

DEVELOPMENTS IN THE FIELD

Corporate Social Irresponsibility, an Elastic Wall, and a Fragile State: Sign of Hope's Unfinished Quest to Mitigate Human Rights Violations in South Sudan

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Abstract

This piece recounts the efforts by NGO Sign of Hope (SoH) to rectify human rights violations in South Sudan, which manifested themselves as drinking water pollution by the oil industry. Committed to exposing and remediating this water contamination, SoH was able to prompt the automobile company Daimler's CSR to engage in extended dialogue with the oil industry stakeholders in Unity State. Despite a tactful use of various methods ranging from cooperation to confrontation, SoH's campaign did not lead the oil producers to reverse the harm inflicted on the people of Unity State. When SoH tried to hold these companies accountable, SoH had the impression that it was hitting an elastic wall. This piece identifies lessons which may help to counter corporate human rights violations and compensate for the weakness of CSR in fragile states and in the face of corporate irresponsibility.

Keywords: Business; Corporate social irresponsibility; CSR; Human rights; Lessons learned; Oil industry; South Sudan

1. Introduction

In the 1970s, large oil reserves were discovered in southern Sudan¹, including Unity State, one of South Sudan's ten states.² This attracted many foreign oil companies to the region. In the 1990s, many of these companies contributed to massive displacement of the mostly nomadic agropastoral local population in Unity State.³ Unity State's rich oilfields, including the oil field unit known as 'Block 5A', have over the years been the scene of extensive fighting as rival militias struggled for control. In addition to extreme violence, the local communities have been exposed to frequent flooding and, as a result, mass displacement and socio-economic difficulties.

¹ 'South Sudan's Oil Industry Remains Dependent on Foreign Help', VOA (6 July 2021), https://www.voafrika.com/a/africa_south-sudan-focus_south-sudans-oil-industry-remains-dependent-foreign-help/6207908.html (accessed August 2023).

² This refers to South Sudan's current 10 states.

³ Human Rights Watch, 'Sudan, Oil, and Human Rights' (24 November 2003), <https://www.hrw.org/report/2003/11/24/sudan-oil-and-human-rights> (accessed August 2023).

The main corporate actor with a direct stake in the oil industry of Block 5A was, until late 2022, Petroliam Nasional Berhad (or Petronas), a global energy group entirely owned by the Government of Malaysia. Petronas was the majority owner and lead company in Sudd Petroleum Operation Company Ltd or SPOC (formerly White Nile Petroleum Operating Company or WNPOC), a consortium of three companies responsible for operating Block 5A.⁴

Over the past three decades, Petronas has been accused of involvement in many serious human rights abuses in the region.⁵ This piece concerns one of them, related to drinking water pollution, and the efforts by Sign of Hope (SoH), a non-governmental organization (NGO) operating on the ground, to get Petronas to acknowledge responsibility and provide remedy to the affected communities.⁶

II. The Concerns about Groundwater Contamination

In late 2007, SoH was alerted that the drinking water from hand pumps in Unity State could be making people sick. SoH suspected that the crude oil extraction and production industry of Block 5A might be contaminating the groundwater and the drinking water of nearby residents. Between 2008 and 2010, SoH sought to corroborate this suspicion. It commissioned a comprehensive hydrogeological survey to identify possible links between an increasingly high salinity in drinking water and oil operations in Unity State. A total of 90 water samples from 76 different sampling sites, from village boreholes and swamps to active drilling sites, were taken, of which 74 were analysed in detail.⁷

From March 2008, SoH began publishing the findings of the water survey as results became available. Initial results indicated that brine from the oil processing facilities produced a remarkably high salinity in some of the water wells tested by SoH, well above the amount recommended by the US Environmental Protection Agency for potable water.⁸ Subsequent results confirmed the high concentration of heavy metals in some water sources.⁹ In 2009, SoH also issued two statements to the Human Rights Council¹⁰ with the results that were known at the time.

⁴ The other two minority partners were ONGC Videsh Ltd from India, and Nilepet from South Sudan.

⁵ See, e.g., Christian Aid, *The Scorched Earth: Oil and War in Sudan* (14 March 2001), <https://reliefweb.int/report/sudan/scorched-earth-oil-and-war-sudan> (accessed August 2023); European Coalition on Oil in Sudan, *Unpaid Debt: The Legacy of Lundin, Petronas and OMV in Block 5A, Sudan 1997–2003* (June 2010), https://www.ecosonline.org/reports/2010/UNPAID_DEBT_fullreportweb.pdf (accessed August 2023); The Sentry, *The Taking of South Sudan: The Tycoons, Brokers, and Multinational Corporation Complicit Hijacking the World's Newest State* (September 2019), <https://thesentry.org/wp-content/uploads/2019/09/TakingOfSouthSudan-Sept2019-TheSentry.pdf> (accessed August 2023); 'Major Player in Canadian Energy Sector Accused of Violating Sudan Arms Embargo' (21 October 2013), <https://www.business-humanrights.org/en/latest-news/major-player-in-canadian-energy-sector-accused-of-violating-sudan-arms-embargo/> (accessed August 2023).

⁶ SoH is a faith-based Christian organization dedicated to human rights, humanitarian aid, and development cooperation. Founded in 1983, SoH has been working in southern Sudan and South Sudan for nearly 30 years. See generally www.hoffnungszeichen.de (accessed August 2023).

⁷ Hella Rueskamp, John Ariki, Klaus Stieglitz and Christoph Treskatis, 'Effect of Oil Exploration and Production on the Salinity of a Marginally Permeable Aquifer System in the Thar Jath-, Mala- and Unity Oilfields, Southern Sudan' (2014) 1 *Zentralblatt für Geologie und Paläontologie* 113.

⁸ 'Sudan Villagers, Environment Suffer from Oil Boom', *Sudan Tribune* (4 March 2008), <https://sudantribune.com/article26287> (accessed August 2023); 'German Rights Group Says Oil Company Spoiling Water in Southern Sudan', VOA (18 November 2009), <https://www.voanews.com/a/a-13-2009-11-16-voa37-70423142/415667.html> (accessed August 2023).

⁹ Hoffnungszeichen|Sign of Hope e.V., 'Schwere Umweltverschmutzung in den Ölfeldern im südlichen Sudan' (17 November 2010), <https://www.hoffnungszeichen.de/presse/pressemitteilungen/schwere-umweltverschmutzung-oelfeldern-suedlichen-sudan> (accessed August 2023).

¹⁰ Hoffnungszeichen|Sign of Hope e.V., 'Human Rights Situations that Require the Council's Attention: Human Rights Council, 10th Session: Written Statement/Submitted by Sign of Hope E.V.-Hoffnungszeichen', A/HRC/10/NGO/84 (27 February 2009), <https://digitallibrary.un.org/record/649503?ln=en> (accessed August 2023) and

Then, in November 2014, the complete hydrogeological survey was published demonstrating that the oil industry was polluting groundwater in the process of extracting and processing crude oil.¹¹ The results of the analysis revealed that ‘the upper aquifer is selectively polluted by slowly seeping saline waters from crude oil production, supplied regularly via storage basins and mud pits during the rainy season, as well as by constantly re-supplying produced water. The downstream located, drinking water wells become less contaminated with increasing distance from potential contamination sources.’¹² In February 2015, the results were presented at a press conference in Juba, South Sudan.¹³

In 2015, SoH also commissioned a group of experts to analyse human hair samples from the affected area. Samples taken from volunteers living in four communities at different distances from the centre of the oil field were analysed. The results of the analysis showed that ‘very high concentrations and a toxic health endangerment were assessed for lead and barium. The concentration of lead increased steadily with decreasing distance from the oil field from Rumbek to Koch and was there in the same range as in highly contaminated mining regions in Kosovo, China or Bolivia.’¹⁴

SoH staff collected further qualitative evidence from nearby hospitals.¹⁵ The physicians from Bentiu, one of the hospitals visited, reported that most of the patients around that time came from the immediate vicinity of the oil facilities. They observed an overall increase in the number of people falling sick. They also commented on the even more pronounced number of losses among the herds of cattle,¹⁶ deepening the socio-economic insecurity and vulnerability of the local people already affected by decades of violence and recurring floods.

III. The Campaign for Remedy

During the course of 2008 and 2009, SoH sent several letters to WNPOC, requesting a formal response to its water survey results, highlighting the health and environmental dangers identified, and demanding explanations from the company. WNPOC did not respond to any of SoH’s letters¹⁷ until November 2009, when, triggered by a query from the Business & Human Rights Resource Center,¹⁸ the company categorically denied the accusations of contamination. It informed SoH that its operations happened under the auspices of the Ministry of Energy and Mining (MEM), and that it had been WNPOC’s policy to always adhere

Hoffnungszeichen|Sign of Hope e.V., ‘Human Rights Situations that Require the Council’s Attention: Human Rights Council, 12th session: Written Statement/Submitted by Sign of Hope E.V.- Hoffnungszeichen’, A/HRC/12/NGO/1 (4 September 2009), <https://digitallibrary.un.org/record/664582?ln=en> (accessed August 2023).

¹¹ Rueskamp et al, note 7, 95–115.

¹² Rueskamp et al, note 7, 113.

¹³ Hoffnungszeichen|Sign of Hope e.V., ‘Ölfelder im Südsudan: Wasserverschmutzung wissenschaftlich nachgewiesen’ (25 February 2015), <https://www.hoffnungszeichen.de/presse/pressemitteilungen/wasserverschmutzung-wissenschaftlich-nachgewiesen-menschen-damit-recht> (accessed August 2023).

¹⁴ Fritz Pragst, Klaus Stieglitz, Hella Runge, Klaus-Dietrich Runow, David Quig, Robert Osborne, Christian Runge and John Ariki, ‘High Concentrations of Lead and Barium in Hair of the Rural Population Caused by Water Pollution in the Thar Jath Oilfields in South Sudan’ (2017) 274 *Forensic Science International* 99.

¹⁵ Klaus Stieglitz and Sabine Pamperrien, *Oil, Power and a Sign of Hope* (Zurich: Rüfller & Rub Sachbuchverlag, 2016), 87.

¹⁶ Ibid.

¹⁷ Stieglitz and Pamperrien, note 15, 60, 71, 86.

¹⁸ ‘Sudan: German NGO says White Nile Petroleum Operating (Joint Venture Petronas, Sudapet) Contaminating Drinking Water’, Business & Human Rights Resource Center (1 November 2009), <https://www.business-humanrights.org/en/latest-news/sudan-german-ngo-says-white-nile-petroleum-operating-joint-venture-petronas-sudapet-contaminating-drinking-water/> (accessed August 2023).

to international health, safety and environmental standards in carrying out its operations.¹⁹ However, the company did not engage with SoH's most immediate and pressing concern: the results of its survey indicating oil-related contamination which was presumably making people ill. SoH responded with a press release that same month.²⁰

In January 2010, Petronas announced a high-level partnership with German multinational Daimler AG²¹ in the Mercedes-AMG Petronas Formula One (F1) team, an initiative that is still active today.²² Having hit a brick wall with WNPOC, SoH saw in this partnership an opportunity to enter into dialogue with a more responsible interlocutor. Daimler had joined the LEAD group of the UN Global Compact and professed commitment to the United Nations Guiding Principles on Business and Human Rights.²³ The company was apparently seeking to position itself as a corporate social responsibility (CSR) leader, and a role model in terms of sustainability.²⁴ SoH hoped that it could leverage Daimler's CSR to get Petronas to clean up its act in South Sudan.

In March 2010, SoH informed Daimler's headquarters about the drinking water concerns. Daimler appeared to see itself as an intermediary between SoH and Petronas, and SoH had the impression that communication doors with WNPOC and Petronas were gradually opening.²⁵

In April 2011, Daimler arranged a meeting between SoH, WNPOC, and the Environment Minister of Unity State to discuss SoH's findings. The meeting was a milestone because it was the first direct conversation between SoH and Petronas in its lead role within WNPOC. During the meeting, SoH heard that a Norwegian consulting firm, Norconsult, was to conduct a water survey to evaluate the charges levied by SoH.

In another meeting in December 2012, the findings from the Norconsult survey, commissioned by the General Directorate for Environment and Safety of the Sudanese Petroleum Corporation,²⁶ were presented and discussed. The purpose of the survey was to evaluate the ramifications of the WNPOC's activities upon the environment and their possibly imperiling of the health of humans and animals.²⁷ Norconsult collected samples of water, of earth and of tissues within the processing facilities and their vicinity, and these had revealed that the danger to people and animals located outside of the facility was negligible.²⁸ Furthermore, samples taken of surface waters situated in the vicinity of the facility and of water from village wells did not yield proof of an impact from the oil industry.²⁹

¹⁹ Stieglitz and Pampierri, *note 15*, 96.

²⁰ Stieglitz and Pampierri, *note 15*, 97.

²¹ Daimler AG became the Mercedes-Benz Group AG on 1 February 2022. In this paper, the authors use Daimler which was the name of the group during the quest.

²² See generally <https://www.formula1.com/en/teams/Mercedes.html> (accessed August 2023). This partnership between Petronas and Daimler may help to promote sales of Petronas products, and thereby contribute to the harm done in South Sudan.

²³ In addition to the UNGC and the UN Guiding Principles, Daimler is a member of the World Business Council for Sustainable Development and prepares reports in accordance with the Global Reporting Initiative standards.

²⁴ In 2015, Daimler AG was ranked number 13 among the top 50 best large companies. See https://www.ranking-nachhaltigkeitsberichte.de/fileadmin/ranking/user_upload/2015/Ranking_Nachhaltigkeitsberichte_2015_Ergebnisbericht_mit_Branchenauswertung.pdf (accessed August 2023). See also https://ass-automation.com/images/downloads/Daimler_Ethical_Business_DE.pdf (accessed August 2023).

²⁵ Stieglitz and Pampierri, *note 15*, 139.

²⁶ Norconsult, *Annual Report 2011* (24 June 2012), <https://issuu.com/norconsult/docs/annualreport2011> (accessed August 2023).

²⁷ Stieglitz and Pampierri, *note 15*, 170.

²⁸ Stieglitz and Pampierri, *note 15*, 171.

²⁹ *Ibid.*

SoH found that Norconsult's report suffered from too many constraints to be in a position to draw the conclusions it did. One such major constraint was that only one sampling campaign, from only one of five major possible sources of contamination,³⁰ was undertaken meaningfully, with other sites covered superficially or not at all.

Meanwhile, between 2009 and 2013, the situation remained unchanged for the people of Unity State. In order to alleviate the plight of thousands of residents with no access to drinkable water, SoH secured funding to build six solar-powered deep wells enabling people to access uncontaminated water.³¹

In early 2015, some five years after the launching of SoH talks with Daimler, SoH contacted Daimler once again to reflect on what had been achieved.³² In response, Daimler requested further figures from SoH's hydrological survey. Then, in August 2015, another letter from Daimler arrived around the same time as an email from the Ministry of Petroleum and Mining (MoP) summoning SoH to a meeting in Stuttgart, Germany,³³ which would be attended by representatives of Daimler, the consortium which was now called SPOC, and the MoP who would act as chair. At that meeting, the chairman warned SoH that in the future the organization 'should refrain' from publishing any allegations against any stakeholders operating in the country without going through MoP first, or it would otherwise be deemed an act against the government of South Sudan and threat to the security of the country. In light of this warning which SoH understood as an unequivocal threat, to protect its staff, SoH withdrew from South Sudan, but continued to support the people of South Sudan through a network of local implementing partners.

Surprisingly, in December 2017, the South Sudanese government confirmed the oil scandal at the UN Environmental Assembly in Nairobi,³⁴ and asked the international community for help. In April 2018, SoH met senior managers from Petronas and Daimler in Zürich, Switzerland, in an attempt to pick up the dialogue. Petronas signalled its willingness to launch development projects to improve water supplies in South Sudan,³⁵ yet without taking responsibility for the contamination of drinking water resources. Shortly after, SoH published a UN statement³⁶ with an alarming revised figure of at least 600,000 affected people, which now included all the oil-producing areas in South Sudan.³⁷

IV. SoH's Assessment of the Campaign

Against a backdrop of social, economic and environmental catastrophe, SoH sought to motivate key stakeholders to live up to their own ethical principles and globally accepted human rights standards. Petronas, in its lead role within WNPOC/SPOC, proved unresponsive right from the beginning, ignoring repeated letters raising serious human

³⁰ Stieglitz and Pamperrien, [note 15](#), 173.

³¹ Subsequent violence in the area caused serious damages to these wells.

³² Stieglitz and Pamperrien, [note 15](#), 221.

³³ Stieglitz and Pamperrien, [note 15](#), 234. The letter from Daimler, dated 4 August 2015, and the email from the MoP, dated 8 August 2015, are with the authors.

³⁴ 'South Sudan Appeals to UN Body over Oil-Polluted Water', *Sudan Tribune* (4 December 2017), <https://sudantribune.com/article62352/> (accessed August 2023).

³⁵ Labeled 'community development', the oil industry financed a tanker truck containing water to come around the villages in the affected area occasionally.

³⁶ Hoffnungszeichen|Sign of Hope e.V., 'Human Rights Situations that Require the Council's Attention: Human Rights Council: Written Statement/Submitted by Sign of Hope e.V.-Hoffnungszeichen', A/HRC/41/NGO/180 (27 June 2019), <https://digitallibrary.un.org/record/3893827?ln=en> (accessed August 2023).

³⁷ The new figure was calculated based on the geographic perimeter around the three oil producing areas (SPOC, GPOC and DPOC), rated critical between 60 and 100 km from the oil processing facilities, data from the 2008 census, and population growth rate published by the World Bank. The detailed calculations are available from the authors.

rights concerns. On the contrary, the company presented itself publicly as socially responsible.³⁸ Multinational companies' global business models have often relied on double standards between their home and host country.³⁹ In highly fragile contexts such as those of Sudan and then of South Sudan, with little government control and the absence of a strong civil society, exploitation of natural resources and profit maximization can be pursued with little regard for human rights and the environment.

Daimler appeared from the start to play the role of a neutral facilitator, but from SoH's perspective, its position was ambivalent and elusive: it prudently avoided condemning Petronas' recalcitrant approach, and used its mediating role to justify not taking more assertive action.⁴⁰ SoH viewed its alleged neutrality with suspicion given Daimler's strategic partnership with Petronas as the key sponsor of its F1 team.⁴¹

The government's response changed over the course of this campaign. Prior to the separation of Sudan and South Sudan in 2011, Unity State's government facilitated SoH's access to the oil facilities to conduct its investigations. Once the geopolitical developments led to the creation of the Republic of South Sudan – with its own ministry – the tide turned. SoH's relationship with the newly created MoP soured until representatives of that very ministry threatened SoH out of South Sudan in 2015.

Throughout the entire quest, SoH hoped that Daimler would be able to influence Petronas' behaviour. In light of Daimler's own social commitments, SoH expected that the company would feel compelled to launch an investigation once it learnt of SoH concerns. If concerns were proven real, and Petronas failed to act meaningfully to address them, SoH hoped that Daimler would end its cooperation with Petronas, living up to its self-declared CSR standards and unambiguously signalling what it does not tolerate. Instead, from SoH's perspective, Daimler did no more than facilitate a limited measure of dialogue. SoH's attempts to get the companies to engage in more substantive action were ultimately unsuccessful.

V. Lessons Learned

SoH did not achieve what it had hoped, but it learned valuable lessons along the way. While dialogue enabled information, perspectives, interests and concerns to be shared, a number of critical shortcomings and limitations retrospectively offer an explanation for the lack of tangible, positive change in relation to the urgent humanitarian needs and human rights concerns in Unity State.

First, CSR gives way to corporate social irresponsibility (CSiR) when profit maximization can be pursued without a legal, executive or judicial context that can rein in corporate misbehaviour. SoH interpreted Daimler's behaviour as a hint for how CSR can be effective when it is supported either by a strong 'business case' or by the social partners, i.e., in the broader context of socially regulated stakeholder capitalism. However, as a growing literature shows, CSR falls short when it confronts irresponsible actions that are costly to remediate.⁴²

³⁸ See generally <https://www.petronas.com/about-us/awards> (accessed August 2023).

³⁹ Sarah Joseph, 'Taming the Leviathans: Multinational Enterprises and Human Rights' (1999) 46:2 *Netherlands International Law Review* 171–203.

⁴⁰ Stieglitz and Pamperrien, note 15, 231.

⁴¹ George Brenkert, 'Business Ethics and Human Rights: An Overview' (2016) 1 *Business and Human Rights Journal* 277–306.

⁴² Maria Rotundo, 'Corporate Social Irresponsibility in Spite of Efforts to Act Responsibly: The Nature, Measurement, and Contextual Antecedents of CSR and CSiR by Organizations', in Abigail McWilliams, Deborah Rupp, Donald Siegel, Günter Stahl and David Waldman (eds.), *The Oxford Handbook of Corporate Social Responsibility: Psychological and Organizational Perspectives* (New York: Oxford University Press, 2019), 176–206; Christopher Wickert and David Risi, *Corporate Social Responsibility* (New York: Cambridge University Press, 2019).

Second, in the context of fragile states such as South Sudan, where strong compliance control mechanisms do not exist and civil society is so weak that it cannot play its role as watchdog, even companies with good CSR programs may find it difficult to dissuade their business partners from engaging in lucrative CSiR. While SoH was able to trigger Daimler's CSR to engage in dialogue with Daimler's business partner Petronas, this dialogue was, according to SoH's observations, not followed by any meaningful action on the ground.

These limitations impacted SoH's campaign. While SoH's campaign evolved dynamically along with the findings of its investigations, none of its tactics ultimately triggered the changes hoped for. SoH initially sought to engage in constructive dialogue and refrained from going public for several years. However, nearly five years of this approach failed to obtain a palpable reaction. SoH had the impression that it was running up against an elastic wall of defence, erected around and protecting the companies' interests. It had fallen into the trap of being drawn into quiet backrooms lined with such elastic walls. In the second phase of its campaign, SoH went public by presenting the results of the hydrological study at a press conference in Juba, South Sudan. Following this defiant move, the organization was, in front of Daimler, threatened out of South Sudan.

Third, SoH's experience with Daimler highlights the importance of engaging with civil society both in the Global South and North in order to overcome the limitations of CSR. While SoH extensively spoke to people directly involved in, or impacted by, the situation, the organization spoke 'on behalf' of impacted groups and did not directly mobilize the South Sudanese grassroots as representatives of the 'exploited' society. In retrospect, SoH missed the opportunity to anchor the problem and the solution locally and sustainably by transferring expertise and methods to those directly affected.

In the Global North, SoH's calls to rein in CSiR were no match for societies thirsty for cheap energy. In view of these challenges, scholars and activists have for many years pointed to state regulation and corporate liability as possible antidotes for CSiR.⁴³ In light of its own direct experience, SoH could not agree more. As part of its advocacy and lobbying efforts, the organization pushes for legislation in Germany and in the European Union, home to large multinational corporations, that will contribute to reversing the elastic wall 'effect' and to erecting a solid, legally binding framework reliably upholding accountability where it belongs; in other words, making ethical promises count.

Competing interest. The authors declare none.

⁴³ David Bilchitz, 'The Necessity for a Business and Human Rights Treaty' (2016) 1:2 *Business and Human Rights Journal* 203–227.