

CONFERENCE ON OIL AND FUTURE OF SUDAN;

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Oil Industry and Human Rights: Emerging Basic Principles & Best Practices

1. Introduction

"Sudan needs oil: its people north and south need oil wealth. But under current conditions that is not happening. Oil is bringing few benefits to the people under whose land it lies. The development of oil must take place under a new set of terms". Christian Aid¹

The above quotation from the Christian aid report on oil and war in Sudan a few years ago has three poignant messages that resonate quite well with the theme of this conference.

The first message is that the discovery and production of oil provides a much needed opportunity for the Sudanese people to benefit from the proceeds generated from oil in order to break the circle of poverty and create better prospects for future economic and social development. The second message is challenges that a new found source of wealth may hide in its bosom. What may be welcome as a blessing may unfortunately turn out to be a curse. The report was informed by the reality on the ground five years back when the window of opportunity was not as optimistic as it is today following the long and unassuming struggles that culminated to the comprehensive peace agreement (CPA) that has ushered the government both the union and southern Sudan levels, to a new chapter of better governance of ensuring that oil wealth and other resources must be ultimately utilized to uplift living standards of all people, particularly those who are on the margins of national development.

The last bit of the message is an element that is going to be central to my presentation. It is a message that whatever conduct or activity that touches on oil exploration, exploitation, sale, utilization and sharing must be underpinned by terms that are not only guided but guaranteed by principles of human rights and social justice. There is also emerging body of jurisprudence that is founded on comparative experiences in other countries or entities like companies commonly termed as 'Best Practices'. We shall look

¹Christian Aid Report: Scotland Earth, oil and war in Sudan ,March 15,2001

at those guiding principles that are adhered to by some of these countries or companies that have exemplary human rights –based approach in doing business.

2. Oil Resources and Human Rights

The development of energy resources like oil and gas is often understandably appreciated as an important way to generate and replenish national coffers in order to raise funding portfolio that may be used to raise living standards and build a prosperous, stable society. However, in many countries across the globe particularly, those energy producing and exporting, revenues generated for government may not lead to better standards of living in spite of high income spurred by newfound wealth and instead such funds may be misused and abused by few political and economic elites in exclusion of majority of deserving citizens. In addition there are instances of diminished rather than increased democratic participation in government and decision making processes. And above all, it is human rights of the people which may suffer as a result of bad governance and economic mismanagement due to political elite's inability or unwillingness to effectively and efficiently manage energy and revenues to foster constructive economic, political, and social development.

This is a stark reality that faces Sudan today and there is an opportunity to make a strategic choice for good of her people without having to go the opposite way. Sudan has recently joined a league of oil producing countries which straddles across the continent with varied level of reserves and production. There are potentially large oil reserves in Sudan which may not be in the mega club of south Arabia or Iraq but nonetheless puts it in the range of the lavishly rich Brunei or not so stable Columbia. The government sources have in many occasions indicated that there has been steady raise in the level of reserves and production of oil in Sudan. "By the end of 2003, the Sudanese daily oil production is expected to increase from 275,000 barrels to 300,000 barrels" ² so was a minister quoted in 2003. The said Minister also announced "some more oil fields in the north and south; the northern fields indicated significant presence of hydrocarbon exceeding the southern fields. The Sudanese estimated that the oil reserves may reach 2.9 barrel by the end of the current decade"³. It was also contended that government oil revenues rose from zero in 1998 to almost 42% of the total government revenue in 2001 with production levels continuing to rise, reaching an estimated 500,000 barrels a day in 2005.⁴

The steady growth and future development of the oil industry in Sudan must therefore be seen within the context of its recent history and the current political transition. Like all extractive industries, oil in Sudan has also attracted hordes of players that include trans-national corporations, human rights and environmental civil society, intergovernmental organizations, United Nations and other multi-lateral organizations, etc. Since the oil projects went online in 1999, the political, diplomatic, financial and other aspects of national life has changed in Sudan. The pre-CPA industrial and political policy of the

² The Minister of Energy and Mining Mr Eward EL Gas, source : www.Gulfoiland Gas.com

³ Ibid:

⁴ <http://www.gulfoilandgas.com/webpro/MAIN/Mainnews.asp?id=1537>

government and some oil companies was highly criticized and condemned by a cross-section of human rights organization and countries for violating rights of communities and individuals living in areas where oil deposits were found. Those accusations were not just limited to the government and concerned companies but also various armed movements and community based militias. The rights groups such as Human Rights Watch, Amnesty International and others like UN Special Rapporteur and independent journalists had documented cases of human rights violations which can be summarized as follows:-

- i) Loss of lives and property
- ii) Forced Eviction and mass displacement of communities
- iii) Environmental destruction and degradation including air and water.
- iv) Misuse and mismanagement of oil proceeds
- v) Erosion caused by land – clearing activities
- vi) Distraction and disturbance of wildlife and bio-diversity
- vii) Poor employment conditions
- viii) Torture and harassment of local people, predominantly in oil fields and their environs
- ix) Discrimination on the basis of race , region and religion
- x) Cattle raids and theft.

There is no doubt the stakes in a situation of war and conflicts were immensely high and it took constant surveillance and constant campaigns of human rights advocates and later bold steps of the warring parties that vouched for peace to avert what could have been incalculable human tragedy in this region. It is evident that oil wealth in some countries has become a cause of misery rather a harbinger of sustainable development for ordinary citizens. The oil riches in some of these countries are known to be the driving force in fueling civil strife and political instability.

In light of this, Sudan as an evolving and growing oil producing country has a good opportunity to avoid some of these pitfalls by learning from the experiences of both countries that have failed or those that have succeeded. For example, while some countries like Nigeria have been described as overly “pessimistic”⁵ due to decades of its negative impact of oil on the community, other countries like Norway are seen as “models”⁶ of best practices.

The effect of oil production in Nigeria, particularly in the Niger Delta Region which accounts for 90% of the country's oil is captioned below to illustrate a grim picture of the inability of the Nigerian government to translate oil wealth to boost social and economic development for the benefit of her people particularly at the local level.

Little has been done to compensate the Ogoni for the deleterious effects of oil production despite the immense wealth the federal government has acquired from the region, since

⁵ Stephen Caford: The Ogoni Uprising: Oil, Human Rights and a Democratic Alternative in Nigeria .Africa Today: April-June 96, Vol 43, Issue 2, P183, 16P.

⁶ Manfred Ertel: The Norwegian Model in The New World War, The world Battle for Natural Resources.

1980, a portion of oil revenues should have been allocated to oil producing areas, but this measure did not appear to be effective. In 1992 the Oil Minerals Production Development Commission (OMPADEC) was established to look in to complaints that state governments were divesting the funds intended for oil producing areas and to "execute development projects based on the principles of demand by the community, balance and priority."⁷

However, this appears to have been too little too late to compensate for the neglect described in the 1981 book by G.N. Loolo; *A History of Ogoni*. Although the oil Industry has had tremendous impact on the Nigerian economy..... its advantage to Ogoni has been almost negative or most minimal. After 20 years of oil exploration....Shell....has only built one road (Chasa/Mogho/Bodo) and awarded 96 Secondary school scholarship....Although the meager compensations paid for land acquisition and oil spillage have aided a few origins to erect buildings and health centers, the people as a community have not felt any improved standard of living.....Neither the federal nor the state government has shown any desire to improve the area or the quality of life of the people.⁸

Damning reports of similar magnitude had been made in the recent past in other countries in Africa including Angola and Equatorial Guinea. For example Guinea which produces 375,000 barrels a day and currently ranked as the third largest oil producer in Africa, with a paltry population of less than one million is a country riddled with high rates of illiteracy, disease and an average life expectancy of barely 40 years. The government has been accused of repressing political activities covering such human rights violations as torture, absence of freedom of speech and corruption. The country is said to be run like a family business.

But not all country experiences are deplorable as the one outlined above. Examples abound of countries and institutions that have made great efforts to ensure oil riches benefit the citizens through better management of resources. Norway, Canada and Alaska (United States) can offer good lessons. For example, one good lesson from Norway is the way the oil windfalls have been utilized in a more sustainable pension fund from where social development projects have been financed by prudent management of social investment as captioned below

Analysts predict that the Norwegian pension fund will grow this year to become the largest pension fund in the world. Roughly four per cent (4%) of the funds financial resources have gone in to the state budget every year since 2001. The money is used to cover shortages and finance projects that benefit the well being of the country's citizens. Most of the remaining sums are invested for future generations - for the time when Norway's oil and natural gas reserves will have been used up."⁹

⁷ Quoted in ibid: Eglasa E. Esoghbae, "the Ogoni Uprising :Oil Politics ,Minority Agitation and future of the Nigerian State"; African Affairs, Vol.94, No.376, July 1995, P.333.

⁸ Quoted in Floid: "The Ogoni Uprising", P.330

⁹ Manfred Ertel : The Norwegian Model:-SPEIGEL ONLINE NEWS.

3. Building on Human Rights Principles and Practices

How can just arrangement acceptable to all stakeholders and beneficiaries be reached not only in sharing oil resources but also taking responsibility for all concerns like environment. This is definitely the most important question that needs to be addressed by the GNU, GOSS, oil companies, communities and civil society organizations in Sudan. While it is important to learn from experiences of other countries, homegrown, innovative and sustainable strategies with solid human rights benchmarks need to be put in place to reach a durable and just arrangement. The recent political history of Sudan clearly demonstrates not only the relationship between strategic resources and peaceful settlement but also the non optional adherence of human rights norms in order to build on the post-conflict peace, political and economic settlement.

Human rights are the basic and premium standards of treatment to which all members of society are entitled regardless of nationality, race, gender, religion or economic status. Every human being possesses and is entitled to enjoy human rights by virtue of being human. At the 1993 world conference on human rights, governments reaffirmed in the Vienna Declaration that human rights are the birth right of all human beings. The concept of human rights is dynamic in nature. Although a wide range of fundamental human rights has already been recognized, nothing precludes additional human rights from being adopted by states to extend frontiers of human rights. It is this dynamism that makes human rights a potentially powerful tool for promoting social justice and dignity of all people. While it is undeniable fact that primary responsibility of protecting human lies with government, the effective realization of human depend on accountability all actors whether they are members of communities, private enterprises, civil society, etc.

Laws and policies at national and international level have been formulated to protect human rights of individual and groups, especially those are vulnerable due to factors imposed on them by the main stream sectors. In respect to oil and other extractive industries, the accountability standards have in the recent years been raised to ensure that government and corporate responsibilities are up held. Human rights group have focused attention on massive mismanagement directly related to the exploitation of natural resources in Africa. Although attempts have been made by such bodies as the United Nations to formulate concrete norms⁹ to regulate private economic interests, many companies in extractive industries have submitted themselves to voluntary guidelines spearheaded by the UN. However it is important to point out that existing international human rights instruments provide significant protective and promotive measures that guarantee access to natural resources and also guard against human rights violations of workers, child labour, torture, corruption, etc.

⁹ Business for social Responsibility: Issue Brief Overview of Business and Human rights.
[http://www.bsr.org/cSRResources/IssueBriefDetail.cfm?](http://www.bsr.org/cSRResources/IssueBriefDetail.cfm?DocumentID=49038)
Document ID=49038.

What do Human Instruments such as Treaties offer?

- They guarantee specific rights to individuals.
- They establish state obligations related to the rights.
- They create mechanisms to monitor states compliance with their obligation and allow individuals to seek redress for violations of their rights.

The states agree to guarantee specific human rights for all individuals within their respective jurisdictions and to comply with corresponding obligations. Countries are supposed to adopt internal legislation and policies to implement applicable human rights standards. Countries that fail adhere to the set standards should be held accountable through various enforcement mechanisms such as charter based mechanism, treaty based mechanism or specialized agencies.

Human rights treaties and declarations provide useful guidelines to protect interests of individuals and groups in respect of natural resources such as oil. A few examples are cited below to illustrate this point:

a) Universal Declaration of Human Rights.

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood¹⁰.

b) International Covenant on Economics, Social and Cultural Rights.

- All peoples have the right self determination. By virtue of that right they freely determine their political status, freely pursue their economic, social and cultural development¹¹.
- All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based on upon the purpose of mutual benefits, and international law. In no case may a people be deprived for its own means of subsistence¹².

c) International Covenant on Civil and Political Rights.

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources¹³.

¹⁰ Article I.

¹¹ Article 1 (1).

¹² Article 1 (2).

¹³ Article 47.

d) Declaration on The Rights to Development.

- The human rights to development also implies the full realization of the right of peoples to self-determination, which includes, subject to the relevant provisions of both international covenants on Human Rights, the exercise of their inalienable right to full sovereignty over all their natural wealth and resources¹⁴.
- State should undertake, at the national level, all necessary measures for the realization of the right to development and shall ensure, inter alia, equality of opportunity for all in their access to basic resources, education, health services, food, housing, employment and fair distribution of income. Effective measures should be undertaken to ensure that women have an active role in the development process. Appropriate economic and social reforms should be carried out with a view to eradicating all social injustices¹⁵.

e) African Charter on Human and Peoples Rights.

- All peoples shall freely dispose of their wealth and natural resources. This right shall be exercised in the exclusive interest of the people. In no case shall a people be deprived of it¹⁶.
- In case of spoliation the dispossessed people shall have right to the lawful recovery of its property as well as to an adequate compensation¹⁷.
- The free disposal of wealth and natural resources shall be exercised without prejudice to the obligation of promoting international economic cooperation based on mutual respect, equitable exchange and the principles of international laws¹⁸.

4. Corporate Accountability and Responsibility.

It is a settled trite that governments bear primary responsibilities of protecting human rights within national and international legal frame-work, but that does not mean that other key players in the affairs of states, like the private sector are excluded from conforming to human rights standards and practices. This area will be dealt with, by other fellow presenters but I will just endeavor to touch, briefly on a few key guiding principles which are potentially significant in making human rights business of business.

The United Nations has made some efforts to highlight and send a strong message that business enterprises must support corporate responsibility and good governance. The UN Global Compact was a major step in pushing corporations to respect human

¹⁴ Article 1 (2).

¹⁵ Article 8.

¹⁶ Article 21 (1).

¹⁷ Article 21 (2).

¹⁸ Article 21 (3).

rights, including labour right and environmental protections and work in partnership with labour unions and NGO's. Although the GC has been criticized as lacking 'teeth' because it does not contain monitoring and enforcement mechanisms, it nevertheless provides minimum ethical standards that support recognition of human rights principles.

The GC ten-point principles are as follows:-

- a) Business should support and respect the protection of internationally proclaimed human rights through:-
 - Compliance with local and international law.
 - Promoting the rule of law.
 - Addressing consumer concerns
 - Building good community relationships.
- b) Business should make sure they are not complicit in human rights abuses:
 - Make human rights assessment of the situation in countries where it does or intend to do business.
 - Develop explicit policy that protects human rights of workers in its direct employment or its supply chain.
 - Establish monitoring system to ensure that its human rights policies are being implemented.
 - Actively engage in open dialogue with human rights organizations.
- c) Business should uphold the freedom of association and effective recognition of the right to collective bargaining.
 - Ensure that all workers are able to form and join a trade union of their choice without fear of intimidation or refusal.
 - Provide facilities to help workers representatives carry out their function.
 - Provide information for meaningful bargaining.
- d) Business should uphold the elimination of all forms of forced and compulsory labour.
- e) Business should uphold the effective abolition of child labour.
- f) Business should uphold the elimination of discrimination in respect of employment and occupation.
- g) Business should approach a precautionary approach to eliminate challenges.
- h) Businesses should undertake initiatives to promote greater environmental responsibility.
- i) Business should encourage the development and diffusion of environmentally friendly technologies.

- j) Businesses should work against corruption in all its forms, including extortion and bribery.

The strategic growth of the GC lies in the "best practices approach" which puts emphasis on the advantages of the broad-based and inclusive partnership. This approach paves the way for detecting synergies win-win situations and stimulates a result-oriented and human rights observing climate for business.

5. Conclusion: Towards Binding Best Human Rights Practices

Sudan is in many ways favored with a great opportunity to re-write its history by taking advantage of current political and economic transitions to transform itself in to a prosperous and just society. The conclusion of recent IGAD peace process for Southern Sudan and the resultant political and economic agreements provide important incentives for sustainable human development.

The Sudan peace and political negotiations have been sufficiently premised on the principles of human rights and social justice. The various protocols that include Machakos, wealth sharing, power sharing etc and implementation modalities which acts as pillars for the Comprehensive Peace Agreement (CPA) create necessary framework for realization of social and economic justice and human rights.

As the expectations of people of Sudan regarding human rights have increased, so too should the efforts of the various level of the state(s) and non-states actors in developing and implementing policies and practices to ensure compliance with human rights. Both public and private ventures should be guided by the spirit and principles of existing human rights instruments. It is also imperative that Sudan should at all time endeavor to diversify its economic base and avoid the pitfall of becoming a rentier state that is held hostage by oil dependency syndrome.

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