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Application of Decision-Making Process: Human Rights and Shell Oil

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Abstract

This paper is a case study of the global business ethics portrayed by Royal Dutch/Shell Oil Corp. (a United States based corporation) of a human rights issue when engaged in activities on African soil. The case is analyzed according to a critical thinking application. A discussion and recommendations follows the review of the facts of the case.

Application of Decision-Making Process: Human Rights and Shell Oil

Applied ethics is the most practical area of moral philosophy. Applied ethics applies identified norms of ethical practices to specific issues, providing standards for right and wrong. Some intriguing discussions of applied ethics involve controversial issues of social acceptance such as abortion, animal rights, and punishment (Applied Ethics, ¶ 1-2). Human rights is also a concern. On a global scale, human rights is a concern as corporations from developed nations seek resources and consumers in third world nations. Royal Dutch/ Shell Oil Corp. was sued by the family of Mr. Saro-Wiwa of Nigeria. The family claimed Shell was indirectly responsible for Mr. Saro-Wiwa's death as he was peacefully engaged in objections of the Shell Oil's ecological practices in the oil-rich delta of Nigeria; Mr. Saro-Wiwa's native Ogoni region. This paper discusses Shell Oil's ethical corporate responsibility to ensure the safety and human rights of the local citizens of foreign nations when engaged in oil drilling activities from a critical thinking perspective. Recommendations for future business decisions when faced with human rights ethical dilemmas are presented.

Facts of the Case

Nigeria

Nigeria is the most populated country on the African continent and one of the top six of the world's oil producing nations (Hondros, 2007). The country has suffered from civil wars and the national debt is massive. Even though Nigeria's oil resources have produced over a quarter trillion dollars since the 1958 (Ken Saro-Wiwa Remembered, 2009). Nigeria suffers greatly from the effects of poverty. One hundred percent of the oil comes from the Niger delta region which is made up of small groups of ethnic minorities.

The minorities have almost no representation in the Nigerian government (Hondros, 2007).

Ken Saro-Wiwa

Kenule Benson Tsaro-Wiwa (Ken Saro-Wiwa) was an academic who was a published and acclaimed author. He later became a businessman and producer of television shows. Saro-Wiwa became a political advocate in 1973 for the Ogoni Region where he was born (Greenberg, 2004 and Ken Saro-Wiwa Remembered, 2009).

“Throughout his work he often made references to the exploitation he saw around him as the oil and gas industry took riches from beneath the feet of the poor Ogoni farmers, and in return left them polluted and disenfranchised” (Ken Saro-Wiwa Remembered, 2009, ¶6). Saro-Wiwa became a spokesman for his people and initiated a peaceful revolution for community and conservation justice. His campaign was so successful that by 1993 Shell Oil Corp reduced its presence in the Ogoni delta (Ken Saro-Wiwa Remembered, 2009). Okuntimo, a colonel of the Rivers State Internal Security Task Force (MOSOP, 2001), arrested Saro-Wiwa several times. Okuntimo was directly responsible for Saro-Wiwa’s death and brought up on charges. Okuntimo was named as a force contributing to human rights atrocities by such human rights organizations as Amnesty International, UNPO and others when he became a controlling military officer in the Ogoni region. (MOSOP, 2001). Memos and letters between Okuntimo and his superiors illicit a direct link between Okuntimo’s brutality and Shell Oil production. Okuntimo sent a secretive communication back to a superior stating that “Shell operations still impossible unless ruthless military operations are undertaken for smooth economic activities to commence” (Ken Saro-Wiwa Remembered, 2009). Okuntimo accused Saro-Wiwa of a heinous crime

in 1993, but did not formally charge him until 1995. Further evidence against Shell was that false testimonies were elicited from witnesses who were bribed by Shell to condemn Saro-Wiwa. The alleged witnesses signed affidavits testifying that Shell offered money, houses and jobs in the local government (Ken Saro-Wiwa Remembered, 2009). As Saro-Wiwa was being executed, he named Shell as having contributed to his death (Ken Saro-Wiwa Remembered, 2009). A few days after Saro-Wiwa's execution, Shell started the proceedings to establish a 3.8 billion dollar liquid natural gas plant in the Ogoni Region.

Evidence connecting Shell to Human Rights Violations

In 2003, an independent consulting firm to Shell Oil, WAC, named Shell Oil as contributing to human rights violations in the Nigerian River Delta. In a memo they declared, "Shell was "part of Niger Delta conflict dynamics and that its social license to operate is fast eroding." Its determination was disturbing: "If current conflict trends continue uninterrupted, it would be surprising if SCIN [Shell companies in Nigeria] is able to continue on-shore resource extraction in the Niger Delta beyond 2008, whilst complying with Shell Business Principles" (After the Death of Ken Saro-Wiwa, ¶22).

Result of the Case

Shell was brought up on charges by Saro-Wiwa's family of indirectly being responsible for Saro-Wiwa's death. Thirteen years after Saro-Wiwa's death, a week before the case was to be tried in the United States, and although Shell never admitted any wrong-doing, the corporation committed \$15.5m (£9.7m) of its resources to settle the case out-of-court (BBC News, 2009).

Business Ethical Issue- Corporate Social Responsibility

Ethics is the way a person acts; right or wrong. Corporations conducting business in the global economy have a social responsibility to conduct themselves ethically. That is why “policies based on ethics principles screen out alternatives that are unacceptable on moral grounds just as laws screen out alternatives... ethics provides the basis for evaluating moral claims and for guiding choice among policy alternatives.” (Baron, Ch. 21). In the United States unethical international conduct may result in poor public perception, which has negative consequences in sales.

A columnist said about leadership and accountability, “accountability goes hand in hand with democratic principles and practices” (To the point, ¶ 5). A society cannot have its leadership create and change rules and laws at whim. “These practices and behaviors do not reconcile with very basic democratic norms (To the point, ¶ 5)”.

Institutional theorists claim that all businesses should be held accountable to the same legal repercussions of wrong-doing. “Whether a single proprietorship, a partnership, or a corporation, a business is a legal entity in our society that must be held responsible for its activities... When managers fail to deal adequately with “externalities,” they should be held accountable not only to their board of directors but also to government enforcement authorities and individual citizens as well” (Kubasek, p. 245).

Explanation of Non-Market Consequences

Baron (2006) discussed the distinctions between market and non-market environments. He stated, “The market environment is characterized by the structure of

the markets in which a firm operates and the rules that govern market completion. The nonmarket environment is characterized by the legal, political, and social arrangements in which the firm is embedded. The nonmarket environment determines the rules of the game for the market environment through government policies and public expectations” (p. xxix). A company must execute both effective market and nonmarket techniques in order to be successful. Corporations should be aware of their global nonmarket impact and be willing to accept the consequences of international infringement of human rights.

Ethical Issue- Human Rights

Shell was accused of violating human rights in the Nigerian River Delta while drilling for oil and natural gas. One questions Shell’s motives. Two perspectives of why people (and businesses) behave as they do are presented.

Utilitarian Perspective of Ethics and Human Rights Issues

Two British philosophers Jeremy Bentham and John Stuart Mill, generated the philosophy of utilitarianism. Utilitarianism is the belief in "the greatest good for the greatest number of people” (Six Ethical Properties, ¶ 3). The Greek philosopher, Plato, is often credited with the first accounting of utilitarianism in his writing, the Republic (Is Plato’s republic, 1937). In utilitarianism, consequences of actions are imagined. Those projections then determine which action benefits the most people. That path is decided to be the best choice under the given conditions. "To a utilitarian, the choice that yields the greatest benefit to the most people is the choice that is ethically correct" (Rainbow, 2002). Sandin (2009) discussed the conflict of corporate ethics when the business is in a crisis situation and how management may use utilitarianism as befits the particular situation and not consider the wider implications to justify the position taken during the

crisis. He discussed the approaches of Gerber and McDonald's as the 2 corporations faced crises and concluded "Two relevant virtues for crisis managers seem to be honesty and courage. Second, virtue (and caring) approaches are potentially better suited to dealing with a problem that is likely to be prevalent in crisis management – the temptation of ad hoc utilitarianism" (p. 115).

Deontological Perspective of Ethics and Human Rights

"The non-Consequentialist theory of deontology is derived from the writings of German philosopher Immanuel Kant (1724-1804). Kant stated that a universal law should provide the basis for each act, and that the intent was of more importance than the outcome. Deontology is a duty-based ethical stance, where one's actions are based on what is morally correct, irrespective of the consequences" (Pieper, 2009, p. 319).

"*Deontology's* core principle is that the concept of duty is at the foundation of morality. Ideas such as duty, obligation, and responsibility are uniquely moral ones-indeed, the most uniquely and clearly moral ones. Doing one's duty is central in deontological ethics" (Orend, 2007, p. 471). The deontological theory states people should hold fast to their beliefs in their fiduciary duties when examining an ethical dilemma. Upholding one's duties is then the ethical choice.

Related International Regulations

"The Universal Declaration of Human Rights [was] proclaimed by the United Nations in 1948 and endorsed by many countries" (Baron, Ch. 22). Countries that engage in global interaction must devise plans to contend with a myriad of legalities. The goal is to standardize laws to regulate international commerce so all parties rely on the same standard of justice. Kubasek et al. defined International Law as "The law that governs the

relationships between nation-states...[This includes laws governing] (1) exit visas and work permits; (2) tax and antitrust matters and contracts; (3) patents, trademarks, and copyrights; (4) bilateral treaties of commerce and friendship between nations and multilateral treaties of commerce such as the North American Free Trade Agreement (NAFTA), the European Union (EU), and the World Trade Organization” (WTO) (Kubasek, Ch.3).

Critical Thinking Analysis

Critical thinking skills are the essential ingredient for “understanding current legal rules and making future business decisions that both comply with and contribute to emergent law” (Kubasek et al., xxix). The eight step critical thinking analysis used for legal decision making can be applied to ethical decision making and self-regulation. Kubasek et al. (2003) defined critical thinking skills as, “The ability to understand the structure of an argument and apply a set of evaluative criteria to assess its merits” (p. 3). An ethical decision making process that enlists higher level critical thinking skills contains eight steps of legal reasoning. (1) identification of facts; (2) putting the issue into words; (3) establishing reasons for actions and drawing conclusions; (4) figuring out the relevant rules; (5) defining ambiguities; (6) establishment of norms (standard of conduct); (7) creating analogies, and (8) searching for relevant missing information (Kubasek, 2003).

Application of Critical Thinking Analysis

1) Identification of facts

The issue of Shell’s responsibility in not only the wrongful death of Mr. Saro-Wiwa, but also Shell’s humanitarian responsibilities was explored from different angles.

A well-rounded overview of the facts leading up to and through the case has been presented. The facts included are the economic conditions of Nigeria and their dependence on revenue from oil companies; the importance of Ken Saro-Wiwa to the leadership of non-violent refusal to cooperate with oil companies until human rights and ecological conditions in Nigeria were improved; evidence connecting Shell Oil to human rights violations; and the outcome of the case, along with Shell's projections for further natural gas cultivation in the region, establishing motive for their behavior.

2) Putting the issue into words

The issues of corporate social responsibility, non-market consequences, human rights from both utilitarianism and deontological perspectives were explored. The issue is what responsibility for protection of human rights (and therefore, accountability) do corporations from developed nations have when conducting operations in third world nations.

3) Establishing reasons for actions and drawing conclusions

The financial benefits of the oil rich Nigerian River Delta to oil companies such as Shell was investigated. The conclusion drawn was that exploitation of indigenous people and environmental damage were a non-market consequence of Shell's behavior in the region. In addition, Shell was responsible, and therefore, should be held accountable for Mr. Saro-Wiwa's death.

4) Figuring out the relevant rules

Although there are many international organizations that advocate for human rights, an obvious difficulty appears when trying to enforce human rights regulations internationally as there is no true international court. Courts such as that of Great Britain

are recognized as being more impartial and human rights cases are often presented in such courts. Developed nations of the western world may also hear petitions of human rights violations committed by their own people against those of foreign nations.

5) Defining ambiguities

One must look at all evidence presented when making a decision, but also acknowledge that there may be issues involved in the case that have not been explained. Evidence was not presented on the culpability of the Nigerian government in the atrocities committed against the Ogoni ethnic minority or directly linking the government's connection to Shell oil, except through the words of Colonel Okuntima.

6) Establishment of norms (standard of conduct)

Corporations need to be conscious of their effects on the indigenous peoples of the communities and environments in which they work. A review of international regulations and United States opinions on human rights issues was explored. The result was a composite that human rights are a value supported by international organizations and all companies conducting international business need to support and enhance the welfare of the indigenous populations with which they work.

7) Creating analogies

Several examples of lawsuits in various stages of litigation show precedent for the case brought against Shell Oil and its corporate responsibility to preserve human rights. Groups such as the International Labor Rights Fund, Earthrights International, and others aware of human rights violations advocate for indigenous peoples and the environment. In 1996, ILRF brought an Alien Tort Claims Act lawsuit against Unocal alleging that Unocal used slave labor when constructing a pipeline in Burma. While the court admitted

that Unocal partnered with the Burmese government, the court dismissed the case saying that Unocal did not have the power to command how the Burmese government treated its people. The decision is under appeal. The new case to be presented by ILRF will state that under California law, partnerships are responsible for the conduct of the other partner. In another case, the people of Ecuador are currently in litigation having sued Texaco for dumping toxic waste in Ecuador in the 1980s. And in still another case, “Bougainville Island in Papua New Guinea filed a lawsuit in San Francisco against the London-based Rio Tinto mining firm. The plaintiffs maintained that the corporation, which took over a company that developed a mine on the island, was in cahoots with a government that engaged in human rights abuses and destroyed entire villages in wiping out local resistance to the project” (Corporate Human Rights, 2002, ¶ 5).

8) Searching for relevant missing information

A critical thinker will admit the probability that he may not be privy to all facts of the case. In the case of Saro-Wiwa vs. Shell, pertinent information, such as the circumstances for Saro-Wiwa’s alleged guilt, may not be available and may never be collected at this time.

Recommendations

Shell Oil leadership has several options it could implement to strengthen compliance of ethics among branches of the corporation, including international divisions. Kubasek et al. (2003) suggested four methods managers could employ to ensure the practical application of business. One, create a code of ethics for all to follow. Two, create an office that monitors activities to ensure the ethical content is adhered. Three, conduct training programs to teach organizational ethics goals. And four, avoid

putting employees in situations where their morals may be compromised. Applied ethics would be legislation preventing unethical practices, such as child labor, another issue of human rights. (Youth and Labor, 2009).

A second recommendation would be Shell Oil Corporation policing its own activities by applying a method of self-regulation. Duncombe and Heeks (2003) discussed self-regulation from an information systems perspective. They said that “Self-regulation is an alternative to the more traditional forms of regulation, such as binding national or international agreements. It allows stakeholders – including government, the private sector, and advocates of ethical trade (such as non-governmental organizations (NGOs) and workers’ representatives) – to work together in order to set voluntary standards governing developing country workplaces, and communities, involved in the global supply chain” (p. 123).

Duncombe and Heeks (2003) urged stakeholders in companies conducting business in the international market to establish internal rules of ethical trade to avoid issues of unethical behavior at the global level: issues such as “adverse employment conditions, infringements of human rights and environmental degradation” (p. 135).

Summary

Saro-Wiwa was a believer in non-violent resistance to bring peaceful resolution to conflicts in his homeland of Ogoniland, Nigeria. He was executed without the benefit of a fair trial and believed his treatment was retribution for his protests of Shell’s lack of humanity and destruction of Nigeria’s natural resources. “In May 1996, Ken Saro-Wiwa was posthumously elected to the United Nations Environment Programme’s (UNEP)

Global 500 Roll of Honour for advancing the cause of environmental protection” (After the Death of Ken Saro-Wiwa, ¶4).

“The notion of corporate social responsibility is itself an extremely, valuable, and hard-won social asset. It is a vehicle for promoting transparency, more nuanced accountability, integrity, better communication, mutually beneficial exchange, and sensible development...It is especially important in a world of increasing global economics” (Pava, 2008, p. 805).

Unethical behavior can result in the collapse of an organization. Luftig and Ouellette (2009) said, “When unethical behavior is present in a business, it poses a significant risk to that organization unethical behavior in firms results in lower productivity, especially among highly skilled employees...lower financial performance as measured by metrics such as economic value-added, and market value-added...and abnormally negative returns to the shareholders for prolonged periods of time” (¶ 2).

On the upside, many positive reasons exist to conduct an ethical business. These may include “avoiding fines and litigation, reducing damage to the firm’s reputation, protecting or increasing capital and shareholder value, direct and indirect cost control, creating a competitive advantage, and avoiding internal corruption” (¶ 2). Corporations dealing with international clientele still have to please certain groups in order to make a profit. Corporations meet ethical expectations by portraying honest concern for their patrons through their actions and expression of international corporate social responsibility.

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