CSR Norms and Transnationalism: Shell's Corporate Social Responsibility After the Ogoni Crisis

by

Natalia Olszewska-van der Merwe
0105845J

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DECLARATION

I declare that this research report is my original and unaided work. It is being submitted for the award of the degree of Master of Arts (MA) at the University of the Witwatersrand, Johannesburg. To the best of my knowledge, it has not been submitted before for any degree or examination at any other university.

Candidate: Natalia Olszewska-van der Merwe

Student Number: 0105845J

Date: 20 November 2013

Signature:

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CHAPTER ONE – INTRODUCTION

Over the past two decades, the role of Multinational Corporations (MNCs) within the international system has expanded dramatically. Through their increasing participation in public-private partnerships they have assumed a role that goes beyond a traditional economic understanding of costs and benefits. The relationships that emerge between MNCs, host governments and communities, as well as local and international non-governmental orgnisations (NGOs/INGOs) are intricate and complex. In specific contexts these relationships and interactions deem MNCs as political actors. [1] In accordance with this stance, the Cardoso Panel[2] stated that the increased power of corporations was able to threaten people's participation, political accountability, the rule of law, and transparency. [3]

Of particular interest in this regard, is the role of MNCs in the extractive industries due to the asset-specific nature of their business, as well as the core (predominantly developing) regions in which they operate. This evolving role of MNCs, and the political, economic and social impact that they have within the international system, has brought to the forefront discussions regarding Corporate Social Responsibility (CSR) norms and practices. For the purpose of this research CSR norms are broadly understood to entail expected actions and policies that fall into the following three levels: they apply to core business activities; aim at sustainable development; and constitute actions over and above legal requirements. [4] Corporations are therefore encouraged to move beyond

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[1] Hofferberth, M. (2008) " Norms and multinational corporations - ideational initiatives for CSR?" Paper presented at British German IR Conference, 16-18 May, 2008, p1

[2] Mayr, J (2003) "Relationship between the United Nations and Civil Society", http://www.ecologic.eu/1039 - The (Cardoso) Panel of Eminent Persons on civil Society and UN Relationships, was established in 2003, by then UN Secretary-General Kofi Annan. Its main task was to make recommendations on how to improve the UN relationship with civil society, the private sector and parliaments.

[3] Rosemann, N. (2005) "The UN Norms on Corporate Human Rights Responsibility: an Innovating Instrument to Strengthen Business' Human Rights Performance", in *Dialogue on Globalization*, No. 20, August 2005, p7

[4] Oetzel, J., Getz, K A., and Ladek, S. (2007) "The Role of Multinational Enterprises in Responding to Violent Conflict: A Conceptual Model and Framework for Research" in *American Business Law Journal*, Summer 2007, vol.44, iss.2, p333

merely securing a Social License to Operate (SLO), which has been defined as existing when:

> a project has the ongoing approval within the local community and other stakeholders, ongoing approval or broad social acceptance and, most frequently, as ongoing acceptance.[5]

It is rooted in the "beliefs, perceptions and opinions held by the local population and other stakeholders" [6] regarding the MNC's operations and projects within the host community. Essentially, it comes down to the MNC doing 'just enough' to maintain a conducive environment within host communities, in order to facilitate the day-to-day running of its operations. The SLO is therefore granted by the community, and is often an intangible and ambiguous concept.

Prior to the 1990's, CSR practices were largely aimed at a corporation's ability to secure a Social License to Operate (SLO). In the mid 1990's however, the increased focus on CSR coincided with a growing global focus on environmental and human rights. Since then various global initiatives have sprung up, aimed at encouraging comprehensive CSR practices – entailing a rights focus – by MNCs, as well as creating an accepted global framework for CSR. These include Publish What You Pay (PWYP), the Extractive Industries Transparency Initiative (EITI), the Global Compact, and the Voluntary Principles (VPs) on Security and Human Rights, to name but a few. Whilst many of these initiatives have experienced multi-stakeholder (governments, business sector, and local and international NGOs) participation and support, the CSR practices of MNCs – particularly in the extractive industries – continue to face many obstacles.

By considering the CSR practices of Shell in Nigeria, pre and post-1995, as well as the local and global context within which this occurred, this study hopes to identify the influencing factors within the local-global nexus that promote and contribute to the adoption of CSR norms. These in turn may facilitate greater integration of CSR moving forward.

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[5] Boutilier, R. "What is the Social License", http://socialicense.com/definition.html,
[6] *ibid.*

Case Study: Shell Before and After The Ogoni Crisis

Nigeria, Africa's largest oil producing nation, is a prime example of the complex effects and impact that MNCs (exemplified by Shell) in the extractive industry can have on their host environments in the developing world. The Niger Delta, which accounts for the bulk of Nigeria's oil production, has largely been marginalised and excluded from the benefits of oil. [7] It has experienced persistent conflict due to the economic, political, social, and ecological effects often resulting from the oil industry, and exacerbated by it. Since the early 90's, these effects have caused the communities inhabiting the Niger Delta to rise up in protest against the government and Shell, in a bid to protect their livelihood. The Movement for the Survival of the Ogoni People (MOSOP), founded by Ken Saro-Wiwa, was an example of such a community rising up, and was a key player in the rising protests. It was – and continues to be – highly significant due to the global support that the movement received from international rights organisations. Thus following the (unjust) trial and execution of Saro-Wiwa and eight of his compatriots in 1995, a global outcry arose against the Nigerian government and Shell. This in turn led to Shell adopting drastic measures after 1995, which profoundly impacted on its CSR initiatives.

Given that Shell is one of the largest MNCs in the extractive industries, the significance of the local and global context that Shell operated in within Nigeria, the impact this had on its CSR practices, as well as the fact that two distinct time periods can be identified in relation to its practices, it makes for an interesting and appropriate case study.

Analytical Framework: Norms and International Relations

In the last three decades the re-emergence of post-positivism, and in particular theories of norms as a focus of international relations theory, have become

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[7] Watts, M. (2004) "Resource curse? Governmentality, oil and power in the Niger Delta, Nigeria" in *Geopolitics*, 2004, vol. 9, no. 1, p2

increasingly evident. International Relations norm theories refers to the body of work, which addresses the moral dimension of international relations and the wider questions of meaning and interpretation generated by the discipline. [8] This focuses on the logic of 'ought' statements in international relations, and is ideational. It is concerned with issues of justice, ethics, and rights. It looks beyond actions, to consider what motivates them. It seeks to understand the 'why' and 'how' of actions, and in order to do so takes into account the soft powers of ideas, values, and norms. [9]. Norms therefore, are regarded as moral (normative) prescriptions stressing justice and rights through moral or ethical norms of behaviour. [10] Thus norms are important because they provide the motivation for actions, which in turn guides the behaviour of actors with a given identity, within (and at times despite) the social, political and economic context in which they find themselves. They create an expectation regarding the future behaviour of actors. [11]

When looking at the development and implementation of norms – the broadly acceptable and expected practices within a specific area of focus – these aspects must underpin our understanding.

In light of this – given that the research considers CSR norms as they currently exist in the international system – it is important to consider what the expected actions of the MNC would be in relation to the pressures and context that it finds itself in. As the norms of CSR create an expectation regarding the behaviour of MNCs, one must consider how the expectation is perceived. Are there instances when the actions pursued by the MNC suggest a normative motivation, beyond that of (self) interest? Do the various local and global actors involved in the public-private partnerships – including the MNCs themselves – perceive the expectation differently? If so, how does this shape the implementation of the norms, and the behaviour of the MNC?

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[8] Brown, C. (1992) *International Relations Theory: New Normative approaches*, Hemel Hempstead; Harvester Wheatsheaf

[9] Bjorkdahl, A. (2002) "Norms in International relations: Some Conceptual and Methodological Reflections" in *Cambridge Review of International Affairs*, 2002, vol.15, no.1, p9

[10] *ibid.* p14

[11] *ibid.* p15

In more recent years, the social constructivist school of thought has contributed to the understanding of norms as espoused by norm theories, by expanding contemporary knowledge regarding the manner in which norms can and should be studied. They focus on the "origins of norms, the mechanisms by which they exercise influence, and the conditions under which norms will be influential in world politics." [12] They place an emphasis on the logic of appropriateness, as opposed to the logic of consequences, when considering the manner in which norms get adopted and implemented.

For the purposes of this research: to identify the influencing factors within the local-global nexus that promote and contribute to the adoption of CSR norms; norm theories and the constructivist school of thought inform the manner in which the collected data is analysed, as well as the type of data utilised.

Methodology: Research Process and Study Limitations

Due to the nature of the research question, the applicable research method is a within-case analysis, indicative of a detailed narrative study. [13] This is established on the basis that the research is not attempting to explicitly determine a causal path but rather is investigating the possibility that a relationship exists between the various elements of the study. It is essentially an in-depth case study. The study is divided into two time periods – before 1995 and after 1995 – in order to allow for within-case analysis, and relies on primary and secondary sources.

The focus on the period leading up to 1995 is to establish the local and global setting within which Shell operated, in order to see how this influenced its CSR practices. It therefore looks at the nature of Shell's relationship with the Nigerian federal government, as well as the impact this had on the oil producing

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[12] Finnemore, M. & Sikkink, K. (1998) "International Norm Dynamics and Political Change" in *International Organization*, no. 52, iss. 4, Autumn 1998, p889
[13] George, A. and Bennett, A. (2005) *Case Studies and Theory Development in the Social Sciences*, Cambridge/London: MIT Press, p210

communities. In order to do so the following are briefly taken into account: the agreements in place between Shell and the government, legislation regulating the oil industry, the practical outworking of the two, and their implications on the oil producing communities. Shell's CSR practices at the time are then considered in light of this local setting. Finally, the global setting is discussed. Specifically, this takes into account the local-global nexus and its key actors, as exemplified by MOSOP's role leading up to the Ogoni Crisis.

Broadly put, the focus on the post-1995 period is twofold. Firstly, it is to consider the nature of the impact that the local and global setting, leading up to the Ogoni Crisis, had on Shell's CSR practices. Secondly, it is to consider whether the impact on Shell's CSR practices had a subsequent impact on the global setting. In order to do so, Shell's rhetoric, policy restructuring and CSR initiatives adopted after 1995 are discussed. This also takes into account the existing local setting, by considering certain actions pursued by the Nigerian Federal Government during this period.

Subsequently, the possible implications for the global setting are considered, by looking at the progression that has occurred within the relevant global perspectives, and their areas of focus, regarding the role and responsibilities of MNCs. For the purposes of this study, the relevant initiatives and ideas espoused by the United Nations – in particular UNCTAD (United Nations Conference on Trade and Development) and the UNHRC (United Nations Human Rights Council) – are utilised as the main point of reference.

In light of the above, it is worth briefly mentioning the applicable study limitations.

The study is by no means exhaustive, nor does it claim to be so. As such, in instances where a correlation between the various study elements is established, this does not eliminate the possible relevance of other factors. Furthermore, given the nature of the study – a within-case analysis focused on the extractive industries (predominantly located in developing regions) – the conclusions drawn may not always be applicable to all other cases.

It is also important to note that due to the aims of the study, the effectiveness of adopted CSR practices by MNCs is not the primary concern. As such, this is only briefly mentioned, and should not be treated as an indication of bias on the part of the researcher.

Structure of Study

Chapter Two – The Local-Global Nexus and Shell's CSR Practices Prior 1995

The aim of this chapter is to establish the local and global setting within which Shell operated until 1995, in order to determine how this facilitated and affected its CSR practices. Firstly therefore a brief summary of the political and economic climate present in Nigeria, in the decade prior to 1995, will be provided. Secondly, the nature of the interaction between Shell and the Nigerian federal government will be discussed. Thirdly, Shell's CSR initiatives will be discussed in relation to the local setting. Fourthly, the global setting will be considered. Specifically, the local-global nexus (as well as its key actors) within which the events, leading up to the 1995 hanging of the Ogoni Nine, unfolded will be discussed.

Chapter Three - In the Aftermath: Shell, CSR and Governance

This chapter considers the nature of the impact had on Shell's operations by the factors discussed in Chapter Two. It therefore looks at Shell's rhetoric and CSR actions adopted after 1995. As the study is addressing both the local and global contexts in relation to CSR, and due to the significance of the Shell-Nigerian federal government relationship in contributing to the plight of the Niger Delta, key policies and actions adopted by the government during this time period will also be considered. The possible linkages between these and Shell's CSR actions will then be discussed. Finally, in light of the above, the significance of the local-global nexus on CSR will be considered.

Chapter Four – Implications for Global CSR Norms

Having discussed Shell's pre and post-1995 CSR endeavours, as well as the local and global dynamics that influenced and compelled them, this chapter considers whether there were any shifts regarding CSR on a global scale, (possibly) as a result of the Ogoni crisis. In order to do so the progression of the relevant global perspectives, and their areas of focus, regarding the role and responsibilities of MNCs will be mentioned so as to facilitate analysis.

Chapter Five - Conclusion

Lessons learned and concluding remarks.

CHAPTER TWO – THE LOCAL-GLOBAL NEXUS AND SHELL'S CSR PRACTICES PRIOR 1995

The aim of this chapter is to establish the local and global setting within which Shell operated until 1995, in order to determine how this facilitated and affected its CSR practices. Firstly therefore, a brief summary of the political and economic climate present in Nigeria, in the decade prior to 1995, will be provided. Secondly, the nature of the interaction between Shell and the Nigerian federal government will be discussed. At this point the main policies and agencies regulating the oil industry, the agreements in place between Shell and the government, as well as the subsequent impact on the oil producing communities will be briefly mentioned. Thirdly, Shell's CSR initiatives will be discussed in relation to the local setting. Fourthly, the global setting will be considered. Specifically, the local-global nexus (as well as its key actors) within which the events leading up to the 1995 hanging of the Ogoni Nine unfolded, will be discussed.

Political and Economic Climate

Nigeria's political climate has been tumultuous at the best of times. This was evident in the late 1980's and early 1990's. In the period 1990 to 1995 the leadership of the country changed three times; civil unrest was on the rise, there were numerous civilian uprisings and protests, and violent and brutal suppression of these by the military, which fuelled the discontent of the Nigerian populace. In 1986, under the leadership of General Babangida, a Structural Adjustment Programme (SAP) was adopted [14] in accordance with requirements stipulated by the International Monetary Fund (IMF), in order to access international funding. As is the case with many SAPs, the end result was not without fault. The inadequate policies, combined with poor administration and governmental corruption, caused the economy of the country to plummet into

[14] Okonta, I. and Douglas, O. (2003) *Where Vultures Feast: Shell, Human Rights, And Oil*, London / New York: Verso, p31

disarray. Inflation escalated, production dropped, unemployment skyrocketed, and the cycle of poverty was increasingly exacerbated, with the urban poor and rural communities bearing the brunt of these effects. This was particularly true for the oil-producing communities of the Niger Delta, who for decades had failed to (significantly) benefit from the oil profits gained by the federal government and oil multinationals, and were now faced with an economic crisis. As the situation worsened, the communities began to make their discontent with the federal government and the oil multinationals publically known through mobilising peaceful protests. Examples of such protests include that of the Iko people in 1987[15], and the Etche people in 1990[16], which were forcibly retaliated against by the Nigerian military.

During this time there was mounting political pressure in favour of elected representation, which ultimately pressured Gen. Babangida into scheduling elections on the 12 June 1993, the results of which were later annulled. By this stage though the pro-democracy movement was set in motion and the general was forced to hand over power to an interim government, led by Ernest Shonekan. The interim government lasted a mere 5 months, before General Abacha staged a coup on the 17 November 1993, and took over as military Head of State. [17]

Shell, the Federal Government and the Oil-Producing Communities

The relationship that existed – and continues to exist – between Shell (Shell Petroleum Development Company [SPDC] of Nigeria), the Nigerian federal government, as well as the oil-producing communities of the Niger Delta, is a complex and intricate one. It is defined by existing laws and agreements, the

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[15] Okonta and Douglas, *op.cit*, p32

[16] Clifford, B. (2002) "Globalization and the social construct of human rights campaigns" in Brysk, A. (ed) *Globalization and Human Rights*, California: University of California Press, p141

[17] Okonta and Douglas, *op.cit*, p37

manner in which they are implemented and adhered to, as well as the perceptions and expectations that this creates amongst the relevant parties.
The federal government owns 55% of the SPDC's shares through the Nigeria National Petroleum Corporation (NNPC). [18] The Nigerian economy relies heavily on oil production; currently oil accounts for approximately 95% of its export earnings, 40% of its GDP, and 80% of its government earnings. [19] Of this, Shell (along with NNPC, Elf and Agip) contributes around 42%, with Shell being the largest contributor of the four. [20] Similarly, the production levels that Shell achieves in Nigeria contribute significantly to Shell's overall profits. In fact, from 1991 to 1995, Nigeria was its third-biggest country of production after the United States and United Kingdom.[21] It was therefore in Shell's (and the federal government's) best interest to maintain its presence and production levels in the Niger Delta.

The Nigerian oil industry - its social, economic, and environmental impact - and the relationship between the federal government and the oil multinationals were 'regulated' by a number of key policies.
The core framework for oil operations in Nigeria was (and still is) set by the Petroleum Act of 1969, which vested the control and ownership of oil in the hands of the state[22]. Other pertinent legislation includes the Oil in Navigable Waters Act of 1968, the Oil Pipelines Act of 1956, the Associated Gas (Reinjection) Act of 1979, and the Petroleum (Drilling and Production) Regulations of 1969, made under the Petroleum Act. From 1988, the Federal Environmental Protection Agency Act vested the authority to issue standards for water, air, and land quality in a Federal Environmental Protection Agency (FEPA). Regulations made by FEPA govern environmental standards in the oil industry and other industries. The Department of Petroleum Resources (DPR)

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[18] Okonta and Douglas, *op.cit*, p50
[19] Idemudia, U. (2011) "Corporate social responsibility and the Niger Delta conflict: issues and prospects" in Obi, C. & Rustad SA. (ed's) *Oil and Insurgency in the Niger Delta*, London / New York: Zed Books, p168
[20] Okonta and Douglas, *op.cit*, p54
[21] *loc.cit,* p50
[22] Obi, C. and Rustad, SA. (2011) "Introduction: Petro-violence in the Niger Delta – the complex politics of an insurgency" in Obi, C. & Rustad SA. (ed's) *Oil and Insurgency in the Niger Delta*, London / New York: Zed Books, p6

also issued a set of Environmental Guidelines and Standards for the Petroleum Industry in Nigeria, in 1991. Furthermore, the Environmental Impact Assessment Act of 1992 requires an environmental impact assessment (EIA) to be carried out should a proposed project potentially affect the environment. [23] Thus in theory a framework existed that was intended to protect the environment and its people, from the negative impacts of the oil industry. In practice however:

> Most state and local government institutions involved in environmental resource management lack funding, trained staff, technical expertise, adequate information, analytical capability and other pre-requisites for implementing comprehensive policies and programmes. [24]

Additionally, the operating agreement signed between the relevant parties, the Land Use Act (LUA) of 1979 – later updated in the Laws of the Federation of Nigeria (LFN) in 1990 – and the Memorandum of Understanding (MOU) of 1986, were key elements of the federal government-oil MNC dynamic.

The operating agreement (mainly Joint Venture (JV) or Production Sharing Contract (PSC)) is intended to articulate the "legal relationship between the partners, and lay out the rules and procedures for specific areas of responsibility, as well as the meaning of joint property." [25] The operating company is responsible for the day to day running, and operations within the oil producing communities. [26] As Shell is the operating partner in the JV between itself and the Nigerian government (the largest JV of its kind[27]), it was therefore liable for any breach of law. However, although the JV was in existence since 1973, no formal operating agreement was signed until 1991. [28] This potentially left the

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[23] Human Rights Watch (HRW) (1999) "The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities", New York / Washington, pp50-52 & Practical Law (2013) "Oil and Gas Regulation in Nigeria: Overview", http://uk.practicallaw.com/5-523-4794?q=*&qp=&qo=&qe=#
[24] HRW, *op.cit*
[25] Frynas, JG. (2000) *Oil in Nigeria: Conflict and Litigation Between Oil Companies and Village Communities*, LIT Verlag Munster, p81
[26] *ibid.* p82
[27] Okonta and Douglas, *op.cit*, p2
[28] Frynas, *op.cit*

requirements, responsibilities, and expectations placed on each partner open to ambiguity. Ambiguity in turn reduces the likelihood of accountability, arguably creating an environment in which exploitation of certain parties is more likely to occur. In addition to this, due to the fact that Shell was the operating partner, the oil-producing communities were inclined to hold them responsible for any grievances that occurred, and government was not necessarily obligated to take responsibility.

The LUA placed all land in the country under the control of the state government[29], which effectively meant that any legal claim by the local communities with regards to compensation for land appropriation, and the natural resources found therein, was lost. Furthermore, it allowed the oil MNCs to gain oil and land leases directly from the government, without having to consult with the local communities. This left the local communities out of the proverbial 'oil loop' as it were, and added to the already existing tension (partially instigated by the petroleum Act of 1969), between the local ethnic minorities of the Niger Delta and the federal government. It also fuelled the animosity felt by these oil-producing communities towards the oil MNCs.

The MOU, signed by the oil multinationals with the federal government, guaranteed a profit margin of $2 per barrel of oil produced as part of the SPDC joint venture, as long as international prices fluctuated between $12.50 and $23.50 per barrel. This profit margin was increased in 1991 to between $2.30 to $2.50 per barrel, for companies that invested a minimum of $1.50 in the Nigerian economy for every barrel of oil produced. [30] The memorandum was an attempt by the federal state to boost oil exploration and production in lieu of the drop in world oil prices in the mid 1980's, and proved a lucrative endeavour as for the most part oil prices remained within the stipulated margins. It is estimated that between 1986 and 1995, Shell earned over $2 billion in profit and the federal government over $65.6billion, from its oil producing operations in the Niger

[29] Obi & Rustad, *op.cit*, p7
[30] Okonta and Douglas, *op.cit*, p 51

Delta. [31] This endeavour however did not take into consideration the people on the ground. Yet again the oil-producing communities failed to benefit and their discontent grew.

Based on the above it is evident that at the time, the local setting was more conducive in facilitating the objectives of Shell and the government, than it was in protecting and meeting the needs of the oil-producing communities. The relevant laws of the land meant that for both the MNC and government, oil production was a lucrative endeavour. This in turn meant that it was imperative for them to protect their joined operations. Furthermore, where laws and regulations that could potentially aid the communities did exist, the necessary enforcement and implementation capacity was lacking, leaving the communities limited recourse in addressing their rising concerns.

Government's Response and Shell's Community Projects; Too Little Too Late

In light of the rising civil unrest amongst the oil-producing communities, Gen. Babangida established the Oil Mineral Producing Areas Development Commission (OMPADEC) in 1992. [32] As a result of this the percentage of oil proceeds allocated to the oil-producing communities (known as the derivation formula[33]) was increased from 1.5% to 3%; the commission was intended to administer this trust, as well as monitor and manage the ecological impact of the activities carried out by the oil companies. [34] By establishing the commission Gen. Babangida hoped to appease the oil-producing communities and reduce the civil unrest, so as to improve local and international perceptions of the regime, as well as of the oil industry within Nigeria. This proved futile however, as the commission soon fell privy to inefficiency and financial mismanagement that was rife throughout government agencies. When the World Bank concluded its study

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[31] *loc.cit*, pp51-53
[32] Okonta and Douglas, *op.cit*, p32
[33] Zalik, A. (2004) "The Niger delta: 'petro violence' and 'partnership development" in *Review of African Political Economy*, vol.31, no.101, p405
[34] Okonta and Douglas, *op.cit*, pp32-33

of the commission in 1995, it stated that OMPADEC was set to fail from the onset due to misplaced priorities, the lack of appropriately qualified staff, lack of long-term planning, poor project assessment, and no integrated approach towards development. [35] It was essentially too little too late.

During this period – and even leading back to its first few decades of operating within the Niger Delta – Shell was involved with a range of community projects, arguably aimed at securing their Social Licence to Operate (SLO). As previously mentioned, this comes down to the MNC doing 'just enough' to maintain a conducive environment within host communities, in order to facilitate the day-to-day running of its operations. The SLO is therefore granted by the community, and is often an intangible and ambiguous concept. This in itself has implications with regards to the expectations that host communities might have. Due to the ambiguous nature of the SLO, it is difficult to have a set standard of acceptable practices, as what works in one community may not work in another. Simultaneously though, it means that in some instances the MNC might get away with doing very little.

It is also notable that Shell cited that its Business Principles at the time, which defined its business practice and the nature of its operation within host communities, were consistent with the OECD (Organisation for Economic Cooperation and Development) Guidelines and the ILO (International Labour Organisation) Tripartite Declaration of Principles. [36] The Guidelines were widely accepted recommendations for responsible business practice. The Declaration sets out guidelines for MNCs, governments, and employers' and workers' organisations in areas such as employment, training, conditions of work and life, and industrial relations. [37]

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[35] Okonta and Douglas, *op.cit*
[36] UNCTAD (1999) *The Social Responsibility of Transnational Corporations*, New York / Geneva, United Nations, p36
[37] International Labour Organisation (ILO) (2006) *Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration)* - 4th Edition, http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm

As the arrangements in place with the federal government facilitated Shell's operations within the Niger Delta, its community projects were for the most part aimed at reputation and risk management. [38] They comprised of Community Assistance (CA) endeavours that are akin to corporate philanthropy rather than long-term development. Thus until 1995 their community projects were focused on 'giving things' to the communities in the following areas:

- water and sanitation – community water projects;
- health care – community hospitals and health care;
- voluntary training – basic skills in welding, plumbing, masonry, carpentry, auto engineering and electrical engineering;
- education – programme of scholarships (university and secondary schools), building of classroom blocks;
- agriculture – agricultural extension advisers to support farmers and cooperatives;
- micro-credit and business development – income generating projects (e.g. water, land transport and fishing)
- and other infrastructure – roads, rural electrification projects, land reclamation for community expansion. [39]

While projects of this nature may be beneficial, when implemented on an ad-hoc basis, and without a focus on sustainable development that incorporates the views and long-term needs of the communities, they can result in conflict and disillusionment. The effects of such projects therefore need to be considered within the existing political and social context.

In the case of the Niger Delta, the oil-producing communities had been politically and economically marginalised. This was largely as a result of the laws that govern the ownership of land and oil, as well as the distribution of oil profits, and was exacerbated by ethnic tensions and increasing resource scarcity. In the midst of this, Shell's relationship with the federal government was perceived as biased towards the state, due to the existing arrangements between the two

[38] Ite, U. (2004) "Multinationals And Corporate Social Responsibility In Developing Countries: A Case Study Of Nigeria" in *Corporate Social Responsibility & Environmental Management*, no. 11, p5
[39] *ibid.*

(LUA, MOU, NNPC and SPDC shares percentages etc.), as well as their actions. The arrangements in place essentially meant that it was imperative for both Shell and the federal government to protect Shell's assets, which in turn had direct implications for the oil-producing communities.

Shell imports its own arms and ammunition, and has its own private police force, whereby Nigerian police officers are assigned to, paid by, and instructed directly by the oil multinational. The locals of the Niger Delta refer to them as 'Shell Police'. [40] At its most base level this creates animosity between the oil-producing communities and the oil multinational. Perhaps more significantly however, it fuels ethnic tensions and impacts on issues of governance.

When tensions arise and Shell feels threatened - as was the case during the 1990 protests by the Etche people - Shell Police are there to protect the multinational's staff and assets. During the Etche protests Shell also called for 'security protection', which led to the brutal suppression of the protests by armed military troops, and the death of 80 Etche protestors.[41] The complexity of this dynamic is integral to the plight of the Niger Delta. The military, which should exist to protect the people, is feared by the people and acts as an extension of the federal government to protect its – as well as Shell's - oil interests. The loyalty of the Shell Police theoretically lies with the oil multinational, and not its own people. Those members of the oil-producing communities, who are employed by Shell, are often caught in this conflict of loyalties. This is compounded by the deeply entrenched ethnic tensions that exist between the ethnic minorities of the Niger Delta, and the ruling ethnic majorities predominantly situated in the North (Hausa-Fulani), East (Igbo), and South-West (Yoruba) regions of Nigeria. [42]

The ruling majorities, by virtue of their privileged economic, political, and social standing – and in light of the ineffective implementation of the derivation formula, resulting in the mismanagement and misappropriation of oil profits –

[40] Okonta and Douglas, *op.cit,* p59
[41] Clifford, *op.cit*, p141
[42] Zalik, *op.cit*, p405

benefit the most from high skills employment in the petroleum sector.[43] The implementation of the derivation formula also added impetus to the pursuit of state creation by the minorities of the Niger Delta, which peaked during the early 1990's, in the hopes of re-directing resources towards their region. Ultimately this exacerbated communal tensions by creating yet another level of minority-majority relations through the power struggles that emerged in the new administrations.[44] Thus ethnic tensions are fuelled by the struggle between the 'haves' and 'have-nots' in the pursuit of economic freedom and political representation.

Environmental concerns were another crucial factor that impacted on the political and social context of the Niger Delta. Although these concerns have been present since the inception of oil exploration in Nigeria, they became an increasingly prevalent aspect of the oil-producing communities' agenda in the late 1980's and early 1990's. From the initial seismic surveys and building works, to the massive ecological degradation caused by ongoing gas flaring, oil spills, pipeline leaks, and acid rain[45], the environment of the Niger Delta was perishing, along with its people. The Inspectorate Division of the NNPC highlighted this as early as 1983[46], which – given the fact that these were government officials – pointed to the severity of the situation. No part of the environment had been left unaffected. Water sources have been polluted, aquatic life has been diminished, the air has been poisoned, and soil and vegetation have been destroyed, endangering the health and way of life of the local communities:

> unfortunately, increasing oil exploration had made the region economically and socially prostrate, courtesy of extensive environmental degradation and ensuing socio-economic disruptions and poverty.[47]

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[43] *loc.cit*
[44] Zalik, *op.cit*, pp404-405
[45] US NGO Delegation Trip Report (1999) *Multinational Corporations, Environmental Destruction, Death & Impunity in the Niger Delta*, Environmental rights Action/Friend of the Earth – Nigeria, pp4-7
[46] Okonta and Douglas, *op.cit*, p64
[47] Ikelegbe, A. (2005) " The Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria" in *Nordic Journal of African Studies*, 2005, no. 14, iss.2, p214

When confronted on these issues by the communities, the oil multinational continued to minimise the extent of its impact. Instead it tried to explain them away by citing a broader context of over-population, over-farming, deforestation, and industrialisation. [48] It was also prone to blaming some of the problems, such as pipeline leaks, on sabotage thus (indirectly) placing the responsibility with the communities in question. While at times claims of sabotage were valid, this type of rhetoric did not aid the already fragile relationship that existed between the oil multinational and the oil-producing communities, and between the oil-producing communities and the federal government.

There was therefore a disconnect between the nature of the CA projects implemented by Shell - and their specific areas of focus - when viewed in relation to the relevant political and social context, and Shell's influence within it. The negative social, political, and economic impact of the conflict of loyalties, violent outworking of the 'Shell-Federal Government' partnership against the people, and environmental devastation far outweighed the benefits of the CA projects. They were at times subpar, ineffectively monitored, and failed to negate the negative effects of the oil industry in the region.

The nature of the operating agreement, as well as the failure on the part of the Nigerian government to effectively develop and assist the oil-producing communities meant that Shell was perceived by the oil-producing communities as responsible for the development of the region. This in turn heightened the nature of community expectations; Shell was expected to deliver in areas that are traditionally the responsibility of government. The nature of the SLO requirements was therefore affected. There was a distinct conflict between what the MNC understood its responsibilities to be, and community perceptions and expectations. This was further exacerbated as a result of the regulatory framework, intended to protect the environment and people, proving futile in

[48] Boele, R; Fabig, H. & Wheeler, D. (2001) "Shell, Nigeria and the Ogoni. A study in Unsustainable development: I. The Story of Shell, Nigeria and the Ogoni People – Environment, Economy, Relationships: conflict and prospects for resolution " in *Sustainable Development*, 2001, vol. 9, p77

practice. By virtue of it operations, Shell was also the most visible actor within the communities, and hence by default the more obvious point of contact.

Having discussed the relevant core dynamics of the local context within which Shell operated and implemented its CA projects, it is also important to consider the relevance and impact of the global context.

MOSOP – The Local and Global Context

It was in the midst of these rising tensions, that the Movement for the Survival of the Ogoni People (MOSOP) was established.

The Ogoni are one of the smallest ethnic groups in the Niger Delta, accounting for approximately half a million people. When MOSOP emerged in August 1990, it resulted in the creation and coming together of pan-Ogoni organisations such as the Federation of Ogoni Women's Associations, the Conference of Ogoni Traditional Rulers, the National Union of Ogoni Students, The National Youth Council of Ogoni People, and the Council of Ogoni Churches, amongst others. [49] It therefore symbolised unification in the pursuit of a common goal - that of saving Ogoniland (and by default the Niger Delta) – and was founded on a democratic, grass-roots base. [50] Led by Ken Saro-Wiwa, a renowned writer and activist, the movement would alter the course of the Nigerian oil industry.

Shell, and the joint venture partners had five major oil fields with five flow stations in Ogoniland [51], dating back to 1958. In the three decades that Shell carried out its operations in Ogoniland, there were numerous oil spillages and routine incidents of gas flaring, which negatively affected the environment and the local communities. Shell's seemingly indifferent response in addressing

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[49] Manby, B. (2000) *Shell in Nigeria: Corporate Social Responsibility and the Ogoni Crisis*, A case study published by the Carnegie Council on Ethics and International Affairs, 2000, no. 20, p5
[50] Okonta and Douglas, *op.cit,* p118
[51] *ibid,* p75

these issues, and lack of coordinated clean-up and preventative measures, created hostility between the oil multinational and the Ogoni. This was further exacerbated by the social and political context of the time, discussed earlier in this chapter. It was in lieu of these grievances that MOSOP presented the Ogoni Bill of rights (OBR) to the federal government, in October 1990 [52], which addressed matters of political autonomy and representation, economic development, and environmental preservation.

In November 1992, after an insignificant response from the federal government, MOSOP issued a thirty-day ultimatum to the oil companies operating on 'their' land. The ultimatum addressed issues of back-rents, royalties, compensation for the environmental degradation, as well as the initiation of dialogue between Shell, the federal government and community representatives. [53] The companies in question dismissed the ultimatum. During this time MOSOP was very active locally; crucial to advancing its cause however was the pursuit to promote it globally.

In July 1992, prior to the thirty-day ultimatum, Saro-Wiwa travelled to The Hague, registered the movement with the Unrepresented Nations and Peoples Organisation (UNPO), and presented his case in Geneva, to the United Nations Working Group on Indigenous Populations. [54] This was in line with the minority-rights issues around which the OBR was originally focused. Due to the very specific and restricted nature of this focus however, MOSOP initially failed to engage the interest of international human and environmental rights NGOs. [55] Amongst these were Greenpeace, Friends of the Earth, Human Rights Watch, and Amnesty International. From late 1992 onwards though, a number of factors began to shift their perspectives.

By the time the thirty-day ultimatum was presented, MOSOP had recast its focus to emphasise the environmental devastation resulting from the oil industry –

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[52] Okonta and Douglas, *op.cit,* p119
[53] *loc.cit*
[54] *ibid.*
[55] Clifford, *op.cit*, p142

specifically, Shell's operations within Ogoniland and the Niger Delta. Shortly prior to this, in October 1992, a documentary aired in Britain outlining the environmental and social plight of the Ogoni. This strengthened their case with the global environmental rights organisations, as their claims were now being verified by objective external sources. In January 1993, in time for the start of the United Nations Year of Indigenous Peoples, MOSOP staged a peaceful protest, attended by about 300,000 Ogoni.[56] This signalled the start of its mass mobilisation, which aided its standing with the INGOs as a legitimate representative movement. It further strengthened its local influence, and the federal government finally began to take notice.

In April 1993, the workers of a pipeline contractor commissioned by Shell begin to dig up farmland in the village of Biara. When the locals protested, citing that no environmental impact assessment (EIA) had been carried out and no compensation had been paid, they were violently dispersed by the Nigerian military unit escorting the workers.[57] Thus commenced the calculated repression of Ogoni protest by the federal government. This included military raids, and the arrest and detention of suspected MOSOP members and sympathisers.[58] The nature and extent of the oppressive measures taken against the Ogoni, while devastating, helped capture the attention of the global human rights organisations. In doing so, a global, transnational platform was established from which MOSOP could articulate its plight and objectives.

The emergence of MOSOP - its cause and objectives - coincided with the growing prevalence of environmental rights issues on the global agenda. Environmental rights organisations had been campaigning against the negative impacts of the oil industry and oil multinationals' practices for a number of years. This had gained impetus since the mid 1980's. In light of this, when MOSOP reframed its focus and began lobbying against the oil industry (and Shell in particular) and resultant ecological devastation in Ogoniland, its objectives became more aligned

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[56] Okonta and Douglas, *op.cit*, p119
[57] *ibid.* p120
[58] Obi and Rustad, *op.cit*, p8

with those of the global organisations. When MOSOP presented its thirty-day ultimatum to Shell, therefore, it gave the global organisations an opportunity to direct their criticisms at a specific target. Ogoniland became the 'bull's-eye' of Shell's operations in the Niger Delta.

The organisations begin to give increasing prominence to the Ogoni in their publications and domestic activities, observers from these organisations began visiting to gain first-hand insight into the situation, and international media networks started covering the events taking place. [59] The same was true for the human rights organisations. They adopted similar approaches as a result of the human rights abuses that became evident in light of the repressive military measures initiated against the Ogoni, by the federal government. [60] As a result of these actions international cristicism against Shell, and the federal government of Nigeria, began to grow. Therefore when Ken Saro-Wiwa, and fifteen other MOSOP leaders were arrested in May 1994, following the death of four prominent Ogoni leaders, the stage was set for a mass, global outcry.

Of the sixteen individuals on trial, nine – including Saro-Wiwa – were eventually convicted and sentenced to death without the right of appeal, by a special (and arguably illegitimate) tribunal established for the case. [61] On the 10 November 1995, the Ogoni Nine were executed.
The federal government, Nigerian legal system, and Shell with its apparent lack of decisive action on behalf of the accused in question, were severely criticised during this time.

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[59] Clifford, *op.cit,* pp142-144
[60] *ibid.*
[61] Manby, *op.cit,* p6

Comments

By considering the context and manner in which events unfolded in the Niger Delta during the period in question, a number of key factors emerge that are pertinent to the discourse surrounding CSR within the local-global nexus.
In the first few decades following the commencement of Shell's operations in the Niger Delta, the local host setting was, for the most part, favourable towards the oil multinational. That is not to say that domestic opposition was non-existent. Rather the favourable nature of the setting was due to the arrangements in place between the MNC and the federal government, as well as the nature of governance. This meant that the MNC's oil operations were largely unhindered and unchecked, contributing to the extensive environmental degradation, and economic and social devastation of the region.

The joint oil venture, LUA and MOU helped to secure the interests of both Shell, and the federal government. The predominantly military regimes were also less concerned with the interests and well-being of their people than might have been facilitated if other forms of governance structures were in place. While no perfect system of governance exists, some are arguably better suited than others towards promoting political and economic accountability, and addressing the needs of the people. The ineffective implementation of the derivation formula; the nature of the relationship between Shell, the federal government, the Nigerian police force, and the Nigerian military; and the failure of official responses such as OMPADEC, in addressing the crisis of development and environmental deterioration in the Niger Delta [62] is evidence of this.

At the onset of the oil industry, and its first few decades of operations in Nigeria, global pressures regarding environmental rights and the role of business (specifically in the extractive industries) were not significantly intense. Thus the local host setting was favourable and global pressure was minimal. As these

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[62] Ahonsi, B. (2011) "Capacity and governance deficits in the response to the Niger delta crisis" in Obi, C. & Rustad SA. (ed's) *Oil and Insurgency in the Niger Delta*, London / New York: Zed Books, p37

issues gained increasing prominence on the global agenda from the mid 1980's onwards however, this setting began to change. MOSOP's emergence, and to a large extent its success in claiming a stake on the global agenda, is indicative of this. The fact that it succeeded in capturing the attention of global environmental rights organisations, only once it had recast its aims and objectives in line with global objectives, is crucial to the local-global nexus. This is also true of the global human rights organisations.

As the environmental plight of the Ogoni started to gain global prominence, it made it more likely that it would capture the attention of other rights organisations. The nature and extent of the oppressive measures taken against the Ogoni from 1993 onwards, by the federal government, incited extensive criticism from the global human rights regime. This in no way minimises the oppression experienced by many oil-producing communities of the Niger Delta prior to 1993. It does however point to the relevance of the global context in trying to alter the local context. It is at the point where local rights interests intersect with global rights interest, that their impact is that much more effective.

This dynamic gave rise to increasing global criticism of both the Nigerian state and Shell. Although Shell had experienced such criticism in the past, it now became the focus and target of the global environmental rights regime. It's operations, community projects, ties with the federal state and military, and contribution to the environmental and human rights crisis (that was fast spiralling out of control) came under intense scrutiny. The local host setting was now less favourable towards the oil multinational, and simultaneously global pressures were intensifying. It is within this context that Shell's subsequent CSR policies will be considered.

CHAPTER THREE – IN THE AFTERMATH: SHELL, CSR AND GOVERNANCE

There is no doubt that the events and interactions of the relevant local and global actors, leading up to the 1995 execution of the Ogoni Nine, had a significant impact on Shell's operations within the Niger Delta. This chapter considers the nature of the impact by looking at Shell's rhetoric and CSR actions adopted after 1995. As the study is addressing both the local and global contexts in relation to CSR, and due to the significance of the Shell-Nigerian Federal Government relationship in contributing to the plight of the Niger Delta, key policies and actions adopted by the government during this time period will also be considered. The possible linkages between these and Shell's CSR actions will then be discussed. Finally, the significance of the local-global nexus on CSR, in light of the above, will be considered.

Shell After 1995; Rhetoric, Policies and Actions

In light of the trial and execution of the Ogoni Nine, there was a very public local and global outcry directed at Shell, and its operations, which were subjected to much scrutiny and analysis in the media. It was during this time that Shell began to alter its public and internal rhetoric, in order to salvage its reputation and operations, moving forward. The company affirmed its commitment to the Universal Declaration of Human Rights, on a number of occasions in early 1996.[63] In May of 1996, amidst concerns about the trial that 20 more Ogoni individuals were facing before the same civil disturbances special tribunal that sentenced Saro-Wiwa, Shell stated:

> The Nigerian Government has a duty to investigate the murder of the four Ogoni leaders. And if those investigations lead to the arrest and trial of suspects, then no-one has the right to oppose due legal process. But trials must be fair. And they must be seen to be fair.[64]

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[63] Manby, *op.cit,* p7

[64] Shell International Limited Press Release (1996) *Fair Trials for the Ogoni 19*, May 17, 1996

Although lacking in detail and substance, the statement was indicative of Shell's attempts to alter its public image as a concerned corporate citizen. At the same time, Shell proposed a 'Plan for Action in Ogoniland'. The plan outlined a number of steps in order to facilitate the process of reconciliation. These included the cleaning up all oil spills that had occurred since the company withdrew staff in 1993 (regardless of the cause, sabotage or otherwise), making safe all facilities, rehabilitating and (if need be) maintaining past community projects, and investigating future development projects in the area.[65] Given that the company failed to inform and discuss the plan with MOSOP however, it was seen as yet another unilateral act on the part of the MNC that failed to acknowledge the significance of the local organisation and people. Such action was in line with Shell's interaction with the oil producing communities prior to 1995, and did nothing to aid the already conflicted situation.

A more comprehensive development was Shell's revision of its Statement of General Business Principles in 1997 (originally drafted in 1976). The revised statement acknowledged its accountability to shareholders, customers, employees, all those with whom they do business, and society as a whole. It also incorporated Shell's commitment to contribute towards sustainable development. [66] While re-affirming its pledge to stay out of politics, Shell acknowledged the responsibility to speak out on issues deemed relevant to its businesses. [67] With regards to society, this included issues related to fundamental human rights, as well as health, safety, security and the environment. [68] This shift resulted in the publication of a group 'Sustainable Development Management Framework and Road Map'. A valuable end result of the publication was the commitment to triple bottom line reporting against environmental, social and economic performance. [69]

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[65] Boele, Fabig, Wheeler, *op.cit,* p83
[66] Shell (1997) Shell General Business Principles, http://www-static.shell.com/content/dam/shell/static/public/downloads/corporate-pkg/sgbp-english.pdf
[67] Bird, F. (2004) *Wealth And Poverty In The Niger Delta: Reflections On The History Of Shell's Operations In Nigeria*, Concordia University, 2004, p15
[68] Shell (1997), *op.cit*
[69] Ite, U. (2007) "Changing Times and Strategies: Shell's Contribution to sustainable community Development in the Niger Delta, Nigeria" in *Sustainable Development*, 2007, no. 15, p6

This became evident in subsequent annual reports published and made publically available by Shell. At the 1997 shareholders meetings of the Royal Dutch/Shell group, the company also published the first annual report on the operations of SPDC surrounding issues of environmental standards and human rights, and the first group-wide report on health, safety, and the environment. [70] Furthermore, from 1997 to 1999, the annual reports displayed a distinct shift in focus towards issues of values, principles, human rights, and their relevance in the creation and implementation of sustainable development practices.

Shell Nigeria also undertook significant organisational restructuring. This resulted in the establishment of the Community Development (CD) Programmes Department in 1997. The department was to guide and implement the new approach to development in the Niger Delta. [71] More specifically, this signified the shift from the CA (corporate philanthropy) model of the past, towards a model that emphasised the role and relevance of the communities within the development process. In 1998, 25 Nigerian professionals were recruited into the CD Department to provide expertise in areas such as health care, agriculture, education, water and sanitation. This was subsequently followed in 1999 by the formal establishment of the community development function as a key business area in the company. [72] At the outset therefore it seemed that Shell had considered what was lacking in its past interactions and ad-hoc projects within the oil producing communities, and was moving away from a 'unilateral', top-down approach towards a bottom-up, partnership approach.

By 1998 its community spending had increased by 37%.[73] Coordinated, comprehensive (addressing pressing economic, environmental, and social needs) community development plans were being implemented, with the participation of the communities themselves. This included areas of education, healthcare,

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[70] Manby, *op.cit,* p8
[71] Ite (2007), *op.cit,* p6
[72] Shell Petroleum Development Company (SPDC) (1999) *People and the Environment: 1998 Annual Report*, Lagos: SPDC
[73] Eweje, G. (2006) "The Role of MNEs in Community Development Initiatives in Developing Countries Corporate Social Responsibility at Work in Nigeria and South Africa" in *Business & Society*, 2006, vol. 45, no. 2, p108

income generation, and so forth. Community development activity in Ogoniland, in the medical, educational and agricultural fields had also resumed, seemingly without the intent of resuming oil-producing activities.[74] Even if the motives at this point in time were to improve Shell's reputation and build up trust in order to resume production in the long-term, it was arguably a positive move, which could have potentially contributed to long-term community development that is pivotal for sustainable development.

By 2000 however, it became evident that there was a lag between Shell's rhetoric and policies on the one hand, and their practical implementation and quality of the community development projects on the other. Increased spending and increased development projects did not necessarily result in greater efficiency and sustainable development. The strong company rhetoric regarding principles, human rights, and sustainable development became somewhat watered down, and incidentally more realistic. This was evident in Shell's 2000 and 2001 editions of the annual *People Planet & Profits* report, which were more practical than the previous editions.[75] The focus was not so much on emotive rhetoric as it was on actual data and information regarding its performance in the social, economic, and environmental sphere of influence.

Reports prior to 2000 were focused on articulating Shell's commitment to the new Business Principles, to their values, to the concept of sustainable development, as well as the manner in which they wanted to achieve this. Subsequent reports are more focused on documenting the actions that have been pursued, limitations that they may have come across, as well as ways of trying to improve on this. As indicated in the 2000 report, "An important part of building confidence is the publication of reliable information that gives a fair picture of our performance."[76] Furthermore, increased attention was given to the verification of data, as well as the type of data that was being verified. For example, Shell voluntarily tested out the Danish Centre for Human Rights'

[74] Boele, Fabig, Wheeler, *op.cit*, p83
[75] Tangen, K. (2003) "Shell: Struggling to Build a Better World?" an *Fridtjof Nansen Institutt Report*, 2003, no.1, p10
[76] Shell (2000) *People, Planet and Profits; the Shell Report 2000*, p4

proposed Human Rights Impact Assessment tool, aimed at helping companies assess the manner in which they address human rights issues. [77] The 2001 report also outlined their development of Key Performance Indicators (KPI), which were intended to help:

> measure and drive progress in critical areas of economic, environmental and social performance. We see KPIs as the logical basis for targets and milestones and for developing standards of reporting and verification. [78]

While one cannot deny that the reports are important to Shell's aims at portraying an acceptable public image as a responsible corporate citizen, their focus on supplying strategic and verifiable data, and endeavours of contributing towards standardised reporting for the oil industry, are also valid.

In 2001 Shell also commissioned an independent evaluation of its community development projects in the Niger Delta. At the time of the evaluation, there were 408 development projects on Shell's books; the evaluation looked at 82 of them. [79] The (leaked) report concluded that the projects were too centralised and were still in essence buying off the communities with gifts. [80] This highlighted the fact that in many instances the CA approach continued being utilised, thus hindering the effectiveness of the transition to the CD approach. Limitations to corporate capacity to genuinely implement a CD approach in all communities meant that supply-driven development projects, without any capacity (absorptive and executive) on the part of the community, or feasibility study to ensure sustainability, were still being undertaken.[81]

The culmination of factors led to Shell adopting the Sustainable Community Development (SCD) strategy from 2003 onwards. This is essentially an extension of the CD strategy. It emphasises not only the role and relevance of the

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[77] Shell (2001)*People, Planet and Profits; The Shell Report 2001*, p38
[78] *ibid.* p14
[79] The Economist, (2001)"Nigeria and Shell: Helping but not Developing", in *The Economist*, May 10, 2001, http://www.economist.com/node/617266
[80] Ite (2004), *op.cit*, p7
[81] WAC Global Services (2003) *Peace and Security in the Niger Delta: Conflict Expert Group Baseline Report*, a Working Paper for SPDC, 2003, p19

communities but also establishes the corporate-community structures necessary to enable and facilitate the integration and sustainability of the CD projects. Key project areas include economic empowerment, human capital development, healthy living and provision of basic services. Increased emphasis is placed on partnerships between Shell, various stakeholders and interested parties – such as corporate bodies, civil society, Nigerian government agencies, and international organisations - as a strategy for achieving sustainable development in the Niger Delta.[82]

In addition to the structural, policy, and programme changes discussed above, it is notable that in the post-1995 period, Shell has engaged in dialogue, and entered into partnerships, with a number of local and international NGOs in an attempt to improve its image, gain input, and increase its accountability on human and environmental rights related issues. Some of the organisations in question include Amnesty International (AI), Pax Christi, USAID, AfriCare, and Investment Climate Facility for Africa (ICF). Following the revision of its Business Principles, AI and Pax Christi expressed their appreciation of the "pioneering role that Shell is fulfilling in recognising that multinational corporations bear responsibility in the field of human rights." [83]
Shell has also entered into strategic partnerships with, amongst others: the Diamond Bank Nigeria, the International Finance Cooperation (IFC) and the International Institute for Tropical Agriculture (IITA).

Furthermore, in 2000 Shell adopted the Voluntary Principles (VPs) on Security and Human Rights. [84] The principles have been birthed out of an ongoing dialogue between governments, NGOs and MNCs in the extractive industries. They guide companies on how to maintain the safety and security of their operations within an operating framework that encourages respect for human rights. Shell has also engaged with Nigerian government agencies, including the

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[82] Ite (2007) *op.cit,* p5
[83] Shell (1998) "Profits and Principles – does there have to be a choice?" *The Shell Report 1998*, p39
[84] Voluntary Principles on Security and Human Rights (2000), http://www.voluntaryprinciples.org/for-companies/

National Human Rights Commission and security authorities, to determine how best to contribute to the effective implementation of the VPs in the Niger Delta. [85] Over and above this, Shell has committed to the Extractive Industries Transparency Initiative (EITI), established in 2002, which holds the premise that transparency will help citizens to 'call their rulers to account', leading to better accountability and governance. [86]

Considering the above developments, it is clear that there were distinct and significant adjustments implemented by Shell with regards to its CSR activities, after 1995. These were both rhetorical, as well as practical. In the initial aftermath of the 1995 Ogoni crisis, there was an influx of rhetorical statements, campaigns, and reports aimed at altering its public image, and aligning itself with the relevant rights groups. This resulted in certain policy and organisational restructuring, which had practical implications for Shell's projects and community engagement on the ground. This is indicative of a change in the traditionally profit-focused consciousness of the business. While there is no denying that profit-making is still a key priority, the inclusion and implementation of policies that are considerate of global rights issues - and in particular human rights - suggests a re-thinking of the role of the corporation within society.

Notably, Mark Moody-Stuart (Shell's chairman, 1998-2001) gave some credit for his own views on CSR to a social activist who reportedly challenged him to reverse the standard business notion of a company and its stakeholders.

> Rather than seeing the corporation at the centre, surrounded by the individuals or groups it impacts or is affected by, the competing perspective views the society as central, with the corporation as only one of many stakeholders in the society. [87]

Shell's increasing attempts to include the participation of the oil-producing

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[85] Hennchen, E. (2011) *The role of oil mayors in supporting sustainable peace and development in Nigeria: the case of Royal Dutch Shell*, p137
[86] Shaxson, N. (2009*) Nigeria's Extractive Industries Transparency Initiative; Just a glorious audit?*, Royal Institute of International Affairs, Chatham House, p44
[87] UNCTAD (1999) *op.cit*, p36

communities in the establishment, implementation and ownership of development projects is indicative of this. Furthermore, the engagement with local and international rights NGOs helps foster the notion that its actions and policies were now taking into consideration values and ideas that previously held lesser importance for the MNC.

One could also argue that the self-commissioned external audit of its development programmes is suggestive of a genuine motivation and commitment towards its social impact. However, one must bear in mind that the report was not officially made public by Shell. Instead, the public became aware of it once the report was leaked.   In light of the fact that the report was critical of two-thirds of the projects that it evaluated, the decision on the part of the MNC not to disclose it indicates that reputation management continues to be a factor in its endeavours.

It is apparent from the above narrative that the core focus areas of (Shell's) CSR practices have remained fairly constant. Many development projects, for example, are related to infrastructure, education, healthcare, and environmental management, which was also true of CSR practices prior to 1995. The move from CA to CD to SCD is – at least in theory – more about the shift in the quality, integration, and considerations of the programmes, than about a shift in the areas of focus. The transition from one level to the next (CA→CD→SCD) has been neither seamless nor without fault however.

This is evident in the continued instability and security concerns that affect both the oil producing communities, as well as Shell's operations within the communities. To some extent the instability is exacerbated by Shell's presence. This is partially as a result of inequitable distribution of wealth and projects implemented amongst the communities, as well as the operational plants. There are numerous examples of this. Included amongst them are:

- pipe-borne water and electricity at the Forcados terminal but faulty pipes and no electricity in the neighbouring Ogulagha community.
- drainage systems and sanitation available at the Soku Gas Plant but

flooding and water-borne diseases in the Soku village .

- Social infrastructure (such as schools and hospitals) functions in some areas (eg. Ogulagha) but suffers from a severe lack of human resources and equipment in others (e.g. Soku). [88]

Given though that development and security are traditionally the role of government, and in light of the complex economic, political and social context of the Niger Delta (as discussed in chapter 2), Shell's involvement therein after 1995 must be contextualised alongside the Nigerian government's response.

Nigerian Federal Government; Policy Adjustments and Implementation

Nigeria remained a military state until 1999. The initial response of the Nigerian government therefore, to the immense local and global outcry after the execution of the Ogoni nine, fell predictably short of the growing local and global expectations. It has been said that Gen. Abacha (who remained in power until 1998) stated he did not understand what the fuss over the death of just one man (Saro-Wiwa) was about. [89] For the most part, the status quo was maintained. This meant the continued violent and brutal suppression of the oil-producing communities and the then mostly non-violent opposition movements, including those in the Delta, Rivers, and Bayelsa states. [90] The role of the oil MNCs (and in particular Shell) in relation to the violence and security threats during this time continued to be dubious.

There was also a lack of willingness on the part of government to contribute towards CSR initiatives proposed by the Joint Venture partners (Shell, Elf, Agip, NNPC). For example, in 1997, a business programme including community and environment projects was proposed. Each partner was to contribute towards the total budget, based on its percentage share in the JV. This meant that funds

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[88] WAC Global Services, *op.cit*, p44
[89] Okonta and Douglas, *op.cit*, p174
[90] Okonta and Douglas, *op.cit,* pp142-145

needed to be made available from the government's 1997 budget, in order to cover the NNPC's share of the costs. Sufficient funds however were not made available. [91] The JV budget was therefore cut by 40%, which had real implications for the community and environment projects. [92] While it is understandable that the government budget needs to account for necessary expenditure required for the running of the country, this was also indicative of the potential role that government could play in ensuring the success or failure of CSR initiatives.

Under the military regime there were arguably no effective policy changes adopted regarding the protection of the environment, the distribution of wealth amongst the oil-producing communities, and the regulation of the oil industry. In terms of government agencies, the Niger Delta-based OMPADEC continued to exist albeit inefficiently. The decision by Gen. Abacha to freeze OMPADEC's bank accounts (supposedly to inspect its books) in 1995 only exacerbated the dire situation facing the Niger Delta. The creation of another development agency, the Petroleum (Special) Task Force (PTF), set up in March 1995 by Gen. Abacha, proved futile too. The PTF confined its activities to the northern part of the country [93], which meant that the needs of the oil-producing communities were not taken into account. Furthermore, some of the PTF officials have since been accused of nepotism and financial recklessness. [94] It was only in 1999, that potentially significant changes began to take place, namely: the transition to democracy, the creation of the Niger Delta Development Commission (NDDC), the adoption of the Nigeria Extractive Industries Transparency Initiative (NEITI), and the Nigerian Oil and Gas Industry Content Development Act.

Despite the heavy-handedness of the military regime, the pro-democratisation movement continued to grow, and Gen. Abacha indicated that he would hand

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[91] Shell (1998), *op.cit,* p45
[92] *loc.cit*
[93] Soremekun, K. (2011) "Nigeria's oil diplomacy and the management of the Niger Delta crisis" in Obi, C. & Rustad SA. (ed's) *Oil and Insurgency in the Niger Delta*, London / New York: Zed Books, p 105
[94] Okonta and Douglas, *op.cit,* p38

over power to a so-called 'democratic government' in October 1998. He died in July of that year however, and Gen. Abubakar took over as military president. A new political transition was announced, which was to see the transfer of power to a democratically elected government in May 1999, when Olusegun Obasanjo was sworn in as president. [95] As one of his first presidential acts, President Obasanjo increased the percentage of oil proceeds to be allocated to development of the oil-producing communities from 3% to 13%. [96] At the same time he sent a bill to the national assembly in order to set up the NDDC. The bill, although heavily criticised, especially by deltans, was passed in 2000. [97]

The main objective of the NDDC is to formulate and implement programmes for the development of the region. Some of the focus areas are transportation, health, education, industrialisation, agriculture, housing and telecommunications. Its funding is acquired via various sources, including (but not limited to): the Nigerian federal government, oil and gas companies (3% of total annual budget) and the Ecological Fund. [98] The NDDC has also collaborated with the various stakeholders (oil companies, development agencies, civil society) to develop the Niger Delta Regional Development Master Plan, as well as a Partner for Sustainable Development (PSD) forum to facilitate the implementation of the plan. [99] Furthermore, the NDDC Act tried to make provision for increased accountability, monitoring and effective financial management. However, although it has implemented numerous projects across different sectors of the delta since its establishment, the NDDC has had mixed reviews. A number of development agencies, civil society organisations, and oil-producing communities have deemed it largely unproductive, ineffective, susceptible to corruption, and lacking in regulation and transparency. Not unlike its predecessors therefore, it has failed to meet expectations thus far. [100]

[95] *loc.cit*, pp39-40
[96] *ibid.* p41
[97] Omotola, J.S. (2007) "From OMPADEC to NDDC; An Assessment of State Responses to Environmental Insecurity in the Niger Delta, Nigeria" in *Africa Today*, 2007, vol.54, no.1, p80
[98] Soremekun, *op.cit*, p 105 & *ibid.* p81
[99] *loc.cit*
[100] Soremekun, *op.cit,* p84

Another key response put into action by the federal government - and with which Shell has fully cooperated - was the NEITI, inaugurated in February 2004 with the establishment of a national stakeholder-working group to guide its development and implementation. [101] This was meant to be the national implementation of the global EITI. The initiative is mandated by law, "to promote due process and transparency in extractive revenues paid to and received by government as well ensure transparency and accountability in the application of extractive revenues."[102] This is done through audits, working with government agencies and stakeholders to remedy lapses identified via the audits, and building the capacity of civil society to monitor and hold the MNCs and federal government accountable. The audit reports of 1999-2004 of the oil and gas sector were up to that point unparalleled with regards to the content and information made publically available, and definitely contributed towards greater transparency. It remains to be seen however, whether the initiative will foster better governance and accountability in the long run; so far the results have at best been limited. [103]

The final response also briefly worth mentioning for the purposes of this paper, is the passing of the Nigerian Oil and Gas Industry Content Development Act of 2010. The Act was the "cumulative result of decades of attempts by the government and stakeholders in the petroleum industry to ensure that the industry provides local value and maximized benefits to Nigerians." [104] It addresses issues of local skills and technology development; the utilisation of Nigerian human and material resources, as well as services; and the retention by the oil operators and contractors of 10% of their profits in Nigerian banks. [105] It also sets a target stipulating the percentage of the Act's requirements that oil companies need to meet. Although the Act could potentially benefit the Nigerian

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[101] Nigerian Extractive Industries Transparency Initiaitve (NEITI), http://neiti.org.ng/index.php?q=pages/about-neiti
[102] *ibid.*
[103] Shaxson, *op.cit,* pp2-3
[104] Ogunbanjo, A (2010) *An Overview of the Nigerian Oil and Gas Industry Content Development Act,* http://www.mondaq.com/x/99294/Oil+Gas+Electricity/An+Overview+Of+The+Nigerian+Oil+And+Gas+Industry+Content+Development+Act+2010
[105] Ogunbanjo, *op.cit.*

population, it has been criticised for being ambiguous[106], which in turn can lead to confusion, misinterpretation and poor implementation. In addition, it fails to specifically address the needs of the oil-producing communities.

The lack of positive governmental response in the initial years post 1995 facilitated the growing violent nature of the opposition movements spreading across the Niger Delta, creating a highly volatile environment. It is also evident that since the transition to democracy, there have been attempts on the part of the Nigerian federal government to respond to the crisis of the Niger Delta, and to overall manage and regulate the oil industry more efficiently, transparently, and effectively. Having said that, the initiated responses have not met expectations, and have been increasingly criticised for their susceptibility to corruption and inefficiency, not unlike the responses of the military regimes of old. This continues to fuel disillusionment and discontent amongst the oil-producing communities, and the opposition movements alike. Furthermore, this affects the security dynamics within the Niger Delta, and instigates conflict, which in turn affects the potential effectiveness of current and future CSR based practices and initiatives.

Comments: Implications for Shell's post-1995 CSR Activities and The Local-Global Nexus

The response of the Nigerian federal government, in lieu of the local and global outcry to the Niger Delta crisis, came rather late in the process. This meant that from a governmental and legislative perspective, the overarching framework that regulates the oil industry, and within which the oil MNC's function, remained largely unchanged. In the initial years following 1995 therefore, Shell arguably had to operate within a legislative and governance 'vacuum' at the local level, in trying to work out its CSR policies and practices in response to the local

[106] DLA Piper UK (2011) "Briefing Note: Implications of the Nigerian Oil and Gas Industry Content Development Act", pp1-5, http://www.dlapipertradefinance.com/export/sites/dtf/downloads/Trade_Finance_Nigeria_Content_Act_May_2011.pdf

and global pressures. That does not excuse/negate mediocre CSR practice but it does pose some challenges, especially given the governance 'vacuum' that existed – and to some extent continues to exist – with regards to the regulation of the oil industry, as well as the distribution of the profits and development of the oil-producing communities. Furthermore, in light of the partnerships and dialogues that Shell entered into with various international organisations during this time, and given the lack of government agencies and poor regulation on the part of existing agencies, one could argue that global pressures were the driving motivators of change in the initial policy and CSR adjustments.

Notably, the transition from a military regime to a democracy brought with it seemingly more favourable responses from the Nigerian government, which attempted to address the needs of the oil-producing communities and improve the regulation of the oil industry and its stakeholders. This also facilitated some of the CSR practices Shell was trying to implement. For example, Shell established a partnership with the NDDC.

> It also provided non-mandatory support in the provision of development infrastructure in the Niger Delta, developed technical and managerial capacity of NDDC's key staff, (and) organised workshops for leaders at state and local government levels about governance and community development. [107]

There is also the potential for enhancing 'political/governmental' efficiency through dialogue and partnership, based on the global partnerships, agreements and voluntary commitments that exist between the MNCs and various global rights organisations. For example, the fact that Shell committed to the EITI in 2002 was one of the contributing factors leading up to the creation of the NEITI. As Ite so aptly mentions, "Shell has taken the lead in the implementation of EITI, and the Nigerian government now has to follow."[108] What is also important to note is the fact that these developments transpired under the democratic

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[107] Hennchen*, op.cit*, p137
[108] Ite (2007), *op.cit,* p9

government, suggesting that the type of government is important in the facilitation of CSR.

CHAPTER FOUR – IMPLICATIONS FOR GLOBAL CSR NORMS

Having discussed Shell's pre and post-1995 CSR endeavours, as well as the local and global dynamics that influenced and compelled them, this chapter considers whether there were any shifts regarding CSR on a global scale, (possibly) as a result of the Ogoni crisis. In order to do so the progression of the relevant global perspectives, and their areas of focus, regarding the role and responsibilities of MNCs will be mentioned so as to facilitate analysis. As the United Nations (UN) and its agencies continue to set the tone for global dialogue and collaborative action regarding issues of business practice and environmental and human rights, it will server as the reference for this discussion. More specifically, the key actions and policies (if any) adopted by UNCTAD (United Nations Conference on Trade and Development) and the UNHRC (United Nations Human Rights Council [previously UNCHR -United Nations Commission on Human Rights]) after 1995, with regards to the role and responsibilities of MNCs, will be briefly discussed.

UN and UNCTAD; Relevant Initiatives and Reports

The United Nations Centre on Transnational Corporations (UNCTC) carried out the Programme on Transnational Corporations, from 1975 to 1992. From 1992 to 1993, the Transnational Corporations and Management Division of the United Nations Department of Economic and Social Development oversaw it. In 1993, the Programme was transferred to UNCTAD. Although it does not create legislation per se, UNCTAD's work is carried out through intergovernmental deliberations, technical assistance activities, policy analysis and capacity building, seminars, workshops and conferences. [109] It is therefore influential in propagating global expectations regarding acceptable MNC practices, and CSR expectations.

[109] Moran, T. (2008), *The United Nations and transnational corporations: a review and a perspective*, Bloomington and Indianapolis: Indiana University Press, p92

The objectives of the UNCTC were focused on establishing the necessary institutions to usher in a new international economic order. [110] On this basis it launched many varying initiatives. One of the most significant of these was the work on trying to establish a code of conduct for Transnational Corporations (TNCs/MNCs). [111] This sparked numerous heated debates that continued over the next two decades, and fostered hostility between the UN and the private sector. By 1994 the code of conduct disappeared from the agenda. While the code was never established, the debates were influential in increasing knowledge regarding the role and impact of MNCs and the various forms of FDI (extractive, utilities, manufacturing, and services) [112], on the social and economic environment of developing countries.

In January 1999, former secretary-general Kofi Anan, addressed business leaders at the world Economic Forum, and proposed a Global Compact between the private sector and the UN, to give a "human face to the global market." [113] The compact subsequently became operational in 2000, and emerged as the leading voluntary global CSR initiative. Furthermore, the initiative redefined the historically tense relationship that existed between the UN system and the private sector, opening up the way for increased multi-stakeholder dialogue and collaborative practices. The compact upholds 10 universal principles, which fall into 4 key focus areas, namely; human rights, labour rights, environment, and anti-corruption. [114] Businesses are encouraged to align their practices and strategies with these principles. Thus far around 7000 business participants, and over 3000 non-business participants, across nearly 140 countries have committed to it. [115]

While the Global Compact is not a monitoring and reporting initiative (such as EITI, Publish What You Pay, Global Reporting Initiative etc.), a number of which

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[110] ibid. p98
[111] UNCTAD (1999), *op.cit,* p 8.
[112] Moran, *op.cit*, p97
[113] Rasche A. (2008) *The United Nations and Transnational Corporations: How the UN Global Compact has changed the debate*, Warwick Business School: University of Warwick, p33
[114] *ibid.* pp35-38
[115] *ibid.* p33

also emerged at a similar time (late 1990's), it tries to facilitate accountability by virtue of its multi-stakeholder setup. Business participants must submit an annual Communication on Progress report, which outlines their implementation progress, and stakeholders are able to report systematic abuse of the initiative's core aims. [116] Thus despite its voluntary nature, an accountability 'structure' of sorts is created, (possibly) making it more inconvenient for participants to not abide by the agreed upon principles. The Global Compact also takes into account the practical implications of applying global principles in local contexts. It has launched a number of Local Networks (in over 90 countries), to aid the contextualisation of the ten principles and to facilitate local discourse and learning.

In line with the above developments, UNCTAD released an unprecedented report in 1999, titled 'The Social Responsibility of Transnational Corporations'. The report expounded on the meaning of CSR; its growing importance in light of the increased globalisation of social, economic and environmental factors; and the possible policy implications for relevant stakeholders.

Shell's policy restructuring after 1995 was utilised as an illustration in the report, to show the interplay between international social responsibility standards and the individual social responsibility policy/code development of an MNC. [117] Specifically, the report outlined the increasing relevance of civil society groups in raising awareness about issues related to the social responsibility of MNCs, as well as its ability to solicit a response from the business sector. At times this may even lead to MNCs altering their planned course of action in favour of civil society pressures, in spite of the 'legitimate' standing of a planned action. According to the report, in instances where MNCs adopted a code of conduct addressing issues of social responsibility in response to external pressures, the quality and nature of the code determined its relevance and effectiveness:

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[116] *ibid.* p36
[117] UNCTAD (1999*), op.cit*, pp31-36

> To be functional, however, the codes must also provide practical internal guidance for corporate operations (Kline, 1985; IRRC, 1999a). Broad, hortatory principles have little credibility inside or outside a corporation if they do not address real operational issues and decision-making processes.[118]

Furthermore, the report emphasised that the explicit interest and involvement of top executives of corporations is a critical factor to the sustainability of CSR codes adopted by them. The case of Shell was used as a positive example to illustrate the validity of the above claims.

Prior to the revision of its Business Principles, which coincided with the crisis it was facing in the Niger Delta (and the Brent Spar debacle), Shell had cited that its principles were consistent with the OECD Guidelines and the ILO Tripartite Declaration of Principles. The revised Principles of 1997 however, specifically emphasised human rights, which civil society pressures had been focusing on. Moreover, Shell's commitment to train management in dealing with human rights concerns; agreement to report on its performance with respect to the Principles; and allowing external auditing of the results, was seen as the practical enforcement of the Principles. [119] This has real implications for decision-making processes, and operational issues. Also, the rhetoric and explicit support of Shell's former chairperson, Mark Moody-Stuart, in rethinking the role of the corporation within society, was formative to the process and implementation of CSR practices.

The above indicates that there was a heightened and structured emphasis placed on the nature (economic, social, environmental, and rights-based) and relevance of CSR from 1999 onwards, with a focus on encouraging multi-stakeholder participation. The manner in which Shell was used to illustrate the claims of the UNCTAD report also suggests that the situation of the Niger Delta and the MNC's response to it, were being specifically observed.

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[118] *loc.cit*, p34
[119] UNCTAD (1999), *op.cit*, p36

UNHRC; The Guiding Principles on Business and Human Rights

It is important to bear in mind that the human and environmental rights concerns were pivotal in the plight of the Ogoni gaining global recognition, as well as in emphasising the complicit nature of Shell's role in contributing to the crisis. This was partially influenced by the clout of international rights organisations within the local-global nexus, as discussed in chapter 2. Furthermore, they were key concerns in the policy and post-1995 CSR adjustments adopted by Shell, as outlined in chapter 3. As the UNHRC is the core global organisation dealing with the adoption, facilitation, and implementation of human rights standards, and from which all other human rights organisations take their cue, its stance on the responsibilities of business is therefore noteworthy.

In 1997, the Sub-Commission on the Promotion and Protection of Human Rights prepared a study on the connection between transnational corporations and human rights. Subsequently a Working Group on the Working Methods and Activities of Transnational Corporations, consisting of five Sub-Commission experts, was established. In 1999 it began the process of preparing a draft Code of Conduct for companies. [120] Prior laws and codes were researched and an extensive consultation process carried out. This solicited broad input and heard testimony from relevant stakeholders, including many businesses as well as unions, human rights organisations and other NGOs. The draft UN Human Rights Norms for Business were submitted to the Sub-Commission in 2003. They were unanimously adopted in August the same year.

The norms outlined the expectations and obligations for TNCs regarding issues of worker, consumer, environmental and human rights, as well as TNC-host government interactions.[121] Although the norms were deemed as having no legal standing by the UNCHR, they established a framework for further

[120] Amnesty International (AI) (2004) *The UN Human Rights Norms for Business: towards Legal Accountability,* AI Publications, 2004, p6
[121] UN, Economic and Social Council (2003), *Economic, Social and Cultural Rights,* E/CN.4/Sub.2/2003/12/Rev.2 , 26 August 2013

investigation into the issue. In 2005, Professor John Ruggie was appointed by the secretary-general to continue with the research, which lasted another 6 years.

The initial 3 years resulted in the 'Protect, Respect and Remedy: a Framework for Business and Human Rights' report of 2008. The report outlined key issues contributing to the violation of human rights by the business sector, and proposed a course of action to address these. This led to the drafting of the Guiding Principles on Business and Human Rights, which were adopted by the UNHRC in 2011. The principles address 3 core spheres of responsibility; the state's duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy. [122] Each sphere is guided by foundational (theoretical) principles, and operational (practical) principles in order to create a coherent, implementable framework.

From the start of his mandate, Ruggie made a point of involving business in the research and discussions. Initially this was done through the international business associations, such as the International Chamber of Commerce (ICC) and International Organisation of Employers (IOE). Subsequently, individual companies also got involved, and a number of them helped pilot various projects. Shell was one of the companies that piloted the idea of "human rights due diligence" processes, a key element in the Guiding Principles. [123] Furthermore, in the second Annex to the 2008 report, Ruggie outlines a number of instances whereby the human rights of indigenous communities linked to the extractive industries, were violated. [124] While specific communities and MNCs were not identified, given the nature of the outlined human rights violations, and in lieu of the fact that Shell was subsequently involved in the pilot project, it is plausible that the situation of the Niger Delta had been considered during the research

[122] UNHRC (2011) *Guiding Principles on Business and Human Rights: Implementing the UN 'Protect, respect, and Remedy' Framework*, New York / Geneva, UN
[123] Business Ethics (2011), *Business and Human Rights: Interview with John Ruggie*, posted 30 October 2011, http://business-ethics.com/2011/10/30/8127-un-principles-on-business-and-human-rights-interview-with-john-ruggie/
[124] Ruggie, J. for HRC (2008) *Addendum 2: Corporations and Human Rights: A Survey Of The Scope and Patterns Of Alleged Corporate-Related Human Rights Abuse*, 2008, pp24-25

process.

A further point of interest is the fact that in 2009, the Nigerian government (along with others) committed to an informal, off-the record brainstorming session with Ruggie, as part of the HRC mandate. The aim was to discuss what innovative policy measures – practical, administrative and legal – should be propose to the HRC for adoption with regards to business and human rights in conflict zones. The governments in question were to bring their experiences to the table, in order to aid the dialogue. [125] The Nigerian experience therefore was part of the process, although the extent of its influence is unclear.

Overall, the adoption of the Guiding Principles was undoubtedly an unprecedented development, which re-affirmed the growing emphasis placed on issues of human rights in relation to the CSR practices of companies. For the first time a global standard was established for "preventing and addressing the risk of adverse impacts on human rights linked to business activity." [126]

Comments

Seemingly, there have been significant developments after 1995, regarding the global perspectives on the role and responsibilities of MNCs, which in turn hold further implications for the continued and practical integration of CSR norms and practices on the ground. The focus on human rights in relation to business practice definitely came to the forefront of the global rights discourse during the mid 1990's. The various voluntary initiatives lend themselves to fostering standard acceptable, and expected, CSR practices on the part of MNCs. Arguably, the nature of the Global Compact and the UN Principles on Business and Human Rights contribute towards normalising CSR practices, by creating a common framework within which participating businesses can develop their CSR policies.

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[125] Ruggie, J. (2009), UN briefing, http://www.youtube.com/watch?v=Th88pvZYa-4
[126] UNHRC (2011) *New Guiding Principles on Business and Human Rights endorsed by the UN Human Rights Council,* http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11164

As the number of participants increases, so the likelihood of practices becoming standardised increases. Bearing in mind though that CSR is both the responsibility of corporations as well as governments, the challenges of implementing and upholding CSR practices within the local context remain complex.

Whether any of these developments were directly affected by the events that unfolded in the Niger Delta is ambiguous. For the most part, there was already a growing focus on environmental and human rights issues by the mid 1990's, which enabled MOSOP to capture global headlines. This in turn exposed Shell's poor practices within the Niger Delta and increased global pressures pushing for change. It is notable though that the global focus on CSR gained momentum by virtue of the suddenly on-going coverage and attention being paid to the situation in the Niger Delta. There was an escalated focus on CSR by the global community, in particular that of the MNCs in the extractive industries. One could argue that it gained prominence in everyday discussions.

It is possible therefore that to some extent, Shell's policy and CSR adjustments, following the events of 1995, had a 'global' impact by virtue of the fact that Shell is a multinational, with operations situated in numerous countries across the world. As the adjustments in question where applicable to the Shell Group of companies as an entity, they impacted on its operations as a whole. Furthermore, Shell has since been cited by certain parties [127] as an example in leading the way to promoting good business practices, transparency, and supporting sustainable development in the operations of the extractive industries. This in turn puts pressure on MNCs in the extractive industries to match up to the rising expectations.   For example, Shell was criticised by other oil MNCs when it initially published reports in line with expectations of the PWYP initiative, as well as the EITI. Likewise, with regards to the Guiding Principles, while the Ogoni crisis was not mentioned per se, we know that Shell's CSR framework adjustments were directly linked to it. Shell's role in piloting the

[127] UNCTD (1999) *op.cit* & AI (2004), *op.cit*

due diligence process is therefore valuable. It indicates that whilst the localised crisis was the final factor that propelled the MNC to adjust its policies and practices, the intentional adoption and implementation of the adjusted policies in turn can help to shape global CSR norms within multi-stakeholder frameworks.

It is feasible therefore that global CSR expectations and initiatives could have been influenced by the occurrences within the Niger Delta, as well as Shell's intentional policy and structural adjustments in response to them. However, it is also very evident that there were a number of interrelated contributing factors at play. What is undeniable is that change on a global scale is a slow, complex, and often times incremental process. It therefore requires commitment and dedication on the part of the stakeholders involved, in order to keep the momentum going, and to see lasting change effected.

CHAPTER FIVE – CONCLUSIONS

The events leading up to the Ogoni Crisis, indicate that in instances where poor CSR practices are being followed, the increasing hostility and deterioration in the local setting, combined with increasing global pressures can facilitate a shift in CSR policies on the part of the MNC. Furthermore, global pressures appear to be the more influential drivers of initial change. This was exemplified by MOSOP's emergence, and to a large extent its success in claiming a stake on the global agenda. The fact that it succeeded in capturing the attention of global environmental and human rights organisations, only once it had recast its aims and objectives in line with global objectives, highlights the relevance of the global context in trying to alter the local context. It is at the point where local interests intersect with global interests, that their impact is that much more effective.

The manner, in which Shell adopted an implemented its rhetorical, structural, policy and programme changes after 1995, is also indicative of the relevant local and global actors. It is notable that by initiating the relevant CSR adjustments, and improving communication with the INGO's, Shell managed to convert its critics into 'allies'. That in no way implies that Shell's current CSR practices are faultless, nor does it suggest that Shell is always an upright 'corporate citizen'. Rather, it is indicative of clever use of strategy. By engaging in dialogue, and entering into partnerships, with a number of local and international NGOs, Shell was able to improve its image, gain input, and increase its accountability on human and environmental rights related issues. Whilst the localised crisis was the final factor that propelled the MNC to adjust its policies and practices, the intentional adoption and implementation of the adjusted policies in turn can help to shape global CSR norms within multi-stakeholder frameworks.

Furthermore, the transition from a military regime to a democracy brought with it more favourable and intentional responses from the Nigerian government, which now attempted to address the needs of the oil-producing communities and improve the regulation of the oil industry and its stakeholders. The policies adopted, and agencies created, in turn helped facilitate some of the CSR practices Shell was trying to implement, such as greater cooperation with government agencies on issues of sustainable development. This led to a partnership with the NDDC, as well as the adoption of the NEITI.

The implications of this are twofold: firstly, the nature of governance may impact on the nature of CSR practices adopted within the local context. Arguably, a democratic dispensation may be better suited towards advancing CRS practices. Secondly, the CSR practices of MNCs cannot exist in isolation; cooperation between MNCs and government agencies is pivotal. Furthermore, while a hostile environment contributed to the initial shift towards improved CSR practices, it is not conducive to facilitating long-term CSR objectives. Stability and security therefore are important (CSR) enabling factors.

In addition to this, the various voluntary initiatives lend themselves to fostering standard acceptable, and expected, CSR practices on the part of MNCs. Arguably, the nature of the Global Compact and the UN Principles on Business and Human Rights has contributed towards normalising CSR practices, by creating a common framework within which participating businesses can develop their CSR policies. Consequently, there exists the potential for enhancing 'political/governmental' efficiency through dialogue and partnership, based on the global partnerships, agreements and voluntary commitments that exist between the MNCs and various global rights organisations.

It is apparent that the local-global nexus is very relevant when considering the adoption and dissemination of CSR norms in the international system. It is intricate, complex, and interdependent. This means that the implementation of CSR norms at both a local and global level requires the participation of the relevant stakeholders. The effectiveness of the implementation of CSR norms in turn depends on the degree to which the relevant stakeholders are willing to participate. Thus the challenge for the relevant stakeholders is to successfully manage the complexities that exist within the local-global context.

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