



Corporate Social Responsibility and Social License to Operate in the Niger Delta: A Case of the SPDC Global Memorandum of Understanding (GMoU)

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ABSTRACT

There has been a buildup of research on the role of the corporation in fostering more equitable social contracts at regional level, as an aspect of stakeholder relations in developing countries. A body of literature analysed approaches for measuring Social License to Operate (SLO), notable among them is a proposition of elements to be acquired to build SLO. In continuing the dialogue between theory and practice, the paper applied the elements of legitimacy, credibility and trust in assessing the perception of SLO in the Niger Delta of Nigeria. The article is a case analysis of the Shell Petroleum Development Company of Nigeria (SPDC) which aims to give an account of the stakeholder's view of the company's efforts to obtain SLO. In the case analysis, the paper outlined that the engagement approach of the SPDC's in the Global Memorandum of Understanding (GMoU) process has had little impact on the community's perceptions of the company's credibility and trust. The paper concludes that while SPDC maintained social legitimacy through improved ownership of GMoU projects and programmes, credibility under the current model is at a fragile level. The analysis further argues that corporations' risks rejection if trust is not developed through collaboration and shared experience in the implementation of community development. The paper recommends that models for community stakeholder relationships should be made more effective through the guidance of frameworks such as the right to Free, Prior and Informed Consent (FPIC) in their engagement with host communities.

Keywords: corporate social responsibility, social license to operate, global memorandum of understanding

INTRODUCTION

International oil companies (IOC) approach to community relations in the Niger Delta of Nigeria has evolved over time. The discovery of crude oil in commercial quantity and subsequent exploration in 1956 was followed by a pay-as-you-go approach to community relations. Under this first phase, the idea was to keep communities at arm's-length as much as possible while securing local right-of-way (ROW) (Idemudia, 2009). In the following years, decades of government neglect and the initial reluctance of

IOC's to address their social responsibility within host communities created a volatile atmosphere characterized by protest and conflict in the region.

The Shell Petroleum Development Company (SPDC) began active operation in Nigeria in 1936. After a reputational dent in 1995 over the Ogoni incident, Shell undertook a major review of its strategies in the Niger Delta region. The company implemented extensive consultation to overhaul its practices in the region. The company's aspiration to contribute economic development and conflict prevention was accompanied by disputes over reward systems which resulted in civil unrest and violence which significantly hampered the company's social license to operate (SLO) (WAC Global Services, 2003). Ojo (2012) opines that the infiltration of government parastatals and politicians in the oil industry contributed to this situation due to their role in shielding oil companies from the consequences of their actions on environmental degradation. These community grievances are also acknowledged by other scholars (Arowosege J. O., 2009; Enuoh R., Inyang B., 2014; Okoro E.N., 2017).

To address the discontent of her communities after attempting several approaches of community development, SPDC embarked on a new model as a way of engaging with local people in her host communities. The model which was based on agreements negotiated by intermediaries on behalf of groups of communities is known as the Global Memoranda of Understanding (GMOU). Studies on the GMOU by ECCR, 2010; Aaron 2012; Ite, 2015; Bieh R. L., Nwoke N., Boroh S.E., 2016) highlight SPDC's effort to maintaining SLO through the GMOU. However, a key challenge remains finding an effective means for corporations to achieve acceptance, approval and co-ownership of community development actions in a way that is sustainable. This paper attempts to contribute to the literature dialogue on the assessment of social license in the context of the Niger Delta of Nigeria. The article is a case analysis which aims to deepen understanding of the concept of SLO and its perception by communities that host the activities of international oil companies (IOC) in the Niger Delta.

Defining Social license to Operate (SLO)

According to Thomson and Boutilier (2011) a social license to operate (SLO) is a community's perceptions of the acceptability of a company and its local operations. The first published attempt to define the SLO by Joyce and Thomson (2000) is as follows: "We propose that SLO exists when a mineral exploration or mining project is seen as having the approval, the broad acceptance of society to conduct its activities...It can only come from the acceptance granted by your neighbors. Such acceptability must be achieved on many levels, but it must begin with, and be firmly grounded in the social acceptance of the resource development by local communities." The Social License to Operate therefore refers to the ongoing acceptance of a company or industry's standard business practices and operating procedures by its stakeholders. The license is granted by "the community". Designating them as stakeholders therefore implies that the network includes groups that are either affected by the operation or that can affect the operation.

SLO was developed as a response to a United Nations initiative that required industries operating in territories of indigenous people to secure free, prior, and informed consent (FPIC) from those indigenous people. The phrase 'the right to Free, Prior and Informed Consent' enforces the prior and inherent right of indigenous people to their lands and resources over external parties. FPIC was established by the ILO Convention 169 on Indigenous and Tribal Peoples (1989) and is recognised in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). FPIC can assist in strengthening corporate stakeholder engagement effectiveness and indigenous peoples' and communities' relationships with companies.

The concept of an informal 'social' license is compatible with legal norms in countries that operate under the principles of common law. However, in developing countries where only an official authority can grant a 'license', the concept has less acceptability. As a consequence, while communities and civil society are eager to see the social license in terms of a dynamic, ongoing relationship between the company and its stakeholders, regulators (and in turn many companies) see the 'license' in terms of a formal permission linked to specific tasks and events in which the regulator plays the central role in granting the 'license'. Consequently, it is seen that a company may have a social license for one operation

but not for another. Furthermore, in the context of the developing nation, the more expansive the social, economic and environmental impacts of a project, the more difficult it becomes to get the social license from host communities.

Social License and Corporate Social Responsibility (CSR)

The World Business Council for Sustainable Development (WBCSD) is a major driving force on the concept of CSR. Established in January 1995, its reports on corporate social responsibility (CSR) have helped to focus global attention on the necessity for governments and companies to demonstrate a degree of responsibility toward the society. Some companies are adopting SLO as part of their CSR strategy. Wilburn and Wilburn (2011) argues that when SLO is used as part of CSR, profit can increase. In a report by Slack, 2008 cited by the author, Royal/Dutch Shell, Chevron Texaco and the Philippine National Oil Company obtained community consent at a project to extract natural gas off the Coast of Palawan Island in the Philippines. This effort resulted in SPDC saving as much as \$72 million in project delays, which amounted to a 1,200 percent return on its community consent efforts.

The social license construct differs from other assessments of corporate social performance like the Global reporting Initiative (GRI). It focuses on stakeholder perceptions of the relationship rather than lists of third-party assessment of impacts. Focusing more on perceptions of the relationship than on perceptions of the impacts puts the weighting of impacts in the hands of the stakeholder. Boutilier (2017) argues that the assumption in the concept is that if stakeholders see the impacts as bad, the relationship will be viewed negatively as well. Looking directly at the perceptions of the quality of the relationship avoids the necessity of companies having to make assumptions on what is important to the stakeholders.

While social license might present prospects for greater recognition of the stakeholder, it can also be abused when IOCs operating in the region consciously implement CSR for merely the sole aim of securing the social license to operate. This ambivalent practice can undermine CSR because it substitutes adherence to environmental standards with maintaining a favourable community relationship. Ojo (2012) notes that IOC's understanding of CSR in this regard is in sharp contrast to the community perceptions of CSR. The approach of pacifying restive communities impacted by oil activities rather than for sustainable community development (SCD) takes the region back to the regime of discursive commitment of IOC's to CSR.

The Measurement of SLO

According to Thompson and Joyce (2008), the normative components Social License comprise the community/stakeholder perceptions of the social legitimacy and credibility of the project, and the presence or absence of true trust. In their conceptualization, the authors posit that a project must be legitimate before credibility is of value and both must be in place before meaningful trust can develop. The three elements proposed are described thus:

- i.) Legitimacy: Conforming to established norms – norms may be legal, social, cultural and both formal and informal
- ii.) Credibility: The quality of being believed – the capacity or power to elicit belief
- iii.) Trust: The willingness to be vulnerable to risk or loss through the actions of another

The practical approach to measuring SLO which may be sub-divided into indirect and direct measurement techniques, probes into the perceptions of the community to yield a numerical score of the quality of the SLO relative to a four level–three boundary conditions model. Although this method is not applied in this study, the authors aver to its capacity to provide a measurement of the SLO, as well as reveal details of what is positive and negative in the relationship. On the other hand, the study adopts the indirect measurements which use physical and verbal indicators. Physical indicators are actions which can be interpreted as expressions of sentiments within the community, while verbal Indicators has to do with recording people's perception in words and phrases that convey their approval or disapproval.

Social License and the Community Stakeholder

Owing to the philanthropic nature of CSR and weak regulatory mechanisms in developing countries it can be inferred that SLO, since it is both voluntary, and involves gaining the consent of the community, its measurement will pose a challenge. This challenge however, can be addressed by a United Nations (2007) document which provides significant guidelines for governments and companies to engage indigenous people. Article 32 of United Nations declaration on the Rights of Indigenous People states as follows:

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.
2. States (and corporations) shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources.
3. States (and corporations) shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural, or spiritual impact.

Following series of conflicts in the Niger Delta that emanated from the degradation and neglect of oil-bearing communities, IOC's responded to the grievances of their host communities by accepting some responsibility. Some demonstrate their commitments to CSR by increasing community development spending while others move away from the 'top-down' to more participatory approaches of engaging community stakeholders. Despite these efforts scholars note that a process for achieving SLO beyond the IOC's provision of funding in fulfilment of agreements such as the GMoU is yet to be developed in the Niger Delta. The gap in literature remains identifying the prerequisites a community stakeholder must have before it becomes capable of granting a level of SLO that holds the corporation to greater accountability in the performance of CSR.

The SPDC GMoU and Social License to Operate

The history of 'organized' CSR in Nigeria can be traced to practices in the oil and gas sector driven by western MNCs whom scholars (Ojo, 2012; Aron K 2012; Beih et al., 2016) note their activities have mainly focused on remedying the effects of their extraction activities on the local communities. In the case of SPDC, CSR has been defined using various terms to match the company's intended approach at each time – sustainable development, community investment, etc. In 2006, SPDC introduced a new way of working with communities called the Global Memorandum of Understanding (GMoU), which has continued to be used successfully by other oil companies. A GMoU is an agreement between SPDC and a group (or cluster) of several communities. Clusters were based on local government or clan/historical affinity lines as advised by the relevant state government. The Global Memorandum of Understanding (GMOU) was created by Chevron oil Nigeria in 2005 as a means through which the communities will gain better access to participate and play greater roles in the management of their development.

After a short while of implementing the GMoU, stakeholder perceptions of the GMOUs' impact on local development and company-community relationships drew the attention of operators of the oil industry to the model. Under the terms of the GMoUs, SPDC host communities organised as clusters became more involved in their development while SPDC on behalf of its joint venture partners, provides funding for five years. The fund ensures the communities have secure finances to undertake the implementation of their community development plans.

The GMoUs or agreements represent a paradigm shift in SPDC's approach to more transparent and accountable processes, regular communication with the grassroots, sustainability and conflict prevention. Key points of the paradigm shift from community development approach to SCD were informed by the need to:

- i. Secure a Freedom to Operate and Grow
- ii. Reduce or eliminate community production deferment, lost project days and asset destruction activities.

- iii. To engage other stakeholders (including NGOs, Development agencies etc.) in developing social solutions for the Niger Delta
- iv. Develop transparency in SPDC's interaction with Communities
- v. Tackle insecurity and constant agitation, which jeopardizes efficiency and investment led growth in the Niger Delta.

Okodudu (2008) identified some of the drawbacks in the policy as the reduction of community interface fronts obviates the peculiar needs of the heterogenous community which ends up providing what communities do not need thereby intensifying disparate needs of communities.

Similarly, a study by ECCR (2010) acknowledged that even though the GMoU was a significant improvement on previous SPDC community engagement approaches, the rushed roll-out by the company resulted in the essential participatory principles being ignored. This was supported by Egbon, O, Idemudia, U & Amaeshi, K (2018) findings that the GMoU's potential to contribute to SCD and positive corporate-community relation is unlikely tenable.

Conceptual Framework

Stakeholder theory is an organizational management and business ethics theory that was first developed by Edward Freeman. The main principle of the theory emphasizes that companies play a vital role in the fabric of society. This role requires them to consider the interests of all parties affected by their actions, not just in the returns they make for their shareholders. Freeman's (1984) definition of stakeholders as those who could be affected by the actions of a company or who could have an effect on the company is adopted in this paper. Clarkson (1995) distinguishes primary and secondary stakeholders. Primary stakeholders are those "without whose continuing participation the corporation cannot survive as a going concern". In Branco & Rodriguez (2007) view, the stakeholder perspective is inescapable if one wants to discuss and analyse CSR, because the theory identifies groups to engage within a community to build cohesion and helps corporations in the achievement of corporate goals.

As it pertains to this study, the concept of the social license presumes that stakeholders have the power and influence, either alone or in coalitions, to either stop projects or impose severe costs upon them. In most communities in which corporations now operate, groups stake a claim in defining what is acceptable to the community. Thus, achieving any level of consent or even simply consultation that informs, must start with being able to identify those groups and their expectations. Wilburn and Wilburn (2011) propose that stakeholders be divided into two groups: vested and non-vested. Vested stakeholder groups would have a voice and a vote in the awarding of a social license to operate, while non-vested stakeholder groups would have only a voice. In this model, vested stakeholder groups would be defined as those who have a right to the possession of something tangible in the community in which the social license to operate is being requested. Non-vested stakeholder groups would be those who have an interest in the activity that is being pursued in the license to operate. In this sense, stakeholder discussions to SLO can begin with shared norms and values that bind each stakeholder group. DeGeorge's (1986) ethical norms for multinational corporations (MNCs) operating in developing countries serves as a set of values and norms a corporation can consider for application.

METHODOLOGY

The study population consists of indigenes and residents of the communities which make up GMOU Clusters in Rivers and Bayelsa states. Nigeria's 2016 population forecasts based on 2006 National Population Commission and National Bureau of Statistics puts the population of Bayelsa and Rivers states at 2,277,961 and 7,303,924 respectively. SPDC presently has signed agreements with 33 GMoU clusters, covering communities in Rivers and Bayelsa states. The study population therefore includes beneficiaries and individuals involved in the GMoU process, selected from twenty-eight (28) communities in Rivers and Bayelsa states. Through a process of purposive and simple random sampling, thirty-one in-depth interviews were conducted while seven focused group discussions held with at least four communities in each Rivers and Bayelsa cluster.

Analysis in this paper employed qualitative cross-sectional key informant interviews of community stakeholders. The GMoU process was reviewed using respondent's narratives as verbal indicators of their SLO perspective. In this approach, the researcher classifies responses based on three elements and examined for consistent patterns to reveal subtleties on the quality of Social License. The verbal indicators had the advantage of being direct but remained highly dependent on the researcher's skill.

DISCUSSION OF FINDINGS

This section describes the analyses the community stakeholder perceptions of the SLO for the GMoU using three key themes of the community perceptions of legitimacy and credibility and the presence of trust since the inception of the GMoU. To grasp the perception of social license in SPDC host communities, the paper summarizes the quality of the SPDC relationship with communities below:

1.) Social Legitimacy:

- i.) Narratives from respondents indicate that communities view the GMoU as a legitimate strategy of extracting oil resources from their land through IOC's. As economic conditions in the country declined since the slump in oil price in 1980's, Niger Delta communities still look to SPDC as a means of meeting their development needs rather than the government.
- ii.) From verbal indicators recorded, SPDC's intent of empowering communities and building partnerships has achieved improved ownership of development process and reduced cases of abandoned projects under the GMoU. However, legal and technical issues on land ownership still exist as there are issues of poor and improperly channeled compensation under the GMoU.
- iii.) SPDC lacks understanding of the norms of the community because the GMoU clusters heterogenous communities whose needs are disparate. As a result, the GMoU struggles to represent the local 'rules of the game' in certain villages. Social legitimacy based on established norms, the norms of the community, that may be legal, social and cultural and both formal and informal in nature. If SPDC fails to consider this, the company risks returning to the regime of rejection.
- iv.) The initial basis for social legitimacy of the GMoU was from engagement with all members of the community during the Sustainable Livelihoods Assessment (SLA), but subsequently, the GMoU representatives, particularly the Cluster Development Boards (CDB'S) are accused of not adequately providing information on the process during and after the award of GMoU projects/programmes.

(2) Credibility:

- i.) The Community development plans of the GMoU is a remarkable instrument that has helped in managing expectations and reduces the risk losing credibility by being perceived as in breach of promises made, a situation that existed in the community relations era when relationships of verbal commitments that were open to reinterpretation at a later date.
- ii.) The GMoU's focus has been on visible infrastructure projects. Respondents believe that the awards are influenced by staff of SPDC for members of their patronage network. This has resulted in sporadic complaints of poor quality of projects leading to feelings resentment among community members who feel excluded.
- iii.) Contacts between the company and the communities become infrequent, frustration seems to be growing and trust is lost. The delay in releasing funds exacerbates the peoples impatience to see development in the community and the process is gradually losing credibility. Regardless of this, the GMoU remains legitimate in the minds of community members because they want the employment and economic opportunities in the future. This situation is therefore described as a fragile level of credibility.

(3) Trust:

- i.) In 2006, when the GMoU was first signed with the clusters, trust reached a remarkable level. Most respondents believed the new model re-legitimized the company as communities became involved in project selection. The community also felt reassured about their concerns regarding the appointment of representatives. But as the communities make contributions to the Cluster development board (CDB) and their aspirations are not met, complaints of lack of transparency and corruption begin to emerge.
- ii.) The narratives of an overwhelming number of respondents revealed that through the GMoU SPDC operates in a transactional way by providing funds and remaining passive through implementation. The company hides under the guise of 'putting communities in the driver's seat' while still indirectly controlling the community's choice of projects to be implemented through the CDB's.
- iii.) Regardless of the mentoring NGOs guidance, communities limited capacity in professional development practice hampers the efficiency of the GMoU. Communities bear responsibility for the outcomes of implementation. The absence of a collaboration that inherently generates shared experiences with SPDC within which trust can grow, signifies that trust is lacking in the GMoU relationship of the company and its host communities.
- iv.) In some communities, a second batch of the revised GMoU has begun. Respondents in such communities acknowledged the reviewed to contain clauses which now make for greater gender participation and the inclusion of vulnerable groups. As a result of the hope the clauses have instilled, there are indications that trust could return to SPDCs relationship with her community stakeholders.

CONCLUSION

In the case analysis we have outlined that stakeholder engagement at the community level within SPDC's CSR had no real impact on how SLO influences the company's acceptability in the region. Without legal requirements, the motivation for seeking a SLO remains quite high among the IOCs. The survey of perceptions revealed that the quality of the SLO had changed very little from the situation before the GMoU due to expectations of communities not been met in the second batch of the model implementation. It appears that the relationship with the communities in the region has stabilized but the SLO cannot yet be said to be at the level of approval. From the evidence, we generalise to the extent that a policy intervention would impress on oil and gas sector regulators and government development agencies to utilize the FPIC as a guidance in the relationship of IOC's in the Niger Delta. Integrating FPIC can gain the ongoing support, social acceptance and approval of the community and stakeholders impacted by oil exploration activities. This will not only activate the companies' SLO but accelerate progress towards sustainable community development.

RECOMMENDATION

- 1.) In order to protect and build SLO, IOC's are encouraged to first do the right thing and then be seen doing the right thing. This means evaluating their environmental impact and all the other aspects of oil exploration activities with a critical eye.
- 2.) In a system where representatives speak for the masses, the power to impose one's will upon others limits some stakeholders from contributing to granting social license to operate. It is therefore recommended that stakeholders be categorized.
- 3.) Research is required to develop a method which provides precise measurement of the Social License in the context of the Niger Delta. This will help to probe into perceptions of the community to yield a numerical score of the quality of SLO as a way of building on qualitative techniques.
- 4.) A consultative Free, Prior and Informed Consent (FPIC) process is recommended for IOC's, regulators and government development agencies to tackle risks and improve the stability of

community development initiatives. Such a process should be adapted to the context of each project/programme or location.

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