



RESPONSIBILITY OF OIL AND GAS (O&G) COMPANIES TO PROTECT HUMAN RIGHTS: THE CASE OF SHELL



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ABSTRACT

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The role that companies play in domestic and international economies is fundamental and over the last few decades the impact of business on human rights has become increasingly visible. Their impact on human rights is an important discourse as they have the potential to make a direct and enduring impact on people's lives. This research uses a case study methodology on an O&G company, Shell to examine its responsibilities and roles in respecting human rights from the theoretical and practical aspect. Assessment of Shell's responsibilities is based on the operation of the company and its impacts on the following three aspects: environment; indigenous peoples; and labor. It is important to focus on these three aspects because they impacted most by the operations of the O&G companies. This study is divided into two parts; i) Shell's responsibilities to protect human rights from the theoretical perspective in which the published data such as annual report and business guidelines are examine critically; ii) whether Shell has discharged its duties according to what they have declared in their business guidelines. This part examines cases of infringement of human rights involving Shell. This article concludes with recommendations on how O&G companies can respect human rights despite of their hazardous activities to environment, indigenous peoples and labor.

Contribution/ Originality: The finding of this study will redound to the benefit of society considering that O&G companies play important role in the global economy. The growing power of MNCs and non-existent of control mechanism may lead to the abuse of human rights. Thus, using Shell as case study, this paper concludes there is a need for control mechanism at international and domestic level to govern MNC activities.

1. INTRODUCTION

Traditionally, human rights had been framed as the responsibility of State (Human Rights Commission of Malaysia, 2015). However, due to the rapid expansion of multinational corporation (MNCs) over the past decade, renewed international discourse and action are needed to undertake abuses of human rights by businesses (Weissbrodt, 2014). Connection between MNCs and human rights is exceptionally imperative and requires explicit instrument to accommodate the both. A definitive target in this manner is to make a win-win situation by amplifying the goods that companies do while taking out the abuses they commit (Global Law Initiatives for Sustainable Development, 2014).

Most importantly, overseeing and controlling MNCs conduct is tied in with distinguishing, building up and embracing policies and initiatives to limit the negative impacts of MNCs while in the meantime tackling its beneficial outcomes. As the occasions of corporate human rights infringement have expanded around the world, so

too have different endeavors to set up global principles for corporate activities (Weissbrodt, 2005). This includes the UN Guiding Principles on Business and Human Rights (UNGPs), the Organisation for Economic Cooperation and Development Guidelines (OECD Guideline) and the UN Global Compact (UNGC). These endeavors can be seen as an urgent advance towards guaranteeing global corporate obligation.

Notwithstanding these developing endeavors to manage business activities a continuing component of the business and human rights landscape has been the exemption of corporate human rights violators and the topic of what, assuming any, human rights commitments business enterprises have under international law. The rejection of the UN Norms in 2003 by business enterprises on the ground that the Norms impose new set of obligations to the business enterprises led to the appointment of John Ruggie as Special Representative to the Secretary General of the UN (SRSG) on the matter concerning business and human rights (United Nation, 2005).

In the wake of inferring that little in the method for reliable models or practices administered TNCs, the SRSG in 2008 suggested a three-column structure for enhancing the current fragmentary and conflicting methodology: “Protect, Respect and Remedy” (U.N.Doc. A/HRC/17/31). With a restored order, Ruggie moved to operationalize this structure by creating solid proposals in his report entitled “Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework (Blitt, 2012).

In June 2011, during the presentation of the framework to the Human Rights Council, Ruggie mentions “[t]he *Guiding Principles’ normative contribution lies not in the creation of new international law obligations but in elaborating the implications of existing standards and practices for States and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it should be improved.*” (Human Right Council, 2011). A fortnight later, a resolution was passed to endorse these principles and a Working Group was established to “promote the effective and comprehensive dissemination and implementation of the Guiding Principles” (United Nations Human Right, 2011). These principles are based on duty of States to protect human rights, responsibility of companies to respect human rights; and access to effective remedies.

This article examines Shell’s responsibilities from theoretical and practical perspectives. The examination will be based on Shell’s activities which affecting three main aspects, namely: environment, indigenous and labor rights. The author chose these three aspects since they are impacting the most from the operation of Shell. This article embraces a methodology that consolidates library-based research where the author referred to books, articles, journals and other relevant writings related to the focus of the research. It reviews existing academic literature, legal documents, jurisprudence and relevant information which the O&G companies disclosed publicly. On the second part, the author use case study methodology to examine as whether Shell had successfully practice what they had plead in their business principles.

2. RESPONSIBILITIES OF SHELL: THEORETICAL PERSPECTIVE

This section theoretically examines human rights matters that may occur due to the activities of O&G companies particularly Shell. The author analyses various reports and documents published by Shell such as annual report; Shell’s Code of Conduct; business principles; and sustainability report. Even though there are various aspects of human rights affected by Shell’s business activities, the author chosen to focus on environment, indigenous and labor rights. This is because these aspects are the most affected by the activities of Shell.

Shell in its Sustainability Report reported that their business exercises are based on the Shell General Business Principles and Code of Conduct. Shell likewise bolsters various external voluntary codes. These incorporate the UDHR; UNGP; UNGC, OECD Guideline; and the International Labor Organization Declaration on Fundamental Principles and Rights at Work (Royal Dutch Shell Plc, 2014). Shell’s human rights policy is claimed to be consistent with UNGP and applied to its employees and contractors (RDSP, 2014).

Since 2010, Shell has been incorporating human rights into its current approaches, frameworks and practices. Shells grasp a various and comprehensive work force with equal opportunities policy (RDSP, 2014). It refers to the

international associations, organizations, society and applicable bodies to comprehend and react to present and developing human rights issues that may occur due to the activities of O&G. It additionally works with other bodies related to the O&G industries to help different organizations embrace human rights hones. For instance, in 2014, Shell helped IPIECA (the worldwide O&G industry relationship for ecological and social issues) to build up a manual on group grievance instruments for the O&G companies to execute remedies for the affected groups (RDSP, 2014). Its human rights policy concentrates on four key territories which are communities, securities, work rights and supply chain (Shell, 2016).

2.1. Environment

The environmental effects are rarely discussed in academic discussions of human rights law. However, the becoming ecological caseload of human rights courts and settlement bodies in any case demonstrates the significance of environment's subject in human rights law (Alan, 2012). As such, realising the importance of environment as part of the human rights, Shell had taken several actions to deal with environment management to ensure their operations does not give adverse impact on the environment and if it does, to ensure that the impact can be reduced and remedied.

Shell, in its General Business Principle indicates that the company has a deliberate way to deal with environmental management. It sets guidelines and focuses for development and measure, assess and report performance externally (Shell. General Business Principle. Principle 5). Shell has clear prerequisites and methodology to maintain a strategic distance from operational spills. However, spills can occur due to accidents, operational failure or unusual corrosion. As can be seen in Chart 1 below, in 2014, Shell has ensured the recorded operational spills at a minimal level of 0.7 thousand tons, down from 0.9 thousand tons in 2013. Meanwhile, Chart 2 shows that the quantity of operational oil slicks likewise diminished in 2014 to 153, down from 174 in 2013. Looking at the chart, it shows that Shell denies responsibility for spills which it says due to sabotage and illegal refining.

In January 2015, due to the two spills in 2008, Shell was required to pay £55 million settlement to the Bodo community in Nigeria. Damage and oil robbery remained a significant reason for spills in 2014. In 2013, although the quantity of spills diminished to 139 from 157, the volume of these spills expanded to 2.7 thousand tons in 2014 from 2.2 thousand tons in 2013 (RDSP, 2014). This is in line with Guiding Principle 22 which imposes responsibility on company to provide or cooperate in the remediation process upon confirmation that any activities of company have caused adverse human rights impacts.

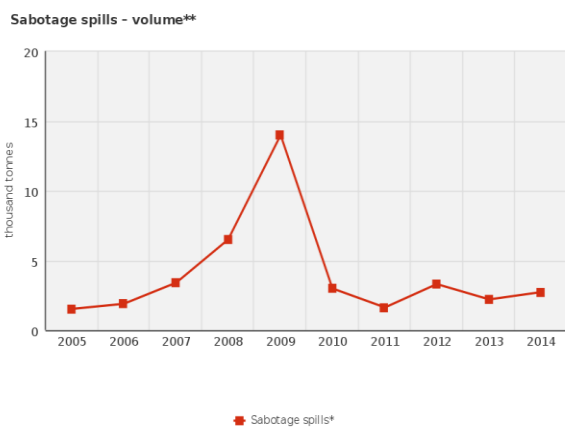


Chart-1. Shell Sustainability Report 2014

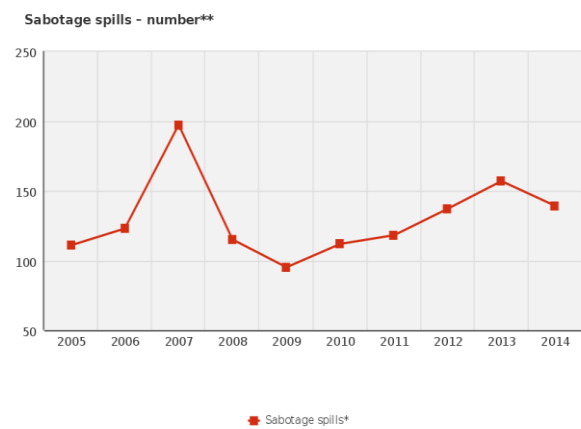


Chart-2. Shell Sustainability Report 2014

2.2. Indigenous Peoples

Within the O&G industry, the activities draw in with an extensive variety of individuals who might be influenced by or have worries about the companies' oil sands activities. O&G activities can possibly affect indigenous peoples who hold explicit rights for the protection of their cultural and traditional lifestyles. As such, it is important for the O&G companies to perceive the customary rights and values of the indigenous peoples groups; regard their social legacy and the essentialness of their properties; and give chances to inclusion and advancement.

Shell, in its Sustainability Report 2014 clarified that the company has consulted indigenous peoples on how company activities may affect indigenous peoples' rights. Shell then discover approaches to alleviate any adverse impacts and to expand advantage for the relevant indigenous peoples. For instance, in Canada, Shell has several agreements entered that upholds the company purpose to work with numerous First Nations and Métis communities to reinforce connections, discussion and engagement on their undertakings (RDSP, 2014). Shell works with IPIECA to build up a reliable approach and best practice over the O&G activities that may effects relevant communities' subject to their free, prior and informed consent (RDSP, 2014). Shell tried to decrease the effect of the O&G activities on the land and providing employment opportunities to the indigenous peoples through their operations. Since 2005, Shell has spent more than C\$1.7 billion to employ indigenous peoples. The company as of now is working with more than 70 indigenous organizations and contractual workers whom providing services and products for their operations (RDSP, 2014).

Actions taken by Shell is in conformity with Guiding Principles 16, 17, 18, 20, and 21 on O&G companies' responsibility to communicate how they address their human rights impact with affected stakeholders. In this case, stakeholders refer to indigenous peoples.

2.3. Labor

In the most recent decade, the O&G business has seen colossal development. Somewhere around 2007 and 2012, livelihood in the O&G industry expanded by more than 30 percent (Naveena, 2014). As indicated by exploration directed by Annette Bernhardt, 84 % of laborers in the O&G were employed by contractors in 2012. The business has likewise seen an expansion in fatalities and injuries at work. There is, in this way, no proof to recommend that these mishaps are an after-effect of inadequate training or overworked labourers. In any case, accounts from different commercial ventures that vigorously outsource work recommend those dangers could be available (Naveena, 2014). Further, O&G laborers are generally non-associated. They are isolated in man camps and on their districts. In most cases, when there is infringement of their rights, they don't know to whom they need to refer (Naveena, 2014).

Shell as a signatory to the UN Global Compact applies the International Labor Organization traditions on worker's rights. In 2014, Shell introduced a supplier reviewing system for stock suppliers as a component of Shell risk-based approach. This system helps Shell to control and avoid any risk by the supplier by conducting ethical audits in industrial facilities. Such audit reviews supplier's labour practices, health, safety and environment (HSE) conditions of the supplier and their general business principles (RDSP, 2014).

The reviews that were made on 17 factories covering 91 products highlighted any regions that do not conform to Shell's norms. Suppliers need to ensure that their factories and products are in line with Shell's norms before they can be accepted as Shell's suppliers. Shell also developed Accommodation and Welfare Guide which characterizes the conditions for sheltered, secured and agreeable accommodations to meet the physical, mental, social and cultural needs of workers. The Guide works as international standard for those who build Shell facilities around the world (RDSP, 2014).

In 2014, Shell achieved the lowest number of injuries. This is due to the introduction of reporting of process safety starting from 2011. The data can be referred in the Table 1 below.

Table-1. Number of fatalities, injuries and illness suffered by Shell's worker from 2005-2014

	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
Fatalities										
Total number	5	5	8	6	12	20	26	21	37	34
Employees	3	0	3	1	0	1	2	1	2	3
Contractors	2	5	5	5	12	19	24	20	35	31
Fatal accident rate (FAR)	0.74	0.79	1.32	0.96	1.56	2.3	3.4	3.1	5.6	5.0
Fatalities per 100 million working hours (employees and contractors)										
Injuries and process safety incidents										
Total recordable case frequency (TRCF)	0.99	1.15	1.26	1.24	1.23	1.4	1.8	1.9	2.1	2.5
Injuries per million working hours (employees and contractors)										
Lost time injury frequency (LTIF)	0.28	0.36	0.34	0.36	0.35	0.4	0.6	0.7	0.8	1.0
Lost time injuries per million working hours (employees and contractors)										
Operational Process Safety Events										
Tier 1 [A]	57	65	91	n/c	n/c	n/c	n/c	n/c	n/c	n/c
Tier 2 [A]	194	246	308	n/c	n/c	n/c	n/c	n/c	n/c	n/c
Illnesses										
Total recordable occupational illness frequency (TROIF)	0.96	0.77	0.51	0.66	0.76	0.6	1.2	1.5	1.8	2.0
Illnesses per million working hours (employees only)										
Security										
Using armed security (% of countries)	24	19	17	14	9	17	17	16	15	19
Using armed company security (% of countries)	1	3	0	1	1	1	1	2	2	2
Using armed contractor security (% of countries)	10	8	10	9	6	10	9	12	9	11
Gender diversity [B]										
In supervisory/professional positions (% women)	29.0	28.8	28.1	27.3	26.3	26.4	24.7	24.6	23.2	21.8
In management positions (% women)	21.0	18.8	18.2	17.6	17.0	16.1	15.3	17.7	16.2	12.9
In senior leadership positions (% women)	18.2	17.2	16.2	16.6	15.3	14.0	13.6	12.9	11.6	9.9
Staff forums and grievance procedures										
% countries with staff access to staff forum, grievance procedure or other support system	100	100	100	99	100	99	100	100	99	100
Child labour (% countries with procedures in place)										
Own operations	100	100	100	100	99	98	100	99	95	88
Contractors	100	100	100	97	96	97	99	98	89	69
Suppliers								96	82	62
Forced labour (% countries with procedures in place)										
Own operations	100	100	100	100	99	98	n/c	n/c	n/c	n/c
Contractors and suppliers	100	100	100	97	95	89	n/c	n/c	n/c	n/c
Integrity										
Code of Conduct violations [C]	267	181	209	226	205	165	204	361	n/c	n/c
Contracts cancelled due to incompatibility with Business Principles	7	22	14	11	40	24	49	35	41	63
Contracting and procurement										
Estimated expenditure on goods and services in lower-income countries (\$ billion) [D][E]	14	12	14	12	13	12	12	13	10	9
Social investment [F]										
Estimated voluntary social investment (equity share) (\$ million)	160	159	149	125	121	132	148	170	140	127
Estimated social investment spend (equity share) in lower-income countries (\$ million) [G]	73	74	67	45	61	54	61	65	n/c	n/c

[A] Process safety events are classified based on guidance from the IOGP and API. In 2014 there were 91 Tier 1 and 48 Tier 2 sabotage related events.

Source: RDSP (2014)

Shell designs their facilities to reduce the likelihood of incidents and the after-effects should anything abrupt arise. In 2014, they had various incidents where the effect of the occasion was diminished by the structure of the office. These occasions were: a fire in a toluene tank in the Rhineland refinery (Germany); a blast in a handling unit in the Moerdijk synthetic compounds office (Netherlands); an evaporator blast at the Sarnia refinery (Canada);

broken gear at an inland gas well in Permian (USA) prompting a gas spill; and a break at a stream station office in Nembe (Nigeria), to a great extent contained on-site (RDSP, 2014).

3. RESPONSIBILITIES OF SHELL: PRACTICAL PERSPECTIVE

Royal Dutch Shell discovered crude oil in Nigeria in 1958 and became Africa's largest oil producer, (US Energy, 2013). As the largest oil company in Nigeria, Shell operation is estimated around 31,000 square kilometers (Amnesty International, 2009). Many indigenous groups including Ogoniland live in the Niger Delta and their survival depending on the natural sources (Richard *et al.*, 2001). The O&G activities have caused oil slicks, gas flares, and other natural contamination that has crushed homesteads, streams, and angling—key assets on which the indigenous peoples depend (Amnesty International, 2009).

This section discusses existing cases involving Shell operation in Nigeria which gave adverse impact on environment and indigenous peoples. This section only examines these two aspects due to the lack of information of labor case against Nigeria. As for responsibilities of Shell towards labor rights, it seems that Shell had done their best to make sure their workers receive enough protection and their rights are safeguarded since up to this day, there is no report against Shell on labor aspect.

3.1. Environment

United Nations Environment Programme (UNEP) directed an autonomous ecological effect appraisal where they reviewed and visited all oil slick sights, oil wells, and other oil offices in Ogoniland, including decommissioned and relinquished office as well as 122 kilometer of pipeline (U.N. Env't Programme, 2011). The report shows that oil pollution in Ogoniland has degraded the environment including the contamination from oil hydrocarbons in Ogoniland in the land and groundwater which surpassed Nigerian national standard (UNEP, 2011). Oil slicks have additionally crushed the plantation in Ogoniland. Oil contamination in numerous brooks has wrecked mangrove timberlands, which fill in as nurseries for adolescent fish. Broad contamination and decimation of mangroves negatively affects the fish cycle. The oil contamination has additionally harmed products, prompting lower yields (UNEP, 2011).

In the case of Social and Economic Action Center v. Nigeria, the plaintiff, a non-administrative association speaking to the interests of the Ogonis, claimed that the activities of the company and its failure to follow standard security measures of oil companies operated in the area was the immediate reason for the ecological harm. Thus, the protestation affirmed that the oil consortium discarded harmful toxic, polluting Ogoni conduits infringing upon material universal ecological guidelines. According to the plaintiff, the company fails to legitimately maintain oil facilities which brings about various oil slicks close to the village. These spills had "*serious short and long-term health impacts, including skin infections, gastrointestinal and respiratory ailments, and increased risk of cancers, and neurological and reproductive problems.*" ((2001) AHRLR 60).

Ogoniland and different regions of the Niger Delta are areas qualify as High Consequence Areas (HCA) since it is exceptionally populated wetlands and are delicate to environmental harm (Richard, 2010). However, Shell has failed to treat these areas as HCA and has disregard the compliance to good oil field practice in Nigeria (Richard, 2010). From 1989– 1994, Shell reported an average of 221 oil spills per year in the Niger Delta (Richard, 2010) in which they claimed that half of these spills were because of consumption of maturing offices, while another 28% were because of sabotage by outsiders. In 1995 Shell took precautionary measures to decrease and oversee oil slicks by asserting that it supplanted and redesigned maturing offices and pipelines, enhanced the manners in which it reacted to oil slicks, and expanded its correspondences with local communities (Richard, 2010). In 2014, Shell claimed that over 70% of all oil spilled from its facilities in the Niger Delta is due to sabotage, theft, and illegal refining (as opposed to corrosion) (RDSP, 2014). This means Shell tried to put the blame on the sabotage and theft instead of their own.

3.2. Indigenous Peoples

Because of oil contamination, ecological damages severely affect indigenous peoples as they depended heavily on their land and natural resources for sustenance (IACHR, 1997). In certain cases, as the Inter-American Commission on Human Rights has noted: the oil exploitation activities have continued through indigenous peoples' land with little consideration on the placement of facilities where production sites and waste pits have been set promptly nearby a few communities; streets have been worked through a traditional indigenous area; seismic impacts have been exploded in regions of uncommon significance, for example, chasing grounds; and regions viewed as hallowed, for example, certain lakes, have been trespassed (Inter-American Commission on Human Rights, 1997). Referring to the report by UNEP, oil pollution has damaged crops; fish recycle; mangrove; and lead to lower yield (UNEP Report). This had adverse impact on the indigenous peoples as they rely heavily on crops and fields.

In Nigeria, Shell failed to consult indigenous peoples before they begin exploration and extraction (SERAC v Nigeria). Since there is no obligation to first seek free, prior, informed consent from the affected communities before commencing any oil activities on the indigenous land (Constitution of Nigeria, 1999) the Ogonis indigenous peoples cannot claim that the exploration of land is done without their consent.

4. CONCLUSION

When Kiobel's (Wiwa v. Royal Dutch Shell Co) case being brought to the US Supreme Court, Shell contended that Alien Tort Statute ought not make a difference on the ground that there is excessively questionable association between what happened in Nigeria and United States. Shell's contention is disturbing since they attempted to separate between corporate social obligation rehearses and genuine corporate conduct including the decision of prosecution and technique. How can a company claim to be committed to corporate social responsibility seek to gut a law that brings human rights victims a remedy for harm? Shell did not take any action to remedy all those adverse impacts suffered by indigenous peoples in Niger Delta even after the report by UNEP in 2011. Oil extraction often involves a triad of parties; indigenous peoples; a MNCs and the government acting in joint venture with the corporation. The alignment of interest in profit maximization need to be balanced between the human rights and MNCs. To prove what Shell pledged in their Business Principles and Code of Conduct, Shell need to take active action to remediate peoples in Niger Delta. Only then can Shell prove that they upheld the principles of business and human rights as spelt out in UNGP.

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