Corporate Social Responsibility/Human Rights Considerations Among MNCs in Nigeria

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Multinational corporations (MNCs) have for some time now gained notoriety in the area of human rights and labour rights in the world economy and politics. The impacts of MNCs in these spheres have continued to generate a vast number of comments and research activities. However, despite the focus on issues revolving around multinational corporations, their activities especially in underdeveloped countries continue to raise more and more diverse issues as the powers and influence of these corporations continue to increase and expand.

The history of MNCs in Nigeria started with the establishment of trading posts in Nigeria by European corporations in the 19th century. The activities of MNCs in the country increased significantly with the discovery of crude oil in Nigeria in the late sixties. Today Nigeria earns 95% of its export revenue from the oil and gas sector. This accounts for about 41% of Nigeria's gross domestic product. The oil and gas industry is dominated by foreign multinational corporations operating in some form of partnership with the Nigerian National Petroleum Corporation (NNPC), a state owned corporation.

MNCs are mostly concentrated in the Niger Delta area of Nigeria where more than 80% of oil exploration activities are carried out. The people in the Niger Delta have had to contend with the burden of environmental degradation including oil spills from pipelines polluting land and waterways, gas flaring polluting the air and destruction of fishing and farming opportunities leading to the destruction of the livelihood of farmers and fishermen among numerous problems.[i]

The situation has led to antagonism against the oil companies and the government by the host communities. In the past, the government colluded with the oil companies and tried unsuccessfully to douse the rising tension by the use of force. MNCs thereafter tried to gain legitimacy by embracing corporate social responsibility (CSR) practices. The general perception is that the CSR strategies have not been effective. Oil communities have tried to get justice by going to the domestic courts. They have largely been unsuccessful because of gaps in domestic law, procedural problems and corruption in the system. Frustration from lack of redress has led to the emergence of anti-oil militias which engage in kidnapping of oil workers, explosion of pipelines, attack on oil installations and abduction of security personnel working with the oil companies. The situation in the Niger Delta area of Nigeria vividly demonstrates the weakness of current CSR strategy and the need to explore how to improve the strategy.

CSR became a prominent issue in Nigeria in the 1990's following a series of human rights and environmental law infringements involving companies in the Oil and Gas sector. Perhaps, the most notorious of these incidents was the Ken Saro Wiwa affair. In the face of mounting agitations and protests, the Nigerian government arrested Ken Saro Wiwa and other leading activists in the Niger Delta. They were accused of orchestrating the murder of some pro-government individuals. They were subsequently arraigned before a military tribunal which sentenced nine of them, including Wiwa, to death in a trial that is widely regarded as unfair. This incident brought the Nigerian situation to global attention and was a public relation disaster for the MNCs working in the area. In order to contain the backlash from within and outside the country, multinational companies became more proactive in the deployment of CSR strategies. The key strategies employed by companies in implementing CSR Include philanthropic activities, stakeholder engagement, public relation campaigns, sustainability reporting and self-regulation (through corporate codes).

Arguably, self-regulation through corporate codes is one of the main strategies employed by MNCs. Codes of conduct express the concerns of companies regarding their corporate social responsibility (CSR) and has become a popular business strategy for companies to respond to multiple stakeholder concerns. In particular, multinational corporations are adopting codes of conduct as means of voluntary self-regulation in order to address the contextual issues of their operations. Corporate codes of conduct come in different forms which perhaps explain the different definitions that have been proffered for the concept in literature. In my opinion, Codes of conduct can be described as voluntarily written declarations of companies' commitment to address the social and environmental conditions of their activities**.** This view embraces major characteristics of corporate codes found in literature. They are: that the codes demonstrate a corporation's willingness to take responsibility; that they are designed by corporations; that they are voluntary and not legally binding; that they are concerned with the management of externalities of business; that they introduce ethics and morality into the business world and that they are part of a business organizations strategic planning.

However, codes have their limitations. The content of codes is as different as their numbers. Secondly, commitments made in codes are sometimes imprecise and ambiguous. Thirdly, corporations appear to choose what they like while leaving other matters which may be more important out. All these have implications for the strategic use of corporate codes.

The World Bank has opined that despite widespread rhetoric to adherence to CSR by corporations, many corporations' implementation processes are shallow and fragmented.[ii] There is a general lack of transparent and effective implementation and enforcement process in the codes adopted by MNCs in Nigeria. There is rather a general reliance on internal monitoring systems which are very subjective and which are sometimes complimented by the appointment of third party private corporate monitors. The latter are also partial in their monitoring process, because in most cases their loyalty lies with the corporation that appointed them in the first place. The question then is how to make the implementation and enforcement of codes of conduct more effective as a CSR strategic tool. How should Nigeria proceed in ensuring the implementation and enforcement of corporate codes?

An emerging response in Nigeria is the attempt to introduce a legal framework to support CSR. In 2008, a Private Members Bill was introduced in the Nigerian Parliament for the establishment of a Corporate Social Responsibility Commission. The main motivation behind the introduction of the Bill is the claim that companies are not adequately responding to the needs of stakeholders through their CSR practices.

The Bill contains provisions which are designed to change companies' approach to CSR. There is an attempt under the Bill to widen the group of stakeholders to which corporations are responsible. Under section 5 (1) (k), the CSR Commission is required to ensure that companies are accountable not only to employees and their trade unions, but to investors, consumers, host communities and the wider environment. Section 5(1) (i) of the Bill makes corporate philanthropy mandatory. It specifies a minimum amount of funding that should be invested in CSR by companies. The section requires companies to spend not less than 3.5 per cent of their gross annual profit for a given year on CSR projects. The Bill mandates annual social and environment impact reporting but places the responsibility for ensuring this on the Commission.

The Commission also has the responsibility to create a standard for CSR consistent with international standards. This takes standard setting away from the voluntary initiatives of companies. Furthermore, the Commission is to develop guidelines on environmental standards expected of companies. The Bill also seeks to introduce social responsibility compliance labels in Nigeria to be awarded to companies that comply with CSR standards.

For companies that default or fail to adhere to CSR standards, the Bill imposes sanctions through fines, temporary closure and suspension of operations. The fines stipulated are not less than 2 per cent of gross annual profit of a company on first conviction and on subsequent conviction not less than 3.5 per cent of its annual gross profit. Company's officers may be liable in cases where a company fails to comply with the law and company's officers wilfully obstruct the operations of the commission or its authorised staff. Such officers may be liable to imprisonment for a period of not less than six months.

It is obvious from the text of the Bill that it has several problematic provisions. For example, section 5(1)(k) of the Bill which attempts to facilitate the recognition of other stakeholders (apart from shareholders) runs contrary to sections 41 and 279 of the principal statute on companies in Nigeria, the Companies and Allied Matters Act (CAMA) of 1990, which only recognises the shareholders. The passage of the Bill has stalled partly because of its controversial provisions. The response of companies to the Bill has been at best lukewarm and largely hostile. However, it is suggested that this development is a potential opportunity for the companies to engage with the government and work with it in order to work out a framework that will strengthen corporate CSR strategy. At present corporate CSR strategies lack credibility and are viewed with suspicion mainly because of lack of transparency. It is suggested that by taking a proactive approach, the companies can demonstrate a genuine commitment to CSR.

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[i] See generally K Omeje, High Stakes and Stakeholders: Oil Conflict and Security in Nigeria (England: Ashgate, 2006), 58

[ii] World Bank, ‘Company Codes of Conduct and International Standards: An Analytical Comparison, Part I and II’ (2003) available at siteresources.worldbank.org/…/Company_Codes_of_Conduct.pdf last visited 08/06/12