LEGAL ISSUES IN CORPORATE SOCIAL RESPONSIBILITY CODE IN SELECTED OIL RICH AREAS IN NIGERIA

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ABSTRACT
There are potentials in subjecting the principle of corporate social responsibility to legal regimes such that by government playing its part through providing the enabling environment for the oil industry to operate, the industry must be legally bound to deliver to its society and environment. The Nigerian Content Law is considered as one of such legal regimes through which the social responsibility of the oil companies can be subjected to strict legal compliance. However, there are challenges of both the government and the industry failing to partner and deliver to the communities, and the slipshod deliveries are largely anchored on infrastructure than human capital and economic empowerment. It is concluded that since only the people can develop their communities, emphasises should be on both through a responsibility code.

INTRODUCTION

Social responsibility is a balanced approach for organizations to address economic, social and environmental issues in a way that aims to benefit the people, communities and society (Money and Yaji, 2006). It is a way by which companies reach out to their host communities by positively impacting on their environments. It is the corporate act of giving back to the immediate and wider community in which organizations carry out their businesses in a manner that is meaningful and valuable to that community (Anuforo, 2007). For Chandler it ought to be about the application of principle: 'the way you treat the people, the environment and the communities' (Kunaiyi-Akpanah, 2005).

Society expects the private sector to use its economic power for broader social goals, and to demonstrate environmental responsibility, philanthropic consciousness, high standards of ethical behaviours, and greater transparency and accountability (Garba, 2005). Thus to Dangogo (Garba 2005), social responsibility is all about identifying with communities in which organizations do business and make tons of profit annually. It is a means of giving back to those communities what they have realized and getting involved with stakeholders in a way that long lasting relationships can be built and leveraged upon. Sincerity of purpose and strong commitment to improving the lives of people in the communities must be seen to be the driving force behind corporate social responsibility despite the organization's commitment to making high returns to shareholders.

Issues wrapped up in corporate social responsibility has been identified by the *International Business Leaders Forum* (IBLF) to include human rights, labour and security, enterprise and economic development, business standards and corporate governance, the promotion of health and education, human disaster relief and environmental protection. It has also been convincingly opined that the jurisdiction of social responsibility should be reviewed to include the broader areas of capacity expansion, deregulation and privatization (Kunaiyi, Akpanah, 2005).

MOBIL'S MODEL IN SOCIAL RELATIONS

Within the old paradigm of corporate social responsibility, *Mobil Producing Nigeria* has been acknowledged in the fore front of provision of infrastructure and services to host communities; working creatively with them in setting new standards in community relations while reassessing its model to ensure a bottom-up approach and sensitivity to its publics (Inoyo, 2005).

Mobil's framework in corporate social responsibility and governance is said to be predicated on three variables. The first is the concentric pattern of assistance which means that in determining support for projects, a system is developed to ensure that communities nearer to Mobil operations stand to benefit more from community projects. In other words, Mobil rationalizes that while the entire Nigerian society is its constituency, there is a specific focus on the local communities where its operations are based (Inoyo, 2005).

The second is sustainable benefit which means that projects which will be sponsored by Mobil must be those that would provide tangible benefits over a reasonable period of time as opposed to cash donations or sponsorship of projects with ephemeral and intangible results. Mobil therefore participates in projects that are functional and beneficial to the generality of the community. The third is wide utility base which means that all projects which qualify for Mobil's support or sponsorship must be of necessity and potentially serve the needs of a wide range of the community inhabitants rather than a selected group of privileged individuals. Within these three paradigms, quantifiable and measurable progress can be made in provision of roads, boreholes, hospitals, schools, markets, motor parks and electricity (Inoyo, 2005).

NDOKWA - AGIP MODEL IN SOCIAL RELATIONS

Juxtaposing the three paradigms of Mobil with the Agip model in Ndokwaland, the Agip-Ndokwa case in corporate social responsibility is a very illustrative irony. Okpai in Ndokwaland is the host community to Nigeria's first Independent Power Plant (IPP). Hundreds of women drawn from Okpai, Utchi, Abala and Okoh communities had in March, 2005 thronged the streets of Asaba, Delta State to protest alleged lack of basic infrastructure in their communities (Ogefere, 2005).

The placard-carrying women decried the deplorable roads of their communities and the lack of social-economic development which they blamed on lack of electricity. Led by Gladys Uzoh, the women wondered why the President of the Federal Republic of Nigeria, Obasanjo, should be flown in an helicopter to Okpai to commission the IPP lamenting that seventeen years earlier, former Military President, Babangida, flew into Okpai to commission the Okpai Re-injection Plant, and neither the Agip Oil Company on behalf of the Joint Venture Partners nor the Federal Government had deemed it fit to provide good network of roads for the communities whereas, it took a week to bulldoze the 58 kilometer road to Obosi in Anambra State for the purpose of installing the high tension transmission line (Ogefere, 2005).

The Okpai case is an encapsulation of the case of the entire Ndokwaland of Delta State. In their project, *The Nigerian Project: Ndokwa Position,* (Aghanenu, Oseji, and Odumosor, 2005) have posited that the Ndokwa people live in pain and agony despite the huge endowment of oil resources and the enormous revenue derived from oil in their farmlands and waterways. The IPP worth about 489 million US dollars had to be commissioned in Okpai when not a single home in the entire community was connected with the electricity it produces. The community had been a host of Agip and many other oil multinationals since the 1950s yet, it has no drinkable water, road or hospital. Many years of gross neglect and political emasculation had left Ndokwaland as one of the backward and undeveloped areas of the world. With half of its communities in the swampy marshland, majority of its people live in prehistoric settlements and ecologically degraded environment completely cut off from modern day civilization and may remain so for eternity if urgent intervention is not made.

SOCIAL RELATIONS, RISK AND REPUTATION

Community relation is that part of the corporate social relations agenda that determines the state of the relationship between the companies and their host communities. It is not public relations which is concerned with managing the image of the organization. It deals with all aspects of the interrelation between the organization and the impacted communities. It manages expectation. It is not fortuitous but a product of sound management policies and practices. It is the result of a deliberate, well articulated strategy that can be implemented (Kunaiyi-Akpanah, 2005).

Increasing as we go into the developing countries, according to Taylor (Kunaiyi-Akpanah, 2005) there is a strong link between community relations, risk and reputation. As the ecology and the environment are being devastated and traditional forms of livelihood become impossible, community problems have become the central issue in the Niger Delta. People like the Ndokwas who have had to live with discomforting outcomes of oil industry activities such as environmental degradation and noise pollution as well as human and cultural displacement and all forms of poverty, including official and government neglect, are already beginning to make their demands either in hushed voices or by agitation, violence and wars (Anuforo, 2007).

In grappling with the challenges of community relations, the oil industry has developed several innovative schemes in the form of sustainable community and social development projects (Kunaiyi-Akpanah, 2005). But most often, industry chieftains like Maarten Wink claim that they are in business of oil production and not community relations. The claim is sometimes dangerous because in producing oil safely, efficiently and in harmony with the environment, the effects of community relations on operations can be ignored at great cost. The Ogoni-Shell debacle is still fresh.

STATE-INDUSTRY DEBATE ON RESPONSIBILITY

A high-level meeting of the major players in the oil and gas industry was held in August, 1999 in the boardroom of NNPC Abuja to review the security situation in the Niger Delta areas and agree on short, medium and long term activities that could guarantee a peaceful atmosphere for continued oil industry operations in Nigeria (Uwugiaren, 1999). The security situation was later to be captured in September, 1999 by Imomoh as 'a situation whereby pressure on individuals, safe operation of staff, and facilities was becoming really worrisome. A number of hostages had been taken. Ransom demanded. Different communities go and shut facilities' (Chigbo, 1999).

In the meeting, the NNPC noted that a situation where oil workers were being kidnapped and helicopters were being high-jacked by protesting youths was no longer a protest. It had gone beyond banditry. Not blaming the youths, the NNPC accused its Joint Venture Partners of neglecting the welfare of their host communities adding that they had failed over the years to develop any industry standards towards community development. Oil companies have failed over the years to achieve any peaceful coexistence with their host communities in spite of the huge sums of money voted for community development (Uwugiaren, 1999).

But Wink (2002), General Manager of Shell, hit back at the NNPC and the State stating:

> *It is not our role to develop the communities. We cannot take upon ourselves the role of the government to develop those communities. We are not government. We can only do a certain amount which invariably is not sufficient for the communities where we work. We can only do as far as our shareholders can allow and government is aware of this. We will also make our contribution to the NDDC. You must realize that this is not our original charter which is to explore and produce hydrocarbons in good cooperation with the communities.*

Continuing, Wink (2002) observed that in Nigeria,

> *we spend by far the largest percentage of our total expenditure on community projects compared to other parts of the world where we operate where the needs are substantially less in terms of community development projects. In Nigeria, the basic rudimentary needs are not there in most areas and we try to assist because we believe that one would certainly like to see that the communities do benefit to some extent since they are within our areas of operations. And we have extensive programs in Nigeria to help the communities develop themselves. And we often realize that their needs are enormous arid extensive. It is not our role to develop the communities).*

IS SOCIAL RESPONSIBILITY THEFT OR CHARITY?

Social responsibility was a concept that had little meaning before now. It was considered a cost element and a distraction. For purists, profit maximization was the overriding concern. Thus, despite its notable attributes, there are arguments against it by those who feel strongly that business should be accountable to shareholders only. Any money spent on so-called social responsibility is theft from shareholders' fund which shareholders are the only legitimate owners to decide whether to give to charity (Kunaiyi-Akpanah, 2005). According to Dokubo, (Onoyume, 2007) the social responsibility of an organization is to pay its taxes. It is not to construct roads. That is the duty of government that collected tax from the organization. No company has any social responsibility other than that provided by the laws of the land.

This traditional and ideological view is very critical and often lies at the bottom of the debate on corporate social responsibility and governance. Citing Business Respect, Hodgson (2005) has drawn attention to the fact that corporations may not really care as they may just be out to screw the poor and the environment to make their obscene profits. Thus, purists are embroiled in bitter debates over what aspects of the social responsibility agenda companies should embrace. As oil corporations go global, issues once considered soft by the private sector pose hard business dilemmas and become part and parcel of corporate risk analysis.

If corporate social responsibility were charity, then any company could once in a while look into its purse and finding some change, dole out a little money to its community. It would just be a convenient way to look good in the public eye, but it is not charity. For a responsible company, the effect of management decision should be considered not only on stakeholders but also on the environment. This requires it to balance the needs of all stakeholders with its need to make profit and reward its shareholders adequately (Adeoye, 2006)

A contrary view has therefore been advanced to the effect that corporations which would sustain competitive success in the future are those which focus less exclusively on shareholders and financial measures but on a broader range of measurements in the way they link and talk about their purpose and performance. For Hodgson (2005), the United Nations has taken keen interest in corporate social responsibility. *The objective of the United Nations Global Compact* which was launched at the *World Economic Forum* in 1999 was to draw together businesses, NGOs, government and other International Agencies in order to find avenues to under pin the free and open market economy with stable and just societies with the aim of upholding the triple bottom line of making profit, caring for the environment and upholding social justice.

It has been canvassed that commitment to corporate social responsibility simply translates to a dent on the financial bottom line in the short term. In the long term, it could translate to a better working environment, sustainable goodwill and positive business perception (Hodgson, 2005). This is because ultimately, good relations rest with operators whose proximity to the frontline will continue to expose them to direct pressure from the communities and their ability to overcome operational pressures will depend on their preparedness and willingness to partner with and build a true stakeholders relationship with their host communities.

Moreover, there is also a major belief that wider adoption of best corporate social responsibility practices in Nigeria would help to address critical national challenges such as corruption, absence of corporate governance, code of ethics, widespread poverty and social unrest. Social responsibility should not therefore be seen as an option and should not be regarded just as a response to externally prescribed measure. It should be essentially a business strategy (Anuforo, 2007).

CHALLENGES OF SOCIAL RESPONSIBILITY

It is correct as submitted by Wink (2002) that in Nigeria, the basic rudimentary needs are not there in most areas. Oil companies complain of perceived lack of government presence in their host communities. Businesses cannot deliver every solution and companies can rarely and hardly act alone. The Ndokwa-Agip case also supports the submission of Gaius Obaseki (Uwugiaren, 2999) that oil companies have failed to develop any industry standards towards community development. Governments and their agencies must thus harmonize their developmental efforts to relieve some of the pressures on the operators. Provisions of basic infrastructure such as road and cheap power will also create an investment friendly environment that will move the oil communities of the Niger Delta from a one-dimensional economy (Kunaiyi-Akpanah, 2005).

Yet, the challenges of the world should not and cannot be borne by governments alone. Partnering is vital and almost all endeavours of a corporate aggregate involve working constructively with partners. Corporate citizens have a major role to play in societal enhancement of complementing the efforts of government. Oil companies cannot afford to chase economic value without considering the impact of their operations on their stakeholders and the community at large (Kunaiyi-Akpanah, 2005; Anuforo, 2007).

Also, it has been considered counter-productive and challenging a situation where citizens, individual and corporate, from outside the impacted areas extract a larger part of the benefit of oil and gas industry operations to the exclusion of the indigenes of the impacted communities thereby accelerating the explosion of the time bomb ticking away in the communities.

LEGAL ISSUES

Broken *Modern Values and Social Responsibility* (Inoyo, 2005) defined social responsibility as the moral and ethical contents of managerial and corporate decisions over and above the pragmatic requirements imposed by legal principles and the market economy. Inoyo (2005) deduces from the foregoing that social responsibility is to business what justice is to law. Each harmonizes the other and each is essential for harmony in society.

Corporate governance and ethical crises around the world in recent years have prompted a sea change of legislation to promote not only corporate governance and ethics, but also to embrace the broader issues of corporate social responsibility including activities which persuade investors to think of more than just the bottom line (Anuforo, 2007). In the face of current stiff competition permeating the entire Nigerian business landscape, oil companies are becoming more conscious of the compelling need for the use of social responsibility as a competitive tool for achieving set corporate objectives (Adeoye, 2006).

Far reaching is the position of Akinwunmi (Adeoyo, 2006) that social responsibility is closely linked with the principles of sustainable development in proposing that enterprises should be obliged to make decisions based not only on the financial and economic factors but also on the social and environmental consequences of their activities. The operations of large oil companies can have a considerable effect on regional economies. Some companies abroad have policies for maximizing local economic growth by using as many local employees, contractors, goods and services as possible offering training where necessary.

In the global environment, protectionist legislation should be limited but, legislations like the *Nigerian Content Directive* can offer long term solution to some of the problems of oil producing areas. Thus for Opeyemi (Adeoye, 2006) laws can be fused into regime of social responsibility either to encourage and reward it or to compel companies to comply with it. For instance, the bid rounds in which the Asian giants were granted premium blocks in the gulf of Guinea with *rights of first refusal* and on the promise to invest not only in the downstream sector but also in the other strategic areas of the Nigerian economy to ensure sustainable development are all exercises in corporate social responsibility within a scheme of legal recognition and regulation.

The *Nigerian Content Principle* could be an ideal mechanism to address the festering discontent in the oil producing communities if it is structured so as to encourage partnering of both Nigerian and foreign investors with entrepreneurs from the communities. Regional, State and Local Governments and the oil companies need to cooperate in promoting strategic alliances so as to forestall a scenario where only the baton has changed hands but the injustice and marginalization experienced by the community continue (Kunaiyi-Akpanah, 2005).

CONCLUSION AND RECOMMENDATION

The traditional paradigm that social responsibility is theft from shareholders' fund requires shift as the development of oil communities will be ultimately tied to the level of integration of the 'enclave' industry into the host community. The embryo-placenta relationship can be under pinned by strict legal regimes beyond the present prevailing framework of *global memoranda of understanding* which are largely unenforceable or non-justiciable.

Statutory legal regimes are becoming overdue because where relationships are not underpinned by law charity may not begin at home; and by running businesses according to laid down legal criteria, oil companies can help drive the engine of economic growth which in turn helps to achieve sustainable social and environmental development.

A comprehensive legal regime on corporate social responsibility or a responsibility code will not only make oil businesses legally accountable to its society and environment well beyond the incidences of taxes and royalties to government but will make any agreements and understandings between the industry and the host communities enforceable under the law.

REFERENCES

Adeoye, S. (2006). Finding a focus for Social Responsibility. The Guardian Newspaper. July 9, 22. Aghanenu, L., Oseji, I. and Odumosor, F. (2005). *The Nigerian Project: Ndokwa Position.* The Guardian Newspaper, May 19, 48.

Anuforo, E. (2007). Challenges of Corporate Social Responsiblities in Nigeria The Gaurdian Newspaper. March 15, 35.

Chigbo, M. (1999). Buy Gari in Dollars. Newswatch Magazine, September 6, 41.

Garba, K. A. (2005). *How Community Engenders Responsible Business Operations.* The Guardian Newspaper, May 9, 14.

Hodgson, R (2005). Corporate Social Responsibility: It's compelling Good Business to give back to Nigeria The Guardian Newspaper, June 3.15.

Inoyo, U.U. (2005). *Corporate Citizenship: Towards a new Paradigm.* The Guardian Newspaper, December 15, 31.

Kunaiyi-Akpanah, D. (2005). *Community Relations in the oil Industry - Perspectives of a Stakeholder.* The Guardian Newspaper. December 8, 78-79.

Money, F and Yaji, V. (2006) *Social Responsibility Issues: the Situation in Nigeria.* Delsu Law Review. 2, (1), 232-233.

Ogefere, S. (2005). *Delta Communities want Obasanjo's visit by road.* The Guardian Newspaper, March 31.

Onoyume, J. (2007). The Asari Dokubo's Interview. Vanguard Newspaper, June 23,10.

Uwugiaren, I. (1999). Your Approach is wrong. The News Magazine, August 30, 36.

Wink, M. (2002). Shell: A Model in Partnership. Tell Magazine, January 14, 41.