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Critical perspectives on Oil and Human Rights by S.S. Thorsen

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Critical perspectives on Oil and Human Rights

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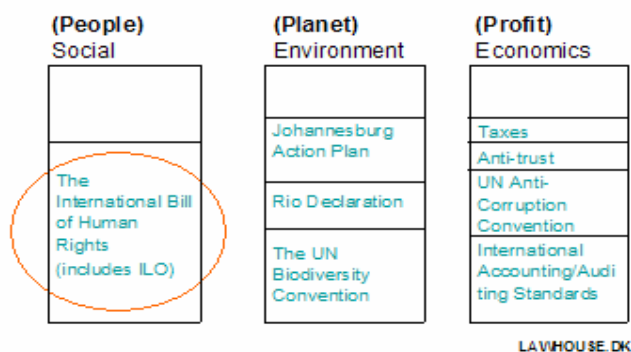
1. The Frame: Sustainable Development, Corporate Social Responsibility & Human Rights¹

The accountability of business within society has been much debated during the past 25-30 years. In the 70's and 80's, attention was primarily focused on the impact on the external environment. However, in the 90's focus has expanded to embrace what is known as Corporate Social Responsibility (CSR).

Despite small nuances concerning the way various terms conform to the discourse, the following concepts appear to have gained consensus amongst leading actors in the field. The primary area of concern is that of Sustainable Development. For business it is defined as the Triple Bottom Line, popularly known as the three Ps: *People, Planet, Profit*, which describe how business can contribute to sustainable development. Shell has been instrumental in conceiving the Triple Bottom Line concept that is usually ascribed to John Elkington.²

Fig.1 The triple bottom line

Triple Bottom Line Corporate Responsibilities



From the Triple Bottom Line perspective, companies are compelled to find sustainable solutions for their relations to *human beings* (CSR, hereunder the relationship to employees, suppliers,

¹ From : "Advice: Unfold Human Rights" ISBEE Conference in Melbourne, July 2004. By Sune Skadegaard Thorsen & Annemarie Meisling

² John Elkington is co-founder of SustainAbility (1987); Elkington has worked in this field for 30 years and is one of the world's leading authorities on sustainable development and on 'triple bottom line' business strategy.

customers, local communities and other stakeholders), to the *external environment* (including biodiversity and animal welfare), and to the *economy* (including the economy of the community).

This article will focus on human rights as the explicit responsibility of business towards people i.e. Corporate Social Responsibility, even though the oil industry has shown signs of leadership in all three fields³ covered by the prevailing discourse operating with 'Corporate Responsibilities' as embracing all three areas of responsibilities; i.e. Social, Environmental and Economic..

Notwithstanding the above, it is difficult, in practice, to describe each pillar as simply as illustrated. Indefinite zones and overlap exist between the pillars. For example, corruption and bribery belong, at first glance, to the expanded understanding of the 'profit' pillar as having an immediate impact on the economy of the community. At the same time however, corruption has human rights implications (in the form of economic discrimination, access to justice, etc.) as well. Another example is seen in the 'planet' pillar. The 'planet' pillar describes the impact on the external environment; yet, this also has great impact on the right to health, the right to family life⁴ and sometimes even the right to life, all basic human rights. Consequently, reporting strives towards a holistic approach embracing all three pillars in one and the same report.

Corporate ethics is a term often used to cover the standards of "good corporate behavior" or "good corporate citizenship" with regard to the "people" and "planet" pillars. But defining 'ethics' is in itself a task that has occupied philosophers for centuries. Corporate ethics should be based on certain social values that have bearing from culture to culture. Identifying these values is of paramount importance.

³ e.g. 'Beyond Petroleum' and the 'Publish What You Pay' campaign.

⁴ This construction was actually part of a decision from the European Court of Human Rights' holding the state responsible for violation of the right to a family life for not intervening appropriately against continuous pollution discharged from a company.

International human rights represent a set of values with a uniquely attractive feature; the Universal Declaration of Human Rights (UDHR) and the two covenants⁵ that followed in the mid-sixties, are the only values accepted and recognized by the vast majority of nations in the world⁶. As such human rights are the only clearly defined values that can claim status as an international frame of reference for responsible corporate behavior towards people.

2. Oil & Gas Dictates Presence

Natural resources do not choose territories where they occur nor do they choose the governments that exercise legal rights over them. Resource rich areas have been fuelling the perpetuation of oppressive regimes that would otherwise be dependant on 'human resources' to develop their economies. When the population is not essential to the "economic well being" of the few holding power, people are less important than if the governments are dependant on their support and full participation in the country's economic growth.

To exploit the richness of their territories, countries need technologies that are most readily available from large multinational companies. These companies primarily originate from countries that have established governance systems that depend on the participation and support of the population. The population sees that the world is not only environmentally and economically interconnected and interdependent, but also socially⁷, and thus makes demands on various global actors. Immediate targets are international organisations such as United Nations (UN) institutions, Bretton Woods⁸ institutions and the World Trade Organisation (WTO). However, it becomes

⁵ The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) form, with the UDHR, the UN International Bill of Human Rights.

⁶ With the UN Vienna Declaration from 1993, the International Bill of Human Rights was declared universal by 172 out of 200 member states, in other words by the vast majority of nations.

⁷ 'The war against terrorism' and the multiple humanitarian interventions in recent years are basically an expression of the need to acknowledge and react on the perceived social interconnectedness.

⁸ Preparing to rebuild global capitalism as World War II was still raging, 730 delegates from all 44 Allied nations gathered at the Mount Washington Hotel, situated in the New Hampshire resort town of Bretton Woods, for the United Nations Monetary and Financial Conference. The delegates deliberated upon and finally signed the Bretton Woods Agreement during the first three weeks of July 1944. Setting up a system of rules, institutions, and procedures to regulate the international political economy, the planners at Bretton Woods established the International Bank for Reconstruction and Development (later divided into the World Bank and Bank for International Settlements), and the International Monetary Fund. These organizations became operational in 1946 after a sufficient number of countries had ratified the agreement.

increasingly evident that international companies play a significant role in international development and that such companies make considerable economic gains on globalisation. With the increased opportunities follow increased obligations in relation to all three bottom-line areas.

3. The Characteristics of Oil Companies' Human Rights Approaches – From Pressure To (Re)Action

Not only oil companies but also the extractive industry in general has realized the necessity to become involved in the human rights agenda. This focus has primarily been spurred by the fact that the extractive industry has repeatedly been subject to human rights criticisms. From Shell in Nigeria, to BP in Columbia and Unocal in Myanmar (Burma), to mention a few, the track record of oil companies as far as human rights is overwhelmingly disappointing.

Similarly reactions to experienced disasters appear to set the agenda for the issues that oil companies include under their initiatives in relation to CSR. Although acknowledging human rights as the basis, the industry has focussed primarily on:

- The right to health and safety of their employees- at constant threat due to difficult and dangerous settings in which companies operate,
- Other labour rights- acknowledging that such focus is an absolute 'must' under CSR,
- The rights of indigenous peoples- following primarily the harsh criticism of Shell in Ogoni land alleging forced displacements and other human rights abuses, and
- The conduct of security forces, –as they relate to a number of rights - i.e. the freedom from torture and degrading treatment, freedom from arbitrary detention etc.

Though highly commendable target areas, the evolution could be perceived as a string of reactionary approaches forming the 'strategy' of the industry in relation to human rights. Whenever a human rights issue has been front-page news, proactive initiatives will be taken to prevent or mitigate a repetition of such occurrence.

A more comprehensive human rights based strategy, that would target issues that have not yet been on the radar screen of industry critics, does not appear to emerge clearly from any of the actors, including front-runners like BP, Statoil, and Shell, even though these companies have committed themselves more broadly to human rights. Although immensely interesting ‘projects’ are emerging, it remains difficult to see any of the companies strategising their core business around human rights and going beyond risk management. In addition, human rights are conceptualised differently from company to company. Shell⁹, for example, would explicitly include Economic, Social and Cultural rights to its human rights commitment, taking its point of departure in the UDHR, while Exxon Mobil, acknowledging the stakeholder demand on human rights and committing itself to be “steadfast in promoting respect for human rights throughout the world”¹⁰, does not mention human rights explicitly in its policies, though mentions related rights such as: health, safety, product safety, alcohol and drug use, equal opportunities and freedom from harassment .¹¹

4. Getting Rights Right

Getting human rights ‘right’ will probably ease the ongoing debate on the role of human rights not only for the oil industry, but also for other industries. An example of the importance of describing rights the ‘right’ way can be concluded from one of the more recent actors, Premier Oil. It appears from the publicly available “Human Rights Policy”¹² that Premier Oil did not get human rights ‘right’. The following “technical” analysis ‘seeks to pinpoint some of the challenges companies signing up to human rights might face.

At first sighting it would appear that Premier Oil signs up to the breadth of human rights mentioning the UDHR and the ILO Conventions in the first paragraph of its policy. However, the Policy continues:

⁹ www.shell.com accessed 20 September 2004

¹⁰ see http://www.exxonmobil.com/corporate/Citizenship/Corp_citizenship_Com_transparency.asp accessed 20 September 2004

¹¹ see Standards of Business Conduct at <http://www2.exxonmobil.com/corporate/files/corporate/sbc.pdf>, accessed 20 September 2004

¹² Premier Oil Human Rights Policy – www.premieroil.com accessed August 30, 2004

“Continuous improvement

Premier Oil recognises it has a responsibility to protect human rights in both its external and internal business environment. This is the basis of the company's commitment to corporate social responsibility. The company is committed to the continuous improvement of its performance in this area.”

It shows leadership placing human rights as the “basis of the company’s commitment to” CSR and recognising that continuous improvement will be needed. Through this the company underscore its responsibility to ‘protect’ human rights not only internally, but externally as well. Whether the latter will relate to company complicity only or possibly to any human rights violation occurring in the vicinity or indeed the country of operations is not specified. Also the statement does not mention which rights the responsibility would cover. Thus, the third paragraph of the Policy could be understood as a specification of the rights contained under the broad commitment:

“Development rights

The scope of our policy includes the rights of our employees - their health and safety as well as their security arrangements and working conditions; and the development rights of our external stakeholders, in particular local communities. We believe that the right to development is a basic right, without which other human rights cannot be secured or sustained. It is therefore our policy to **Make a Positive Difference** through supporting programmes of social investment, in partnership with professional social development organisations, government agencies and local non-governmental agencies, that contribute to sustainable development goals in the communities and countries where we operate.”

The heading, “Development rights”, would normally be interpreted as economic, social and cultural rights.¹³ However, it appears that Premier Oil on the one hand includes some civil and political rights and on the other hand limits the scope of economic, social and cultural rights referring to: “the rights of our employees”, i.e. labour rights, further qualified as “the right to a safe and healthy working environment”, a more unspecified right to “security arrangements”, and “working conditions”. “Security arrangements” can hardly be described as a labour right or indeed as a right in itself. The statement could invoke a range of rights, primarily civil and political rights. In relation

¹³ Also referred to as second-generation rights, whereas civil and political rights are referred to as first generation rights.

to the term “working conditions” it is unclear what right exactly Premier Oil refers to. By refraining from mentioning the quality of the working conditions the reference could be interpreted as a broad reference to art. 7 in the ICESCR mentioning ‘just and favourable working conditions’, including as a minimum equal pay for equal work, minimum wages, safety and health, equal opportunities by promotion, and the right to rest, leisure and paid holidays. However, Premier Oil would possibly not have such wide perception of ‘working conditions’.

Premier Oil continues by mentioning that it believes in the “right to development”¹⁴ as a basic right. This position signals a very progressive stance. The right to development has been debated for decades but a final definition has yet to be agreed by the UN. Such signal could possibly make an impression on several nations when debating the legal status of such a ‘right’ in coming years. However, it will be interesting to see whether Premier Oil will actively lobby for such a development. It will also be interesting to see whether Premier Oil will assist in the formulation of a definition in practice. The subsequent sequence unfortunately seems to restrict Premier Oil’s contribution under ‘the right to development’ to ‘donation’ or ‘community involvement’,¹⁵ i.e. the ‘usual suspects’ under CSR.

In sum, despite Premier Oil’s clear efforts to appear proactive in the human rights field, it seems to lack a basic understanding of human rights law and content. Working with international human rights law requires that the actor understand the content and subtleties of such law in order to avoid empty statements or worse becoming bound by un-intended statements.

5. Unfold the Universal Rights

It is advantageous for business to use human rights, as defined in the UN Bill of Human Rights, as the foundation of their CSR strategy. The unfolding of human rights’ relevance to business

¹⁴ Shell also includes the right to development, see www.shell.com, accessed 20 September 2004

¹⁵ “supporting programmes of social investment, in partnership with professional social development organisations, government agencies and local non-governmental agencies, that contribute to sustainable development goals in the communities and countries where we operate” or in other words donations.

substantiates this argument. Not only do human rights provide for an encompassing framework for risk management in relation to social responsibilities; the UN Bill of human rights can form the basis of a proactive approach, providing companies with a competitive edge¹⁶ and needed synergies between corporate strategies, branding, donations and community involvement.

Arguments for using a human rights based approach can be summarized as follows:

- There is a general recognition for Human Rights as contributing to sustainable development,
- They are globally recognised and accepted,
- They provide a good basis for making values operational
- They provide an ideal basis for creating objectives under partnerships with both states and Non-Governmental Organisations (NGOs)
- Most NGOs addressing the problematic parts of globalisation base their arguments on human rights issues and understanding.

Rights under the International Bill of Human Rights can be described under the following headlines:

International Covenant on Civil and Political Rights

Art 2:	non-discrimination in relation to all rights
Art 6:	the right to life
Art7:	prohibition against inhumane/degrading treatment (consent medical trials)
Art 8:	prohibition against slave-, forced- or other compulsory labour
Art 9 - 10:	the rights to freedom and personal safety (arrest and detention)
Art 11:	prohibition against imprisonment for non-fulfilment of a contractual obligation
Art 12:	the right to liberty of movement and freedom to choose residence
Art 13:	the right to seek asylum
Art 14 - 15:	the right to a fair trial and prohibition against retroactive punishment
Art 16:	the right to recognition as a person before the law
Art 17:	the right to privacy
Art 18:	freedom of thought, conscience and religion
Art 19:	the right to hold opinions and to freedom of expression
Art 20:	prohibition against inciting war and against hate speech
Art 21:	the right of peaceful assembly
Art 22:	freedom of association, including the right to form and join trade unions
Art 23 - 24:	the right to form a family and the rights of the child
Art 25:	the right to take part in the political life
Art 26:	equality before the law

¹⁶ From "Advice: Unfold Human Rights" submitted for ISBEE Conference in Melbourne, 15 – 17 July 2004 by Sune Skadegard Thorsen, Partner and Annemarie Meisling, Assistant Attorney see www.lawhouse.dk.

Art 27: minority rights to culture, religious practice and language (indigenous peoples rights)

International Covenant on Economic, Social and Cultural Rights

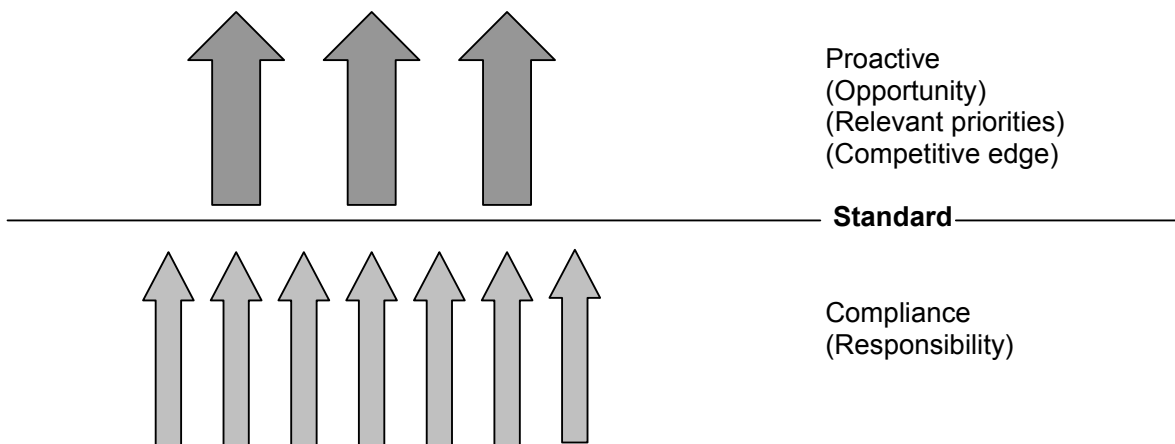
- Art 2: non-discrimination in relation to all rights
- Art 6: the right to work
- Art 7: the right to a minimum wage/ safe and healthy working conditions/ rest, leisure and holidays
- Art 8: the right to form trade unions and join the trade union, and the right to strike
- Art 9: the right to social security, including social insurance
- Art 10: the right to a family life including prohibition of exploitative child labour
- Art 11: the right to adequate food/ clothing/ housing/ fair distribution of food
- Art 12: the right to health
- Art 13-14: the right to education
- Art 15: the right to protection of moral and material interests from one's inventions/ culture/ to enjoy scientific progress

6. Creating The Competitive Edge – A Proactive Approach

Most of the rights have a compliance side and a proactive opportunity side. The compliance part is related to risk management, while the proactive part gives the companies a competitive edge. Translated into the larger picture, coherent compliance across the full range of rights would form the foundation for turning the downward spiral on corporate performance into an upward spiral.

In the proactive approach the companies go beyond the compliance side and use their CSR strategy to brand themselves and create a competitive edge. This can be done by passing the line of compliance and adopting proactive strategies in support of one or more rights.

Fig. 2 Corporate Social Opportunities



National legislation and the International Bill of Human Rights
(Labour rights are an integrated part of the Bill of Human Rights)

Taking a proactive approach means choosing some rights that the company is prepared to actively promote, beyond what it is obliged to do. Experience from companies adopting this approach has shown that it can be valuable to formulate the proactive strategies in line with the International Bill of Human Rights referring to the arguments outlined above in section 5.

Not many companies have yet integrated a proactive approach, but those who have can brand themselves on their CSR strategies in ways that are impossible for companies only working with the compliance side. Initiatives under a proactive human rights strategy are unlimited. A company in compliance with human rights, which by now will be expected as a must, though seldom fulfilled, no longer impresses stakeholders.

When choosing a proactive strategy it is important that the values are relevant to the specific sector. It will be expected of the food industry to have a strategy regarding the right to food, for the pharmaceutical industry to pay specific attention to the right to health, etc. An illustration of this is McDonalds' first CSR report that in length described its HIV/Aids program in Africa. Notwithstanding the undisputable positive aspects of the initiative, McDonalds was criticised for not addressing the problem of scarcity of food in some of the African countries or the issue of quality of its products as defined under the right to food.

Sponsorships and donations should be an integral part of the proactive approach. Many oil companies provide funds or give subsidies to various purposes locally or abroad without a specific purpose beyond the creation of an improved image. However, there is a risk that such 'random' activities will be perceived as mere diversion of attention from the core activities of the company. It becomes important that sponsorships and donations are streamlined into supporting the proactive goals defined in the sustainability strategy of the company. This will further enhance synergies

between the more traditional corporate giving and the contemporary approach of enhancing sustainability issues into core business strategies.