere by oil companies operating in Nigeria, compared to 21 percent in Libya and 0.6 percent in the United States ... 80 billion cubic feet of gas is flared in the Niger Delta yearly.”¹⁷ And Shell flares the largest quantity of gas because of its high number of oil acreages in the region.

¹⁷Okonta and Douglas ibid, p.67.
Gas flaring is poisonous to human beings and their environment because it can cause \textit{leukaemia or asthma and premature death}. It causes acid rain which acidifies lakes and damages vegetation\textsuperscript{18}. And in Niger Delta, Shell flares gas close to people’s residential areas and farm and, as already mentioned, the flaring is non-stop. It has adverse health effect on the people because most of the people depend on the rain water due to lack of pipe borne water. Drinking such water leads to slow and massive death of the people of the region. Commenting on the situation, Reverend Nnimmo Bassey, Executive Director of Environmental Right Action /Friends of the Earth Nigeria, said,

\begin{quote}
While Shell and its shareholders count their profits, all we can count are the early graves that their toxic gas flaring keep sending our people ...It is criminally wasting the lives of poor people in our communities who cannot avoid the impact of gas flaring.\textsuperscript{19}
\end{quote}

Besides, farmlands and forests near the flaring sites are affected leading to poor harvest as plants shrink and wither; thereby worsening poverty. Shell even accepts the fact that gas flaring is dangerous to the communities and promised several times to stop but never did. Nigerian judiciary has over and over again ordered Shell to stop gas flaring in the region because “it is a gross violation” of the constitutionally –guaranteed right to life and dignity, which includes the right to a clean poison-free health environment\textsuperscript{20} but Shell never did. In 1990, Shell gave January 2008 as a firm deadline to end gas flaring in Nigeria. Months have passed beyond that date, yet gas flaring continues unabated at a very scorching temperature.

Oil spillage is another major source of degradation and it is a common phenomenon in the Niger Delta region. According to World Bank record, oil spills are generally caused by the companies themselves, with corrosion being the most frequent cause.\textsuperscript{21} This is due to the fact that most of the oil installations are old and poorly maintained. Changing the old installations will be too expensive and as such, Shell prefers making use of the rusty and obsolete pipelines that were installed in 50s and 60s because it is cheaper for them. Unfortunately, most of these “high pressure pipeline pass above ground through villages and crisscross over land that was once used for agricultural purposes, rendering it economically useless”\textsuperscript{22} Whenever there is


\textsuperscript{19}Ibid.

\textsuperscript{20}Ibid.

\textsuperscript{21}Frynas, ibid. p.464.

\textsuperscript{22}Okonta and Douglas ,Ibid,p.77
an oil spillage, lives and properties worth millions of dollars are destroyed. Ken Saro Wiwa, the late environmentalist while commenting on the first oil blow-out in well 11 in the Bori oil field in 1970, said that he was a “witness to the great damage which the blowout occasioned to the town of Kegbara Dere. Water sources were poisoned, the air was polluted, farmland devastated. I watched with absolute dismay as indigent citizens found neither succor nor help from Shell” 23 From that time till date, the story remained the same.

World Bank estimated that oil companies in River state and Delta state spill about 9,000 cubic feet of oil in three hundred major accidents yearly 24. And Earthaction, while reporting Shell’s oil spillage in Ogoni land which is the worst hit community and where Shell has been the only company exploring and producing oil, noted that:

In 1970 about 30 million barrels of oil were spilled from Shell Installations in Ogoni land. Between 1985 and 1993, there were 2,500 major and minor oil spills in Ogoniland, including a major one in which Shell delayed for forty days before patching a ruptured pipe. 25

The painful thing about the situation is that Shell has not done any substantial thing to improve the situation and it is very slow in responding whenever there is an oil spillage. These oil spillages destroy not only human beings and their property; they also destroy crops, forest, swamps and creeks. When they occur in the rivers, they destroy aquatic life and this is a painful loss in the sense that fishing is one of the major occupations of many people in the region. Oil spillage has continued to be the rule rather than the exception where ever Shell operates in the Niger Delta. It continued to be so high that Shell in its 2006 annual report put oil incidents recorded that year at 241 compared to the previous year (2005) figure of 224 incidents. 26 The reason for the increase in the spillage is simple. The pipelines are old and poorly maintained and Shell’s production is on the increase, thereby subjecting the old and tired pipelines to pressure they cannot carry.

Unfortunately, instead of Shell to do something about the situation, it wastes the whole time blaming the local communities and accusing them of sabotage. Even when the World Bank

23 Ibid, p.76.
24 Ibid.p.67.
has maintained that spillage in the Niger Delta is caused by corrosion, followed by equipment failure and then sabotage which is third in the World Bank assessment. And J.P. Van Dessel, the former Shell Nigeria’s head of environmental studies, confirmed World Bank report when he said “wherever I went, I could see... that Shell’s installations were not working cleanly. They didn’t satisfy their own standard, and they didn’t satisfy international standard”.

Dessel resigned his seat two years after taking the position because of the ecological nightmare in the region and Shell’s utter negligence of the situation. Despite all these prove that fault Shell’s equipments, it has done absolutely nothing to improve the oil installations. Instead the local communities continue to suffer untold hardship from spillages owing to old and poor maintenance of Shell’s pipelines. Destruction of human lives, properties, farmland, deforestation and destruction of wild life, toxic waste, acidic rain etc. continue unabated. The impact of pollution from oil spillage can be so complex and the effects on the region are so devastating. The activities of the oil companies could rightly be described as economic and ecological war in the region.

2.2 Shell’s Developmental Programmes in the Region

Shell Company claims to be a socially responsible company and as such readily provides a long list of efforts and developmental programmes undertaken to improve the living standard of the people in the region. According to the Company, they contribute to the welfare of the people through their engagement in the community and environmental developmental programmes. In the community development programme, Shell claims that it helps the people through the following ways:

- Health care: Shell claims that this programme is the most popular and it is geared towards improved quality of life by eradicating any type of diseases, both preventable and curative ones. Hence it states that it organises HIV awareness lectures and spends on immunisation of children against crippling diseases and other fatal diseases. For example, it states that it organised 271 lectures in 2004 for 9,400 young people in schools and villages and continues the work through the Nigeria agency in charge of AIDS-National Advisory Council on AIDS (NACA) through Nigerian Business

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27Frynas, ibidp. 464.
28Okonta and Douglas, ibid, p.67.
Coalition against AIDS (NUBICA). In addition to the above, Shell claims the programme has provided “14 cottage hospitals, 13 health centres, land swamp mobile clinics, many health post, as well as supply of equipments and drugs through revolving scheme”\(^{30}\).

- Education: Shell claims to assist in the education of the region by providing sustainable and qualitative education. The assistance comes in form of scholarship programmes for post primary school, undergraduates and post graduate Nigerian students.

- Youth skill development: According to Shell Company, this programme is developed to reduce unemployment among the youths and help create self reliance. It prepares graduates and technicians to work in oil industry through Shell’s intensive training programme. Others are trained in vocational skills like welding, sewing, auto mechanics, electrical work, computer technology, hairdressing, building, baking, soap making, plumbing and fitting.\(^{31}\) While in schools, there is annual secondary school soccer competition to ensure that talented youths are able to combine their education with football skills and career.

- Business Development: Shell claims that it helps communities to establish their own land and marine transport, gives loans to people to start business especially young school leavers and women, as a contribution to socio–economic development of the region.

Apart from the community development, Shell claims that it makes effort to reduce the negative environmental impact of its activities in the Niger Delta region through its environmental programme. Its objective in the programme is to “painstakingly minimize and, where possible, completely eliminate all negative impacts and footprints, in our collective drive to protect the environment in which we operate.”\(^{32}\)

With the above lists, Shell claims that it is committed to Corporate Social Responsibility but ironically, reports on ground prove the contrary. The local communities are still suffering as a result of the company’s explorative activities in the region. The basic amenities needed by the

\(^{30}\) Ibid.
\(^{31}\) Ibid.
\(^{32}\) Ibid.
people are virtually in non existence and the ecological destruction is still on the increase but Shell spends so much on the media advertising how it is committed to social responsibility of the people. It has been much talk and less action on the part of the Company. While the Company makes its 13% worldwide profit from Niger Delta alone, the Company spends only 0000.07% in the region. And when confronted, Shell gives a ready answer that it is not the duty of company to develop communities but government, rather it (Shell) gets involved to complement government’s efforts. While not objecting to the fact that it is the primary duty of Government of Nigeria to develop communities under her territory, I will later on in this work examine Shell’s claim that her developmental efforts should be a complimentary one, to know how true the claim is.

2.3 The Condition and Agitations of the people

Niger Delta region before the advent of the oil companies was known mainly for farming, fishing, hunting and trading. This was because it has fertile agricultural land, forest, rivers, creeks, and coastal waters teeming with fish and sundry water creature. The Niger Delta communities were so popular for their farm produce that British traders went into business relationship with them as early as 1895. Apart from the pains of slave trade and the colonial conquest, the region enjoyed relative peace at this period. But this peace varnished the day the first dynamite was exploded by Shell in Oloibiri. The explosion marked the beginning of the economic and ecological war in the region. Thus Niger Delta Region became one of the most threatened ecosystems in the world.

The people of the region who were dehumanized by the activities of the oil companies started complaining and asking questions about their situation. The complaints were lodged at different quarters of Nigerian Government whose primary duty it is to protect her citizens, but nothing came out of their complaint. Consequently, In February 1966, Isaac Adaka Boro, a 27 year old fresh graduate of Chemistry from the region, declared the Niger Delta region a Republic. To consolidate the state power of his newly seceded state from Nigeria, he formed a

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33 Frynas, p.463
34 Okonta and Douglas, bid, p. 97.
35 Okonta and Douglas, ibid, p.19.
rebel group known as the “Niger Delta Volunteer Service”. While addressing his military group on that fateful day, he told them:

Today is a great day, not only in your lives, but also in the history of the Niger Delta... because we are going to demonstrate to the world what and how we feel about oppression ... Remember your 70 year old grandmother who still farms before she eats, remember also your poverty – stricken people; remember too, your petroleum which is being pumped out daily from your veins and then fight for your freedom.36

Their struggle and agitation lasted only 12 days before the government force arrested him and sentenced him with few others to death by hanging. They were protesting, as his speech indicates, against poverty caused by oil companies and oppression from State. Boro was later pardoned by the Federal Government but was killed in 1968 while fighting during the Nigeria-Biafra civil war. With his death, the agitation of the Niger Delta people were silenced for a long time and the ecological and oppressive war waged by the oil companies and Nigerian State continued.

However, in 1990s, the agitation resurfaced in a more organized and non-violent way under the Movement for the Survival of Ogoni People (MOSOP). MOSOP was formed especially against Shell, and the leading members of the movement were professionals, intellectuals and human right activists from Ogoni land in the Niger Delta region. The most prominent member was the late Ken Saro Wiwa, an academic of repute, playwright and human right activist, who doubled in the capacity of their founding secretary and spokesman. Saro Wiwa made revealing and provoking speeches that attracted the sympathy as well as accentuated the emotions of the people. On one occasion, while addressing the people of Ogoni, he lamented that:

For 30 years the Niger Delta people have quietly endured military oppression and have watched their environment become polluted by oil. Shell would be slapped with hefty fines if it were to pollute any European or American country one-tenth as much as it did in Nigeria. The Exxon oil spill in Alaska in 1989 and the a reparation afterward is still fresh in our memory.37

37 See Nnamani 2004, p. 73.
Consequently, the Ogonis under the umbrella of MOSOP embarked upon mass rallies and peaceful demonstration with wide media coverage. When it seemed that the Government and Shell paid deaf ears to their complaints, MOSOP drafted the Ogoni BILL of Right (OBR), which was unanimously adopted by the people. It contained a new social contract formula based on human rights and resource control. They submitted copies of the OBR to the Nigerian Government. Their complaints in the Bill include the following:

That the Shell Petroleum Development Company of Nigeria Limited does not employ Ogoni people at a meaningful or any level at all…
That the search for oil has caused severe land and food shortages in Ogoni, one of the most densely populated areas of Africa….. That Ogoni people lack education, health and other social facilities. That it is intolerable that one of the richest areas of Nigeria should wallow in abject poverty and destitution.38

To this effect, MOSOP demanded that Shell must stop all its activities that were inimical to the Ogonis and their environment; they further demanded specifically that, ‘‘Shell must now clean up the mess it has made; pay reparation of four billion US dollars and either operate in (an) environmentally conscious way or quit the land’’39. These conditions were given not only based on the fact that Shell’s activities had caused much damage whereas the Ogonis benefited very little or nothing, but also on the assumption that oil exploration and production by Shell in Ogoni land since 1958 have generated an estimated revenue of $40 billion. Although the liquid cash they demanded from Shell is quite high, yet it represents only 10% of the revenue generated from their land. Their other demands are about the basic necessities of life.

Given the increasing popularity of MOSOP both locally and internationally, the image of Shell was tarnished. Shell through the help of the Nigerian Government sent soldiers and anti-riot police unit to suppress the people and their demands. Through Government coercive and repressive counter-reactions, many people lost their lives and property in Ogoni and elsewhere in the region. As State oppression increased, the people did not give up, rather they increased their media campaign against the oil company and the Nigerian Government that Support it. The conflict between the Ogonis on the one hand and Shell and the Nigerian Government on the other gradually became intense and weapons were used by both parties.

39See Ibeanu and Luckham ibid,p.38
Incidentally, other pressure groups sprung up in Ogoni and other parts of the region, but they preferred violence to the non-violence methods of the MOSOP. It was within this context that the National Council of Ogoni Youths was formed. Divisions and factions came up among the Ogonis leading to the murder of the four Ogoni Chiefs by the group who accused them of taking sides with Shell and the Nigerian Government. The Nigerian Government now saw this as an opportunity to finish the MOSOP leaders. Consequently, Saro Wiwa and many leaders were accused by the military government of inciting the murder of the four Chiefs. An ad hoc military tribunal was set up to try them and they were found “guilty” and condemned to death by hanging.

With the death of Saro Wiwa and eight others in 1995, the political equation in Nigeria changed because it marked the beginning of an era of unprecedented violence in the region. Inspired by the impact of the Ogoni case, especially the paralysing of Shell’s activities, other communities joined in demand for social justice and true federalism and this continued till date. Thus there have been widespread struggles, agitations, violence, etc. across the Niger Delta against the State and the oil companies. The government in turn stepped up security in the Niger Delta by increasing the number of joint military and police troops in the region. Nevertheless, vandalization of oil pipelines became widespread in the region to the extent that the Nigerian National Petroleum Corporation (NNPC) has reported that Nigeria’s oil and gas industry has lost 71 billion naira between 2004 and 2006 in 6,141 cases of pipeline vandalism across the country.\(^{40}\) The vandalisation was the handiwork of the militant groups which emerged from the people's agitation when the non-violent means seemed not to work. The famous among them were the Niger Delta Volunteer Force (NDVF) and the Movement for the Emancipation of the Niger Delta (MEND). The militant groups not only vandalised pipelines, they also kidnapped workers of oil companies, especially the expatriates. Ray Ekpu has noted for instance that:

> In 2006, more than 150 foreign oil workers were kidnapped and released only on the payment of handsome ransoms. This has made life unbearable for the foreign oil workers. The story is told of a foreign oil worker who has resorted to painting his face black whenever he goes out.\(^{41}\)


\(^{41}\) Ibid.
While the story of the white man painting his face black may be a comic exaggeration, the fact remains that kidnapping of expatriates by the militants is too rampant despite the heavy State security around them. It has become a source of mockery by the people against the incapability of the Nigerian Police, Army and Navy. All efforts to bring peace to the region has proved abortive because some of the Niger Delta communities still insist that resource control should be increased and Shell and other oil companies should be “called to account and compelled to pay reparations for despoiling their environment and taking away their mineral resources these past years, without paying them the royalties that are just due.”

42Okonta and Douglas ibid, p.3.
CHAPTER THREE

THE ISSUE OF CORPORATE SOCIAL RESPONSIBILITY

In this chapter, I will discuss the concept; Corporate Social Responsibility; its meaning and some philosophical theories to justify the concept. The aim of the discussion is to know whether it is morally right or wrong for Business Corporation like Shell created primarily to make profit, to engage in Corporate Social Responsibility and to know if it is a moral duty or a charity.

3.1 Meaning of Corporate Social Responsibility

The primary objective of every business corporation is to maximize profit. This is actualized by the sell of wealth products and services, which it creates to the society and this leads to the well being of man who needs this wealth to survive. But due to pressure in recent times, there is a shift from this sole and primary objective of corporations, a shift which instead tends to be more sensitive to social problems, especially the ones caused by them, rather than being entirely concerned about profit maximization. This shift emerged in the 1950s in the United States of America when “the concern about the civil right for minorities, equal right for women, protection of the physical environment, safety and health in the work place and broad array of consumer issues” were the topics of the day. It emerged due to the growth in size and power of business corporations in the country. Thus as they grew in size and power (economic power), they attracted the scrutiny of the public, largely due to the impact of their activities in the society. This shift is what is known as the Corporate Social Responsibility.

So the concept Corporate Social Responsibility emerged as a result of changing societal values and Business Corporations responded by not only talking about the economic nature of business but also the social responsibility of business. Schools especially the business schools developed different programmes. Many books were written on it and on its importance to business. There were different governmental legislations and agencies to ensure that corporations were socially responsible.

43Rogene 2006, p.303.
44Ibid.pp303 &307
Many definitions of corporate social responsibility have evolved over time, as different scholars tried to aptly grasp the meaning of the concept. But in the general sense, it means that corporate institutions have responsibility to the society that go beyond observance of the law of the state, in their creation of wealth and services. International Encyclopaedia of Ethics defined it thus: “That degree of moral duty that may be imputed to corporations beyond a simple obedience to conform to the laws of the state.”

Such duties include ‘to help the society to solve pressing social problems, many of which corporations helped to cause, by devoting resources to the solution of these problem’.

This concept makes corporations which are economic institution to be social institutions also. This is because it makes it to be sensitive to the social impact of its activities. It gives it a wider constituency to serve not only the interest of the stockholders who are the owners of the corporation but also the interest of the stakeholders, that is the groups and individuals who benefit from or harmed by, and whose right are violated or respected by corporate actions. The stakeholders comprise the stockholder, employees, customers, suppliers, local communities and the society at large. But for the sake of this thesis, focus will be more on the stockholders and the local communities.

This concept raises a lot of questions, most of which are ethical: Should corporations engage in social responsibility apart from making profit which is their primary aim? Is it a moral duty or a charity to the society for corporations to be socially responsible? Attempt to answer these questions have led to divergent views on what Corporate Social Responsibility is. In the next section of this chapter, I will discuss the Kantian and the Utilitarian theories in the bid to know whether Corporate Social Responsibility is morally defensible or not for Business Corporations like Shell to engage in it.

### 3.2 The Ethical Theories on Corporate Social Responsibility

#### 3.2.1 Kantian Theory

The German philosopher, Immanuel Kant was well known for his deontology. In his deontology he argued that the highest good is good will and to act from it

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45 Roth 1995, p.198.
46 Ibid.p, 304.
is to act from duty. For him, a person of good will does his duty, not because of the good consequences that accrue from it but because it is his duty. Hence he stressed that intention matters in every action. In explaining what duty means, Kant mentioned two types of duties; hypothetical imperative and categorical imperative. While hypothetical imperative is a duty one does in order to get something, categorical imperative is a duty based on reason, rather than what one gets. Since for him, the very idea of a moral requirement or duty involves there being some action (or omission) that one must do (or omit) regardless of what one might desire, Kant rejects hypothetical imperative as a moral requirement or duty because it is conditionally binding on the agent. But he accepts categorical imperative as a moral requirement or duty because it is unconditionally binding on the agent.

It is a truism that Kant never wrote on Corporate Social Responsibility, but his deontology has implication for the concept since it defends the "respect for person" and the concern of Corporate Social Responsibility is the respect for the stakeholders who are persons. In trying to know whether Corporate Social Responsibility is morally defensible or not, I will concentrate on Kant's principle of categorical imperative which he formulated in various ways. I will focus on his three most commonly used formulations.

The first formulation of Kant's categorical imperative is "Act only on that maxim according to which you can will that it should become a universal law." Kant believes that every action has a principle (maxim) upon which it is based and categorical imperative serves as a test to see if the principle (maxim) upon which an action is based is morally permissible or not. He gave an example of a man in a financial difficulty and wants to borrow money from someone with a promise of paying back the debt but has no intention of paying it back. To find out the moral status of such action, Kant requires that the maxim of the action be tested on the categorical imperative to find out whether it is morally permissible or not. This is by universalizing the maxim upon which the action is based. And when the above stated example is universalized, it will not be morally permissible because it is logically incoherent for people to borrow money from others with a promise of paying back but have no intention of doing so. Drawing from Kant's line of thought, consider a situation where a business manager permits the pollution of human society with the aim of providing goods and services to the

48 Timmon, 2002, p. 155
49 Bowie 2006, p. 4.
50 Synoeyebos 2001, p. 40.
society through which it makes profit for the corporation. But the corporation has no intention of either paying compensation to address the negative impact of their pollution in the society or stopping the pollution. If the maxim upon which the action of the corporation is based is universalized, there will be a logical contradiction. This is because the society will become uninhabitable for persons as a result of the pollution. Hence categorical imperative demands that “we are ethically permitted to act only on maxims which are logically capable of being adopted by everyone; it is our duty not to act on those maxims which are not capable of being acted on by everyone”\(^{51}\). From the Kantian point of view, a corporate act which is capable of being universalized when tested against its maxim is a morally permissible act. But one that is not capable of being universalized is morally forbidden.

The second formulation of Kant’s categorical imperative states: “Act so that you treat humanity, whether in your own person or that of another, always as an end and never as a means only”.\(^{52}\) Kant believes that human beings have dignity and unconditional value which is beyond price. And this dignity and value accrue from their free will which makes them capable of acting from laws required by reason. For Kant, since human beings have such dignity and value, it is morally wrong for a person to use another person merely or only as a means of satisfying his own interest. This is the basis of his second formulation. The implication of Kant’s second formulation to corporate activities in the society does not prohibit going into business relationship like a corporation using a person or a group of persons to achieve their goal; rather it prohibits people being used merely or only as a means of achieving such goals. As the formulation stresses the respect for persons, the implication for corporations is that they should treat stakeholders who are group of persons as ends not as merely or only means and when persons are treated as such, there will be fair play and equity in business transaction. This can only be possible when corporations act with the right intentions towards stakeholders which is devoid of self-interest (profit making only) and should be a relationship of reciprocity.

The third formulation of Kant’s categorical imperative states: “So act as if you were a member of an ideal kingdom of ends in which you were both subjects and sovereign at the same time”.\(^{53}\) The implication of the above formulation is that business corporations which are

\(^{51}\) Ibid, p40.
\(^{52}\) Synoeeyebos, ibid, p.41.
\(^{53}\) Bowie Ibid, p.7.
composed of persons should respect the human dignity of stakeholders who are a group of
person too and the stakeholders see corporations not as instruments to achieve individual
goals, but a place where both stockholders and stakeholders can actualize their common goals.
The idea here is that of beneficence and reciprocity. If the corporations have benefited from
the society, they have a duty of reciprocity to the society in which they have benefited from.
And from Kantian view, this reciprocity and beneficence is a duty and not a charity, hence he
argues,

That beneficence is a duty results from the fact that since our self-love
cannot be separated from our need to be loved by others (to obtain help
from them in the case of need), we thereby make ourselves an end for
others …hence the happiness of others is an end which is at the same
time a duty54.

From the Kantian perspective, reciprocity and beneficence of a business corporation is a
moral duty which a corporation should take as serious as making profit for itself, since
without the beneficence which the society first showed by allowing them to do business, it
would not have been possible for them to do business and make profit. Only in this way will
stakeholders and stockholders achieve their common goals and live as a people in the
kingdom of ends.

The implication of Kantian ethics to Business Corporation is the critique of the traditional aim
of Business Corporation which is to make profit only and a call to democratize and moralize
the activities of corporations through the representation of the interest of stakeholders in the
decision process of corporations. Only in this way can corporations be responsible to the
society and he sees this as a duty, a moral duty and not charity.

3.2.2 Utilitarian Theory: This is a consequentialist ethical theory which addresses the
question of right and wrong by considering the consequences of an action. The theory is
value- based. This is because the consideration of value is prior to the consideration of right
and the rightness of an action depends entirely on the facts about the value of consequences of

54Frederick 2001,p.11.
actions. Hence utilitarianism uses ‘utility’ to refer to the value of the consequences of an action.

Utilitarianism is characterized with maximization conception which holds that ‘right actions are those that, compared to the alternative actions open to one in a situation, would produce the greatest amount of utility.’ So the theory advocates that the right action which is the one that produces the greatest amount of utility or value be maximized and not the wrong action which produces less utility or value.

It also upholds the welfare of individuals. This is because the actions we take affect the well-being of others, thus the goodness or the badness of our action in relation to the welfare of individuals determines the rightness or wrongness of an action. Hence utilitarianism accepts welfarism as the only kind of value that is fundamental to ethical evaluation.

Finally, Utilitarianism is universalistic and impartial when it comes to whose welfare counts in determining what is wrong or right. It is universalistic because everybody who will be affected by the value of consequences of an action is counted as morally relevant and it is impartial because there is no preferential treatment of any kind, rather everybody is counted equally. The non-partial of the theory is encapsulated in the memorable slogan of Bentham “Everyone to count for one, no one to count for more than one.” So to act morally according to utilitarianism, one will follow these steps:

First set out the alternatives open to her. Second, she calculates the ratio of benefit to harm for each individual, including herself, affected by the alternative acts. Third, she adds up the ratios for each alternative act. Finally, she chooses the act that results in the greatest total ratio of benefit to harm.

One of the main problems of this theory is that it quantifies so many things, and as Philip Petit noted, such quantification turns individuals to calculators in the bid to act morally. But on the positive note, as already mentioned, it maximizes what it holds as the right action, which

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56 Ibid. +2348038741663
57 Ibid.
59 Synoeuyebos, ibid, p.30.
60 Petit 1991, p.236.
is the maximization of the greatest utility, takes interest in the welfare of every individuals and it is universalistic and impartial.

In applying utilitarianism to the issue of Corporate Social Responsibility, can one say that a business manager who applies the principles of utilitarianism in his business activities is socially responsible. Taking cognizance of the aforementioned characteristics of the theory; such a manager is socially responsible. This is because any corporate action he is about taking, he sets it out along with it alternatives, calculates the ratio benefit to harm for each individual including himself, without giving any preferential treatment to anybody, he chooses the action that is of the greatest total ratio of benefit to harm, hence the maximization of the greatest amount of utility.

So can a manager whose corporation pollutes an environment in the bid to produce goods for the people, but has other alternative means of production which will not pollute the society, be said to be an utilitarian since the goods and services are produced for the survival of the people in the society? No. It is true that the goods and services are produced for the good of the society but when the people die or suffer as a result of the pollution, the welfare of the people are infringed upon. A good utilitarian will go for a means of production that does not pollute the society, even if such a means will lead to the corporation having less profit as long as the welfare of the people are not infringed on by the production activities of the corporation. And such action is obligatory for the corporation to embark on since according to utilitarian principle an action is obligatory if and only if such action has a higher utility than any other alternative action that the agent could perform instead. 61

The implication of utilitarianism to Corporate Social Responsibility is that it makes the business corporations to be considerate in its action and it democratizes the actions of corporations by counting everybody before taking decision. Such action makes corporation to be socially responsible and it attracts the good will of the host society who know that the corporation take them into account in their decision process and has their well-being at heart.

61 Timmon, p.105.
3.3 Contending Views on Corporative Social Responsibility

There have been divergent views among philosophers and scholars of other fields on whether corporate social responsibility is good or not. While some affirmed that corporate social responsibility is a worthy project, others denounced it as against the spirit of business transaction. For the sake of clarity, these divergent views will be examined under the simple headings of opponents and proponents of corporate social responsibility.

3.3.1 Opponents: These are those who oppose the idea of corporate social responsibility. They hold that the only responsibility of Business Corporation is to make profit and not to concern itself with social problems. One of the proponents of this view is Adams Smith who is known as the father of modern economics. He argues that the sole aim of business is to make profit. According to him the highest good for society is not achieved by corporations trying to be socially responsible or act in a moral way in their pursuit of profit, instead it is achieved by each corporation seeking to maximize profit, unregulated except by the laws of demand and supply and some other laws necessary in the competitive process. And when corporation achieve these profit motives, it is for the greatest good of the society. So in his view, a business activity that degrades an environment in the process of wealth and service creation should be allowed so long as it for the greatest good of the society. Supporters of Smith’s view see it as the source of success of capitalism throughout the ages while other ideologies like socialism failed woefully in meeting up with human needs.

Milton Friedman, a renowned economist and Nobel Prize winner, like Adams Smith argued that the main purpose of business is profit maximization and as such sees corporate social responsibility as subversive doctrine. According to him, business is owned by stockholders and their motive for the establishment of the business is for profit maximization. A corporate executive is only an employee and he has direct responsibility to his employers which is to make as much money as possible for them while conforming to the laws of the State. He noted however that in practice ‘the doctrine of social responsibility is frequently a cloak for

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62 Almeder, 2001, p.84.
the actions that are justified on other grounds rather than a reason for those actions’ 63. He sees the concept as fraudulent and subversive Thus he said:

There is one and only one social responsibility of business –to use its resources and engage in activities designed to increase its profit so long as it stays within the rules of the game, this is to say, engages in open and free competition without deception of fraud. 64

Milton Friedman sees corporate social responsibility not only as a subversive doctrine but also a contradiction of free enterprise system because it serves as social constraint and censorship to business activities.

### 3.3.1 Proponents:

These are those who support the concept of Corporate Social Responsibility. They are of the view that business corporations have a duty to the society as much as they have to their corporations. Robert Almeder, who is one of the proponents, made a defence of the position in response to Milton Friedman view. Almeder compared corporations that are not socially responsible to the killing of an innocent baby for fifteen million dollars in order to raise the living standard of poor people. He said that it does not make sense. Rather it makes sense “to kill one innocent person in order to save, say, twenty innocent persons; but it makes no sense at all to kill one innocent person to raise the standard of living of an indefinite number of people.” 65 What Almeder is saying here is that it does not make sense to kill a person or group of persons who are innocent just to raise the living standard of the rest of the society. Rather the killing of such person or persons can only be justified if the rest of the society is in danger of death and only the death of the innocent persons can save them. In sum, his argument is to refute the claims of some Business Corporations who in their pursuit of profit, claim that their corporate actions is to raise the living standard of the society, even when such actions is to the detriment of some people. He argued that there is no difference between what Business Corporations who are not socially responsible do and the murder of innocent people for money because people die as a result of their business activities and they see it as part of doing business and making profit. He suggested as a way of checkmating the gross insensitivity of business corporations to social problem, that legislation should be promulgated to try corporate managers who engage in

64 Friedman 2001, p.78.
65 Almeder, 2001, p.89.
such behaviour for murder. Though he said it sounds too unrealistic but it’s more unrealistic to kill innocent people for money. He wrote,

In short, unless we take strong and appropriate steps to prevent such practices, society will be reinforcing a destructive mode of behaviour that is maximally disrespectful of human life, just as society will be reinforcing a value system that so emphasis monetary gain as a standard of human success that murder for profit could be a corporate policy if the penalty for being caught at it were not dear.66

Going along Aristotelian line of thought, he argued that money and all that it brings is not an end but a means to an end, and as such one should not be immoral in the quest for its acquisition. He suggested a humane capitalism, one that is socially responsible because “It is a necessity if capitalism is to survive at all; and, presumably, we shall all profit with survival of a vibrant capitalism”.67

Norman Bowie who is one of the proponents noted that there was never a time profit making was absolute; rather it was always limited by the law and the rule of the game. Corporations should also abide by the moral minimum individuals and institutions ought to abide, since some of their activities pollute the environment and injure people. He said: “those who contribute to social harms should contribute to their resolution; business should cooperate in finding ways to compensate society for any harm it creates.” 68

He acknowledged the fact that stockholders are the owners of the business but that does not give them the right do anything just like individuals do not have right to do anything with their property. Corporations should rather have a sense of duty of citizenship to a larger society just like individuals in the society. For corporations to achieve this, he said that managers must first know that they have more than one client, the stockholders and the stakeholders and should balance and represent their interests. Secondly, managers should not depend on the law to know what is morally right; rather its adherence is the first step to socially responsible conduct. Thirdly, managers should shift their traditional motive that business is only for profit making to the motive that business is desire to serve others. He concluded that business will flourish on the long run if they become socially responsible.

66 Ibid, p.91
67 Ibid, p.93.
68 Bowie 1987, p.17.
Having gone through the different views of moral philosophies and the philosophers on whether corporate social responsibility is a worthy project or not, it is worthy to note at this juncture that business corporations and the society are intertwined and interdependent in relationship. Corporation could not have existed without the society. Its existence is due to society’s consent. Corporations should not internalize their benefits by way of taking profits accruing from the business and externalize their cost, which is the negative impacts, to the society. That is lopsided in nature. They should share both the benefits and the burden of production and should not leave the burden for the society or corporation alone. They should see themselves as people in moral community interested in each other’s well being and development. This can only be realized when corporations are socially responsible. Corporations should see Corporate Social Responsibility as very important and as such should be embraced by every business organization that intents to be profitable and remain long in business. Such a corporation will not only prosper, it will also enjoy the good will of the people.

Having discussed what Corporate Social Responsibility is in this chapter, in the next chapter I will discuss the United Nations Global Compact, an initiative that encourages business corporations to be socially responsible by joining and adhering to the principles of the compact. Shell which is the focus of this research work is a strong member of UN Global Compact and by implication is seen as a socially responsible company on the international scene. The chapter will discuss the context and the content of Global Compact and its plausibility.
CHAPTER FOUR

THE GLOBAL COMPACT REQUIREMENTS FOR CORPORATE INSTITUTIONS

4.1 The context and content of Global Compact

Global Compact initiative is a United Nations’ programme designed to make business corporations socially responsible in their activities throughout the world. The initiative is based on the conviction that weaving universal values into the fabric of open global market and corporate practices will help advance broad societal goals.\(^{69}\) The values were derived from already existing principles enshrined in the Universal Declaration of Human Rights, The General Principles of International Labour Organization, The Rio Declaration and The United Nations Convention against Corruption. From these principles emerged the ten principles of Global Compact. The initiative was inaugurated on July 26, 2000 by the former United Nations Secretary, Kofi Anan in Davos, Switzerland. The United Nations, explaining the initiative, stated categorically that:

The Global Compact is a framework for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, the environment and anti-corruption. The Global Compact is first and foremost concerned with exhibiting and building the social legitimacy of business and markets.\(^{70}\)

The ten principles that make up the content of Global Compact are:

Principle 1: Business should support and respect the protection of internationally proclaimed human rights; and
Principle 2: make sure they are not complicit in human rights abuses.
Principle 3: Business should uphold the freedom of association and the effective recognition of the right to collective bargaining;
Principle 4: The elimination of all forms of forced and compulsory labour;
Principle 5: The effective abolition of child labour and;
Principle 6: The elimination of discrimination in respect of employment and occupation.

\(^{69}\)Leisinger 2007, p.6.

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Principle 7: Business should support a precautionary approach to environmental challenges;
Principle 8: Undertake initiatives to greater environmental responsibility; and
Principle 9: Encourage the development and diffusion of environmentally friendly technologies.
Principle 10: Business should work against corruption in all forms, including extortion and bribery.

This initiative is not an international code of conduct for companies, “designed as a certification or tool to regulate and sanction its participants but instead to foster a dialogue among a diverse set of actors in a non-beaucratic way.” As a matter of fact, the Global Compact is designed to be a partnership initiative in which both the United Nations and the stakeholders share experiences and exchange ideas on how to make economic activities foster and respect the dignity of humanity. This is why the former UN Secretary General, Kofi Annan, while unfolding the initiative to business leaders in Davos, said to them “You business leaders gathered in Davos, and we, the United Nations, initiate a Global Compact of shared values and principles, which will give human face to the global market.”

But why do we need to give “a human face to the global market”? This question could be translated as demanding the reason for the Global Compact in the first place. That is, why do we need it, if at all? Many reasons could be given for the existence of the Global Compact. First, adopting the principles outlined in the GC could help in realizing other UN aims like the millennium development goals. For example, Principle 6 which deals with elimination of discrimination in respect to employment and occupation can help realize the UN millennium goal on gender equality and empowerment of women. Principles 8 and 9 can help us realize the millennium goal on environmental sustainability. Second, corporations in many parts of the world, especially in the developing nations, have been known to be involved in the trampling of human right. The principles enshrined in the GC could help stem this. Finally, it is now commonly accepted that business cannot continue to progress in the midst of increasing human right abuses. For example, Chevron (formerly) was known for its poor record on human rights in Myanmar (formerly Burma). This made the Company become the

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71Ibid.
73 Ibid.
target of several grass root campaigns asking the Company to leave the country. Such negative records affect the progress of a company. For as Simon Billenness, Co-Chair of the US Campaign for human rights for Burma, said:

Having a positive brand image is vital for oil companies when searching for supplies in a tightening global market where average citizen has a greater say in investment policies. Chevron’s deteriorating human right image can easily put it at a competitive disadvantage.\(^\text{74}\)

The Global Compact is, therefore, to a large extent, necessitated by severe and bitter criticisms of business outfits, together with animosities that are growing against the negative effects of globalization, that is, the widening of the gap between the rich and poor nations, as well as between the poor and the rich within nations.

The principles of the Global Compact are believed to be beneficial not only to humanity but also to business concerns. For example, thinking critically on the first two principles which are based on human rights, one comes to the reasonable conclusion that it is wrong for business to continue to progress when corporations are found to trample on human rights. It is very logical to expect that a situation of protracted and widespread abuse of human rights with impunity will lead to aggressive reactions. This can lead to violence and unrest which is obviously not suitable to business. The experience of Chevron in Myanmar shows how violence and civil unrest from alleged abuse and disregard of human right can affect business. The lesson to be learnt is that not only should businesses respect human rights but they should also be seen to be respecting such rights. The huge losses by Chevron were due to violence arising from alleged abuse of human right among other demands.

Principles 3 to 6 talk about labour standards; and of particular concern to us here are such issues like forced labour, child labour and discrimination. It should be remarked that business corporations can some how act to encourage bad practices without they or the society being aware of it. For example, when the activities of oil company damages farmlands, poisons rivers and destroy the forest, they lead to the loss of source of livelihood for those in the immediate environment, like those who depend on fishing, farming and agriculture for their livelihood. If compensation is not paid, and as when due (actually as soon as possible) then

the affected people would be indirectly forced to change their occupation or means of survival. Indeed, under such conditions of deprivation, coupled with no viable alternative for survival, people will be made to suffer unremittingly. Besides, the loss of their source of livelihood can induce children in devastated environment to child labour or even to drop out of school.

Environmental concerns are the issues addressed by principles 7 to 9 of the Global Compact. The Principles emphasize on preventive approaches in handling the environmental challenges and how they can be actualized. What this means is that a corporate action which may have a negative impact on the society should be prevented and in a case where it is impossible, should be reduced to the barest minimum. This can be actualized by the corporation undertaking initiatives that will ensure they are environmentally responsible in their activities. New technologies that will prevent or address the negative impact of corporate action in the society should be developed and encouraged.

Principle 10 deals with the issue of anti-corruption. The principle that deals with bribery and corruption is meant to show that these vices are detrimental to business in that they give unfair advantage to one business group to the disadvantage of another. Moreover, where a corporation is notorious for bribery and corruption, it is likely to ruin its image or be ridiculed by public opinion-a situation that could lead to the boycott of its goods and services by the public.

4.2 Plausibility of the Global Compact Initiative

The principles of Global Compact would certainly help create a better world if they are adhered to. The big problem is on its workability. It should be noted that opinions are divided as to whether the aims of the initiative could and would be realized. As some are optimistic about it, many others are pessimistic about it. In what follows below, I examine some objections to the Global Compact initiative with a view to ascertaining whether or not the principles outlined by the Global Compact are workable.

First is the view that the Global Compact is defective because it lacks a regulatory mechanism to enforce its principles. Rather than being a regulatory framework, the GC is merely a learning process. The idea is that it would be a lot difficult to seek to make the GC a
regulatory mechanism. J.C. Ruggie, a GC commentator offers three factors that would hinder the initiative from becoming regulatory:

First, the probability of the General Assembly adopting a meaningful code approximates to zero... second, the logistical and financial requirements for the UN to monitor global companies and their supply chains, let alone small and medium-sized enterprises at national levels, far exceeds it’s capacity. Thirdly, any UN attempt to impose a code of conduct would not only be opposed by business community, but also would drive progressive business leaders into a more uniform anti-code coalition

In responding to the objection also, Karl Leisinger argued in line with Socratic line of thought that truth is in everybody and all one needs to do is to recognize it. That of the corporations is in their code of conduct. And as moral philosophical discourse acts as a ‘mid-wife’ in giving birth to the truth so does Global Compact principles help corporation to recognize the truth through “Self-critical reflection on corporate responsibility in the light of the Global Compact principles... all core business ethics aspects are covered by the ten principles”. So for him, there is no need for Global Compact to be a regulatory framework since there are regulatory laws at different levels for corporations, Global Compact is only for the companies to judge their performances.

Second objection is that the Global Compact will create opportunities for “corporations that were suffering from adverse publicity and were only too eager to gain respect by hanging on Kofi Annan’s coattails” to join the initiative just to have more acceptable social image. This act is called ‘blue washing’. Though it is a probable situation but nevertheless, ‘corporations are also urged to submit the case studies demonstrating how they have met the Compact’s ten principles. The studies are then discussed and often put into a learning bank for evaluation by other enterprises. This process in addition to teaching others, is also used to assess who is committed or not to the principles of the initiative. Member corporations which do not publish their activities with regards to the principles, after one year, are labelled as non-communicative. If the trend of silence continues up till three years, a corporation loses its membership. This approach helps to make corporations accountable and further help to

76Leisinger ibid, p.8.
78Morre 2006, p.233.
undermine the criticism based on the lack of regulatory mechanism. This means that UN sees that member corporations publish what they do and such publications are made available to the public and NGO who serve as watch dogs to these corporations. By so doing, the public and the NGOs would have the opportunity to react to false claims.

Third objection holds that through enrolling in the initiative, the big and rich multinational corporations capture and manipulate the UN. While this may be possible, it is worthy of note however that this is not the first time UN is relating with big capitalist multinationals (or even national) corporations. Besides, multinational corporations are among the important non-state actors in international relations today. Even if they attempt to capture the UN, Andreas Rache argues that it is “not the Global Compact that allows corporations to capture the agenda of policy makers at the UN, but that corporations already are political players that need to be recognised by politicians regardless of whether the Compact exists or not.” Indeed the era of the state being the exclusive actors in the international relations is gone. The fact remains that with their enormous resources (some corporations are richer than many African countries put together), the big corporations can no longer be ignored by the UN. However, since NGOs are part of the initiative, they serve as a watch dog against possible excesses of the “big Corporations”.

Fourth objection is that “GC suffers from ambiguity of goals, and inadequate linkages between purposes and means to accomplish them.” The point here is that the principles of the initiative are principles that are already in existence and they have been serving their goals, hence UN's effort to extend it to business world. If these principles have been serving their goals, it implies that the means and the purposes are adequate. So Global Compact initiative is UN's effort to make business corporations more active in these principles by expecting the members to weave these already existing principles into their business activities. Again, in various countries of the world, laws of the state are more definitive on what these principles are (I will later mention in this work that of Nigeria with regards its oil sector) and the need for it to be respected. These laws serve as guide to Business Corporations in their various countries of businesses and they are binding.

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79 Rache ibid.p.15
80 Sethi ibid.
In this chapter, I have discussed the role of the UN Global Compact initiative in moderating the activities of business corporations, especially in developing parts of the world. I have also discussed some objections to the initiative, particularly the pessimism expressed in some quarters concerning the workability of the initiative especially in the area of actualizing or fulfilling the ideals expressed in the ten principles of the Global Compact. One of the major objections is that the Global Compact is a defective organisation because it lacks a regulatory mechanism to explore its principles. However, I believe that most of the objections raised need not be a hindrance to the Global Compact fulfilling its set objectives if there is a collective will on the part of the UN, business organisations and government to ensure the workability of the ideals expressed in the principles of the Global Compact. What is required to make the principles realizable is the determination and the moral conviction that human beings have moral worth and that business organisations should act in ways that will not subject people to hardship and suffering.

In the next chapter, I will discuss Shell’s code of conduct and the ideals it expresses in that code with regard to how to carry out its operations in ways that will not harm the local populations in its areas of operations.
5.1 Shell’s code of Conduct

It is a common tradition for companies to have self-made principles and implementation standards to guide their operations. These principles are known as company code of ethics. Shell is not an exemption. With regard to its activities and operations, Shell states as follows:

We have eight principles, which apply to all our business affairs and describe the behaviour expected of every employee. The principles are based on our core values of honesty, integrity and respect for people.82

Shell claims that it abides by those principles guiding its operations, noting that its success in business is largely owing to the commitment to doing business with honesty, integrity and respect for people. I shall highlight some of these principles, which are relevant to understanding the roles of Shell in Niger Delta conflict. The third principle is on doing business with integrity. Here Shell claims that it does its business by applying the virtues of honesty, fairness and integrity. Accordingly Shell declares that:

The direct or indirect offer, payment, soliciting or acceptance of bribes in any form is unacceptable. Facilitation payment are also bribes and should not be made.83

Elsewhere, Shell Company also declares that the Company has zero tolerance to corruption. Any illegal payments are sanctioned and all suspicious circumstances are investigated. And any employee found to have breached the firm’s ‘no bribe’ policy may be dismissed.84 Shell claims that part of how it proves its honesty is by voluntarily reporting its environmental activities and social performance to the appropriate agencies and the general public.

Principle 4 of Shell’s Code of Conduct is on the company’s political activities. The principles states as follows:

83Ibid.
84Ibid.
Shell Companies do not make payment to political parties, organizations or their representatives. Shell Companies do not take part in party politics.  

By declaring its political neutrality, it is expected that Shell would not sponsor candidates in elections or sponsor state repression of people. However, Shell still maintains that it has the right and responsibility to express its opinions to the government on issues that affect it or its clients, shareholders or local communities.

In principle 5, which addresses health, safety, security and environment, Shell claims that it has a systematic approach to managing its challenges for the good result of the local communities. Shell asserts its commitment to “continually look for ways to reduce the environmental impact of their operations, product and services.” The company says it views such issues stated in the last remark to be critical issues. At least, the company appears to be aware that their activities have negative impact on the environment.

It is in the principles 6 that Shell explains the nature of relationship with local communities. Shell claims that it aims to be good neighbours to local communities by trying directly and indirectly to improve local environment. In this regard, Shell affirms as follows:

We manage the social impact of our business activities carefully and work with others to enhance the benefits to local communities, and to mitigate any negative impact from our activities.

Here, Shell admits the social impact of its activities. However, it is not stated whether its efforts to “enhance the benefits to local communities” is mere charity or a matter of obligation. I believe this effort should be obligatory and made legally compelling.

The principle 8 deals with the issue of compliance. Shell states categorically that it complies with all applicable laws and regulations of the countries in which it operates. Here the company claims that it abides by the rules and regulations pertaining their activity in each country of operation. Shell refers to these principles as “Shell General Business Principles” and they set out the rules guiding Shell’s activities in local communities.

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85 Ibid.
86 Ibid.
87 Ibid.
88 Ibid.
In addition to the above principles, Shell claims to be a member of and an active supporter of such institutions like Transparency International and Business and Industry Advisory Committee of the OECD, and the UN Global Compact Principles, etc. As an active supporter and member of these groups or initiatives, it is expected that Shell would (or at least should) share and implement the values it has outlined for itself. However, the weight of evidence before us shows that Shell neither abides by or implements even its own principles and regulations. They are just principles that “seldom move beyond exercises in public relations and half hearted efforts at improving conditions.” Shell acknowledged that its principles do not reflect on its actual activities and reiterated the need to make some key changes in them. To this, the management short listed the areas that need to be changed:

- The emphasis on compliances
- Growing concern about security post 9/11
- Emphasis on social performance and engagement with communities
- Diversity and inclusiveness
- Shell’s Enterprise first values and behaviours
- A focus on dialogue as opposed to the dissemination of information
- Development of sustainable development principles
- Clarity on treatment of felicitation payments.

As the changes that Shell promised to make is being waited for, it be noted and as I will later show in this work that Shell has no serious committed to the company’s code of conduct.

5.2 Nigeria’s Guideline on Crude Oil Exploration

Nigeria like many oil producing nations in the world has guidelines that regulate its oil industry. As is the case with Nigerian Legal system, these guidelines cannot be found in one volume but are in scattered sources. The major sources of these guidelines, though not in order of importance are:

i. Ministry of Petroleum Resources
ii. Federal Environmental Agency (FEPA)
iii. National Oil Spill Detection and Response Agency (NOSDRA)

i. Ministry Of Petroleum Resources

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89 Sethi ibid.
90 Shell Company Ibid.
In Nigeria, all the mineral resources including crude oil are owned by the Federal Government of Nigeria. This power of ownership has always been vested on the Government by its various constitutional rights from the colonial era to the present period. In the current Nigerian Constitution (1999), section 44(3) states thus:

The entire property in and control of all mineral, mineral oil and natural gas, in, under or upon any land in Nigeria or in, under or upon the territorial waters and the exclusive Economic Zone of Nigeria shall be vested in the Government of the Federation and shall be managed in such manners as, may be prescribed by the National Assembly. ⁹¹

Thus, the Nigerian Government manages the oil industry of the nation with the prescriptions from the National Assembly. This management function is delegated to the Minister of Petroleum Resources, who is appointed by the president with the approval of the National Assembly. The procedure for the Minister of Petroleum Resources to make guidelines for the oil industry is contained in the Petroleum Act of 1969 (which was reviewed in 1990). This Act prescribed three different types of licenses for any oil company to operate in Nigeria. These licenses are the exploration license, the oil prospecting license, and the oil mining license. The Minister of Petroleum has the delegated power to grant these three licenses to companies (which must be either indigenous or incorporated in Nigeria). As I earlier mentioned, it is because of this incorporation law that Shell operates in Nigeria as Shell Petroleum Development Company of Nigeria (SPDC).

Stating further the power of the Minister, section 3(2) States that ‘‘licenses granted under this section shall be subject to the prescribed terms and conditions or, where no form is prescribed or no terms or conditions are prescribed, in such form or subject to such terms and conditions as may be decided or imposed by the Minister.’’ ⁹² Consequently, oil companies are to operate under the terms and conditions attached to their licenses. In a possible event of ambiguity, it is the minister that has the final say as to what is to be done. The law empowered him not only to decide, but also to impose terms and conditions of operations for oil companies. This power and roles come out more clearly in section8 (1) (a) which states that ‘‘the Minister shall exercise general supervision over all operations carried on under licenses and leases granted

⁹¹ Constitution of the Federal Republic of Nigeria (19990,Section 44(3)
under this Act.’”93 For the Minister to do this successfully, he is empowered by the law of the country to have unrestricted access to all the areas covered by the licenses. He has the right to summon any licensee in writing, to give explanation of their activities. He can do this by delegation which is often to the Director of Petroleum Resources who heads the Department of Petroleum Resources. The Minister has the right to delegate power but not when it comes to making orders or regulations.

Stipulating further the conditions under which oil prospecting and oil mining license may be revoked by the Minister, the Petroleum Act in section 25 (1) states that ‘’the Minister may revoke any oil prospecting license or oil mining lease if in his opinion the licensee or lessee …is not conducting operations in accordance with good oil field practice… has failed to furnish such reports on its operations as the minister may lawfully require.’94 One problem here is the criterion with which to determine what ‘good oil field practice’ is as the Act does not specify any. And the silence of the Act on this issue makes this particular law vague, but then, the Minister has the power to impose regulations and take drastic actions, ‘if in his opinion’ an oil activity fails to carry out its businesses according to ‘good oil field practice’. And the punitive measure for the oil companies that fail to furnish the Minster with adequate information is the revocation of their licenses for breaching the law.

With regard to the negative impact of oil exploration on the Nigeria society, the Petroleum Act stipulates that a precautionary approach is most desirable and should be adopted by the oil companies. In section 25, it states that ‘’the licensee or lessee shall adopt all the precautions including the provision of up-to date resources, to prevent pollution of inland waters, rivers, water course, the territorial waters of Nigeria or the high seas by oil, mud or other fluid or substances which might contaminate the water banks or which might cause harm or destruction to fresh water or marine life, and (if it) occurs or has occurred shall take prompt steps to control and if possible end it’’.95 This is to say that the license to prospect or mine oil does not constitute liberty to pollute the environment. The Nigerian guidelines taking cognizance of the fact that there could be environmental mishaps resulting from the activities of oil companies, stipulated that prompt measures should be taken by companies to clean up such mess. Unfortunately, we read in more than one case that many oil companies in Nigeria

93Ibid.
94Ibid.
95Ibaba 2005,p.86
stay up to six months without responding to clean up of spillage from their pipelines, which even the World Bank maintains result often due to bad equipment or corrosion.96

ii. Federal Environmental Petroleum Agency (FEPA)

Federal Petroleum Agency (FEPA) was established through the decree No.58 0f 1988 of the Nigerian Government. This agency was created to help the Nigerian State fulfil its duty of protecting the Nigerian environment. Thus the scope of FEPA’s tasks includes the industries and indeed the whole Nigerian environment. Section 4 of the FEPA Act states that its task is “the protection and development of the environment in general and environmental technology, including initiation of policy in relation to environmental research and technology.”97 It further explains that the agency is to advise the federal Government on national environmental policy; prepare master-plans on how to develop technologies to manage the environment; and liaise with local and international bodies on environmental issues. These purposes seem to focus on environmental research than on actual regulation of industries in the country.

However, in a bid to make the role of FEPA more regulatory and specific, the Nigerian government promulgated “the Environmental Impact Assessment” (EIA) Decree, No. 36 of 1992. This law empowers FEPA to make environmental assessment of projects before they are commenced. Section 2(1) of the Decree stipulates that “the public sector of the economy shall not undertake, embark or authorize projects or activities without prior consideration, at an early stage, of their environmental effect.”98 This decree requires that before companies begin any new project, they have to check its possible consequences on the environment; that is, before any project could begin, the company executing the project would have to describe the proposed activity, explain its potential effect on the environment and how they plan to handle it, and even indicate whether any other society outside Nigeria may be affected. After the submission of a detailed environmental Impact Assessment (EIA) then, the FEPA evaluates the submissions, holds wide consultations with all stakeholders and then take a decision; it is the final arbiter on such issues.99 This process of assessing the goal and effect of projects on the environment would have been wonderful if companies adhere to it, but both

97Ibabaibid, p.50.
98Ibid, p.45.
99Ibid. p.46.
private and public companies hardly consult FEPA nor does the EIA carry out its supervisory roles on projects. The reason behind this is largely due to lack of professionals in the agency to do the work. To carry out its task successfully, FEPA would need adequately trained staff and modern technologies which it lacks.\(^{100}\)

EIA supervision is not meant to be a one-time supervision which is done prior to the commencement of a project; rather it is an ongoing supervisory role. Thus, FEPA should be informed of any discharge of hazardous substance into the environment and offenders are meant to be fined. Non-complying offenders incur more debt each passing day. In the oil sector, FEPA works with Ministry of Petroleum Resources. But the agency works as auxiliary to the ministry. For example, Section 23 of the FEPA Act states that ‘‘the Agency will co-operate with the Ministry of Petroleum Resources (Petroleum Resources Department) for the removal of oil related pollutions discharged into the Nigerian environment and play such supportive role as the Ministry of Petroleum Resources (Petroleum Resources Department) may from time to time request from the Agency.’’\(^{101}\)

Critics like Jedrzej Frynas find this legislation inadequate and capable of hindering FEPA from being efficient. Commenting on joint task role of FEPA and Ministry of Petroleum Resources, Frynas argues that ‘‘the words ‘co-operate’ and ‘request’ indicate that FEPA may be constrained from acting on matters relating to oil pollution without the consent of the Oil Ministry’’.\(^{102}\) However, it is possible that the expressions highlighted by Frynas were actually used in a loose and vague sense, for it is not really well-defined, how FEPA and the OIL Ministry will carry out this mandate. Hence, there is much sense in reasoning with Frynas that ‘‘it appears that section 23 of the FEPA Act may have taken the oil industry out of the purview of the agency.’’\(^{103}\)

Even if FEPA were to be detached from the oil ministry, it still suffers from logistic problems like human resources and facilities to perform its role effectively. Commenting on this problem, the Frynas made a reference to World Bank records that state that FEPA office in River State had 25 staff including 10 environmental professionals of which only 3 dealt with oil pollution, and only few activities were being implemented. The World Bank concluded

\(^{100}\) Frynas ibid, p. 86.
\(^{101}\) Ibid, p. 85.
\(^{102}\) Ibid. p. 85.
\(^{103}\) Ibid.
that FEPA monitoring and environmental expertise had to be substantially increased.\textsuperscript{104} In the bid to address the environmental problems, State Governments established State Environmental Protection Agencies. These new agencies are still faced with problem of inadequate personnel and facilities. They do not even have the full backing of the law to sanction offending companies.

Making FEPA effective may not still adequately solve the environmental pollution problem in Niger Delta. This is because the penalties which FEPA stipulates are too cheap and ridiculously low. For example, if offending companies were to pay fines as FEPA Act stipulated, the fine should not exceed 500,000 Naira and additional fine of 1,000 Naira for every day the offence persist-which appears to be a rather insignificant amount for any foreign oil company.\textsuperscript{105} Such fines are laughable and mere Child’s play for offending oil companies. All these expositions and analysis of the Nigerian regulatory mechanism of the oil industry do indicate that the regulations presently in place are inadequate and poorly implemented.

iii. National Oil Spill Detention and Response Agency (NOSDRA)

National Oil and Spill Detention and Response Agency was established in the year 2006 by the Nigerian Government, to help curb the adverse effect of the activities of the oil industries on the Nigerian Society. As Jude Njoku reports:

\begin{quote}
NOSDRA is an agency of the Federal Government set up barely two years ago to ensure that all stakeholders in the oil and gas industry conduct their operations in a way that would not adversely impact on the environment of their host communities. \textsuperscript{106}
\end{quote}

This initiative came against the backdrop of the intense conflict between many host communities and oil companies. Oil Companies are required to report any oil spillage to the NOSDRA, even if the quantity of the spilt oil is one barrel of crude oil or less. But like the previous regulatory agencies, NOSDRA cannot even accurately document the number of oil

\textsuperscript{104} Ibid, p.86.
\textsuperscript{105} Ibid, p.87.
\textsuperscript{106} Vanguard Newspaper, 2008, p.42.
spillages, much less than what the companies publish. For example, in 2006, Shell put its total number of oil incidents at 241. This statistics “for 2006 is a far cry from the paltry 78 ascribed to it (shell) by NOSDRA.”\textsuperscript{107} This is a dismal record.

From all that has been said above, it is clear that there are numerous regulations and agencies established by the Nigerian State to regulate the activities of the oil industries. It may not be that the oil companies do not want to co-operate. Rather, it seems that they operate with much disregard to the rules, where they perceive that the regulatory agencies are neither strict nor well equipped to do their job. Where compensation are stipulated, they are unfair, in the sense that fines against offending companies are so cheap that they do not in any way deter offending companies from their wrong acts.

\textsuperscript{107}Tell News Magazine
CHAPTER SIX

THE EFFECT OF SHELL’S ACTIVITIES IN THE CONTEXT OF THE NIGER DELTA CRISIS: A CRITICAL EVALUATION

6.1 Shell’s Activities and the Demand of Corporate Social Responsibility

In chapters four and five, it was noted that Shell is one of the companies that projects its image to the world as a company that is socially responsible and it subscribes to the view that business corporation should assist in the welfare of their host communities. Shell is seen as such on the international scene through its membership of the international organization like the Global Compact and on the local level through its Code of Conduct. But this raises some questions; does Shell live up to the image it projects to world? Does it observe the principles of the Global Compact and its Code of Conduct? Evidences observed contradict the image Shell creates for itself. I will examine these evidences.

Shell claims it provides sustainable and qualitative education for the Niger Delta youths. But the question is where the youths receive the sustainable and qualitative education since most schools are dilapidated and students study under trees and in open fields. In Olobiri, where Shell first struck its oil, Shell’s sole contribution to the education of the area is an uncompleted six-class room extension to the secondary school. And similar stories abound in other parts of Niger Delta. Such are the type of schools Niger Deltans study and take Shell scholarship examinations with their counterparts from other parts of Nigeria since there is no tangible number of educated people from the region. And coming from dilapidated government secondary schools, the chances of doing well in such examinations are very narrow judging from the weak educational foundation. This leaves one to wonder whether Shell’s claims of investing or spending on the education of the Niger Delta youths has any significant impact on the level of literacy in the Niger Delta region since such investments are epileptic and are poorly financed.

Shell makes other bogus claims of huge expenses under the corporate social responsibility scheme. It claims it spends about $60 million annually in community projects like health care, agriculture, water, and road. But most facts on ground prove Shell otherwise. In Olobiri,

108 Okonta and Douglas, p.97.
there is no proper road network linking the town to the outside world. “Travellers have to navigate their way through treacherous creeks and rain forest. There is no drinking water in the village. The government hospital begun in 1972 has since gone the way of all abandoned projects, inhabited by rats and cockroaches instead of patients needing care. Most times, some of the roads built by Shell in some towns do not lead to areas where people live but only to Shell’s oil locations. Such projects are not part of corporate social responsibility but the company counts them as one.

Shell’s corporate social responsibility has no impact on the people of the region because of poor implementation of the scheme. The amount it spends on the region is grossly insignificant and inadequate when compared to the extent of damage done to the ecology and the huge profit it makes from the region. Other oil companies like Mobil and Chevron are believed to have impacted more than Shell on their host communities. And this further fuels agitations in the communities where Shell has the highest acreages of oil production in Nigeria. As I mentioned earlier in chapter two, it is estimated that Shell invests only 0.00007% of its revenue on Niger-Delta, in spite of the huge profit it makes from the region. While it may not be a good argument that a business corporation like Shell should spend all its profit on corporate social responsibility, it is very logical and morally demanding that the amount for CSR should be commensurate to the magnitude of harm done to the ecosystem of the region. Though the yardstick for measuring the harm done by the oil company and the adequate amount to be spent on the region may still be a thing of debate, it is good to note that it is a worthy goal Shell should work towards.

It is a moral responsibility of Shell since they destroy the ecology of the region through their corporate actions and as Kant argues to help where one can is a duty, not a charity. Shell can really help in the development of this region through the huge profits it makes from its business in the region, instead of clinging only to profit maximization which is detrimental to the region. An act that has led them to losing Ogoni land some decades ago, where it has the highest oil acreages in the country and on 5th of June, 2008, it was officially expelled from Ogoni land by the Federal Government of Nigeria after failing several times to broker peace between the Ogonis and Shell and the Nigerian Government also ordered Shell to pay

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110 Okonta and Douglas, ibid.
compensation to the people of Ogoni for the damage done to the land. This profit maximization mode of operation which Shell clings to is not only detrimental to the region through the ecological destruction which the region experiences, it is also detrimental to the Shell since the company not only lost the Ogoni land to another oil company, it is to pay Compensation worth billions of dollars for the harm done to the ecology of the region.

It is clear from above that Shell’s CRS scheme is both ineffective and inadequate. It is ineffective because it does not reflect on the people’s life and it is inadequate because the amount spent in the region is inappropriate compared to the ecological damage done to the area. Shell needs to make its CSR scheme effective and adequate since it is good not only for the host communities but for the company also. The company can do this by being sincere, serious and transparent in the execution of their CRS scheme so that the people would know what the company has actually done to alleviate the plight of its host communities and should avoid quoting unsubstantial or deceptive figures meant to detract the attention of an unwary world. Shell can only do this by seeing CSR as a duty and not a privilege which by implication means that the company should take CSR scheme as serious as making profit for the corporation. Its business in the region will also be guaranteed by doing so.

6.2 Shell’s Actual Mode of Operation and Its Code of Conduct

As noted in chapter five, every business corporation has self imposed principles that guide the corporate actions and so is Shell. Even though these principles have no legal binding, companies are expected to adhere to their code of conduct. Shell claims that it adheres strictly to its code of conduct in all its corporate activities. However, most of the facts on ground prove Shell wrong. On the principle of compliance, which is one of the principles it claims to adhere to, the Nigeria law requires that appropriate license must be obtained before any oil exploration, prospecting or mining can take place. But I.S. Ibaba notes that:

A classic example (of the breach of law) is the Shell Petroleum Development Company (SPDC) Estaury Amatu (EA) project where the project commenced before the application for license was made.

112 Ibaba,ibid,p.92.
The fact is that if Shell could embark on such a multi-billion dollar project, one year before applying for license, the logical implication is that there was no environmental impact assessment of the project done by FEPA. Shell takes undue advantage of the weak state of regulatory mechanism that exists in Nigeria and acts without any reference to the laws of the state. It acts as if the only duty of compliance it owes to the state is the duty to pay the government its due in the form of tax, royalties and rent but the truth of the matter is that payments alone do not constitute compliance to the law on oil exploration.

Shell also claims that it takes a systematic approach to reducing the impact of its activities on the environment. However, there are many instances in which Shell has delayed so much before venturing to address the ugly effects of its activities on the environment. In Ogoni land for example, and perhaps owing to civil unrests, there is an oil spillage that dates back to 1993 which Shell has not cleaned till date. Rather as I noted in chapter two, whenever there is an oil spillage, Shell spends the whole time accusing local communities of sabotaging its equipments. Even World Bank records have attested to the fact that old age and poor maintenance of Shell’s pipeline often lead to oil spillage. Similarly, while blaming Shell for the frequent oil spillage from its facilities, J.G. Frynas argued saying,

   Even if sabotage played a significant role as Shell maintains, it is a problem with equipment that predominantly cause environmental damage; these can be traced back to 40 years of neglect of the oil installation.  


Shell pipelines are very old and worn out and so cannot withstand the oil pressure but the company keep on using them because they are cheap for them and in turn blames the local community for pipeline vandalization whenever there is an oil spillage.

Nigeria is also known to be the greatest contributor of greenhouse gas emission among the oil fields of the world because of gas flaring and Shell is one of the companies that make it the greatest contributor, because it has the highest acreages. The company has promised to reduce gas flaring and if possible, stop it. But as I noted earlier in chapter two, gas flaring has neither been stopped nor reduced by Shell till date. It has rather continued on a scorching increase despite Shell’s promises.
Shell also usually makes the claim about its political neutrality in its dealings with government. But the fact remains that Shell is strongly influential in Nigerian politics. In fact, Shell has some deep intimacy with the Nigerian government, past and present. Shell’s influence is to such extent that it can help broker conflicts between local communities and government forces if it so desires. For instance, when Saro Wiwa, the MOSOP leader, was condemned to be executed by a corrupt military junta, Shell could have successfully and diplomatically intervened to save his life. On this point, it is on record that Dr. Owen Wiwa, the brother to the late environmentalist met with Brian Anderson, the then managing director of Shell on the 5th of the May, 1995. Anderson is reported to have said that:

He could effect Ken Saro Wiwa’s release from detention but would only do so if MOSOP called off its international campaign against his company. \(^{114}\)

Ken Saro Wiwa rejected this offer and a few months later, he was hanged. While acknowledging the fact that it is unfair for Shell to attach such an unfair condition for the release of Ken Saro Wiwa, the situation however shows how powerful Shell is in the Nigerian politics.

From the above stated facts, it is very glaring that Shell is uncommitted to its core principles despite its claims that it adheres strictly to the principles, especially those that require Shell to carry out its corporate activities with integrity and respect. Shell should ensure that it carries out its activities in accordance with business principles because by doing so, they will win the confidence of the society who will see them as sincere and good company that has not only the interest of the company at heart but also that of the society. And such a confidence will be adrem to the image the company creates on the international scene where it projects a good image of itself as a sincere and socially responsible company.

6.3 On Shell “Commitment” to the Demands of Global Compact

Shell belongs to so many international organizations like the Transparency International, International Chamber of Commerce (ICC), World Business Council of Sustainable Development, Business and industry Advisory Committee to the OECD, International

\(^{114}\) Okonta and Douglas, p.58.
Business leaders Forum, UN Global Compact Principles and World Economic Forum.\textsuperscript{115} With its membership in these organizations, it pledges to support and promote the values of these organizations which are generally the promotion of ethical behaviour in business activities.

As a member and popular supporter of the Global Compact, Shell is expected to maintain international labour standard, respect human right, protect the environment through precautionary measures and be faithful to the anti-corruption ideals expressed in the guidelines regulating business activities especially in resource-poor or developing nations of the world.

Unfortunately, Shell acquires weapons with the permission of the Nigerian government and provides these weapons of theirs and helicopters to the Nigerian military, to use against the host communities, whenever there is civil unrest.\textsuperscript{116} Even when \textquoteleft\textquoteleft the international legal standard for complicity would, for instance, require a corporation not to lend its equipment to government forces with knowledge that it will be used to suppress human right.\textquoteright\textquoteright\textsuperscript{117} Thus, Shell is found to be an accomplice to the Nigerian government in human right abuses.

As if that was not enough, Shell also worked to help launder Nigeria’s battered image in the international community when it was globally criticized for the execution of Ken Saro Wiwa. The Nigerian government was variously sanctioned by the Common Wealth Nations, the European Community and other countries of the world. But in order to deceive the world community and divert its attention on its real activity in Nigeria, Shell’s reaction was to place advertisement in media organizations all over the world with the intention of blackmailing MOSOP as a terrorist organization. In the words of Jennifer Daves “Shell was running adverts in the British media which portrayed MOSOP as a terrorist organization.”\textsuperscript{118} However, MOSOP was known to have conducted its activities in decent and dignified ways, and in accordance with civilized standard of expressing grievance. In fact, the present militant groups were formed as a reaction to the state's violence against MOSOP. MOSOP did not in


\textsuperscript{116}Nnamani, 2004,p.76.

\textsuperscript{117}Ratner, 2001, p.52.

\textsuperscript{118}Nnamani, ibid.
any way resemble a terrorist group. It is Shell that could be said to be financially sponsoring state terrorism against the people.

Shell is not only involved in human right abuses, it is also involved in corruption in the Nigerian government. Shell illegally sponsored Military Juntas like the Abacha regime and as American environmental pressure group Project Underground pointed out in 1997, Shell supplies fully half of the income to the brutal regime of Abacha that was bent on suppressing dissent.\(^\text{119}\)

From what has been elucidated above, it is clear enough that Shell’s performance falls below the demands of the Global Compact initiative to which it subscribes. The image it gives to the world through its membership of the Global Compact Initiative is not compactable to its actual activities in Niger Delta of Nigeria, they are rather contradictory.

6.4 A Recapitulation

Interest in this research work arose as a result of reactions to the activities of oil companies in the Niger Delta region of Nigeria. Shell was chosen as the focus because it was the first oil company to prospect for crude oil in the region, Shell also has the largest oil acreages in Nigeria; it is most probably the prime target of militants, local youths and the aggrieved communities and it is the most criticized among the many oil industries in the region. I therefore felt the need to investigate the role that Shell has played in the conflict with a view to making a moral assessment of Shell’s actions and inactions in the communities where it operates.

The inquiry revealed that the people in the Niger Delta region of Nigeria have for decades lived in abject poverty regardless of the fact that oil wealth worth billions of Dollars are carted away from their land. As was noted in chapter one, while the people of this region seem to have little or nothing from the oil wealth, they also face the painful fact that oil exploration, prospecting and mining in the region have been devastating to their environment, making it impossible for them to live on their traditional occupation of farming, hunting and fishing. Gradually, with a deep sense of frustration and alienation, the people started

\(^{119}\)Okonta and Douglas, 2003, p.58.
complaining and with time, the complaint changed to protest for Shell to stop environmental destruction and pay adequate compensation for destruction done to their environment. The Shell in connivance with the State reacted with oppression and repression. The same people in turn reacted violently and this violence resulted to formation of militant groups in the region. They started making increasing demands from oil companies and failure to meet their demands often resulted into conflicts.

In addressing the question whether business corporations like Shell has any responsibility to the society outside the traditional aim of every business corporation, which is to maximize profit; I discussed the issue of Corporate Social Responsibility. Kantian and utilitarian views argue that it is a duty for Business Corporations to address the social problems in the society in which they operate, especially the ones caused by them. While the opponents of the CRS; Adams Smith and Milton Friedman saw the concept as being against the spirit of business transaction, the proponents; Robert Almeder and Norman Bowie saw it as a worthy project which business corporation should embark on. I noted that being socially responsible is not only good for the society but also good for Business Corporation because what affects the society affects the Business Corporation. More importantly, I showed that even the United Nations is equally committed to ensuring that Business Organizations act responsibly to protect the interest of societies where they do business. The UN Global Compact is meant to help Corporate Organizations learn how to combine business with respect for human rights, protection of the environment, maintenance of high labour standard and shunning of corruption in business etc.

Shell it was noted accepts and supports both the idea of Corporate Social Responsibility (CSR) and the Global Compact Initiative. Besides, it has its own general business principles based on integrity, honesty and respect for people. Shell claims that it abides by its principles; and that explains the reason why it progresses. I looked at Nigerian exploration guidelines which should govern Shell in its explorative activities to know if the company abides by it. I also looked at the extant literature on the business activities to see what Shell activities in the Niger Delta have been and discovered that Shell’s activities in the Niger Delta have contributed in the destruction of the ecology of the area, paying little or no compensation for the damage. The reason for ecological destruction is due to Shell’s non compliance to the Nigerian regulation for oil industry which are weak and inefficient due to lack of both manpower and the political will to regulate the oil industry. It is noteworthy that Shell
initiates some CSR programmes, but these programmes have neither made significant impact in the region where it does business nor are they transparent. Shell has also been a partner with Nigerian governments in the reckless abuse of human rights. A fact that made Shell to fall short of the Global Compact requirements. To date, the people in the Niger Delta area are still expecting much from Shell and other multi-national oil companies doing business in their area.

6.5 Recommendations and Conclusion

Having examined the history of the conflict and the impact of the ecological destruction in the region, it became obvious that Shell contributed heavily to the conflict in the region. And it contradicts the good image the company projects to the world. And as examined in this work, it is morally permissible for Business Corporation like Shell to engage in this Corporate Social Responsibility. For peace to reign in the region again as it once did when Shell started its operation in the region, the following recommendations are made:

i. Shell should avoid the inordinate profit maximization which places much emphasis on the profit made in business to the detriment of the society. This is because it is morally wrong to maximize profit while human beings are suffering untold hardship and most often dying as a result of Shell’s production activities. Such approach uses people merely as means and not as ends which human beings are. The approach is not only detrimental to the society but also to Business Corporation. One can recall the consequence of the revolt of Ogoni people. Shell lost billions of Dollars as a result of the loss of their oil well from the day of the revolt and on 5th June 2008, lost the license to operate in Ogoni land. Shell should rather adopt the Kantian and Utilitarian approaches of seeing business and the society as a moral community where people are treated as ends and their welfare prioritized by providing them basic amenities, especially ones denied them due to activities of Shell in the region like portable drinking water, good schools, roads, electricity etc. Shell should also adopt more precautionary approach to environmental challenges and pay adequate compensation where necessary. This is because Shell operates in Niger Delta because the people allow them. They should reciprocate this gesture of the people by caring for their basic
needs which it denied them due to their activities in the area. Only in this way will Shell’s business flourish and enjoy the good will of the people again.

ii. The people of Niger Delta, though already bruised by Shell’s inordinate pursuit of money in the region should once again see Shell as a member of a moral community by giving peace a chance and co-operating with Shell and allow some time to pass for Shell to unfold its plan for the region. Consequently, people should stop the vandalization oil facilities and the attack of oil workers and seek peaceful ways to pursue their goals.

iii. The Nigerian Government which has the constitutional duty of protecting the Nigerian citizens and its environment should rise to its duty of protecting the environment from pollution. This can best be done by revising and enforcing its guidelines for the oil industry, especially in the area of compensating the people for the losses suffered. It should also act to promote the welfare of all Nigerians, especially those in the Niger Delta region.

Shell once enjoyed the good will of the people and made profit when it started its operation in 1958 at Olobiri, but Shell lost that good will when it started operating in a socially reprehensible way by taking advantage of the weak regulatory agencies of Nigeria to operate in a flagrant and arrogant disregard of the people and their environment. This has exacerbated the poverty and conflict in the region. Although Shell through its CRS schemes has attempted to alleviate the sufferings in the region, the effort has been grossly ineffective and insufficient as is reflected on the lives of the deprived and dehumanized people of the Niger Delta. Nigerian State, Shell and the people of the Niger Delta are all casualties in the conflict. They should all team up and develop the region and make it more habitable for human life. Only through this way will Shell and the people of the region become friends again.
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