Silence as Complicity: Elements of a Corporate Duty to Speak Out against the Violation of Human Rights

How should we understand what corporate complicity is? An account of silent complicity.

What is this Research About?
The researcher examines the concept of silent complicity by questioning what it means when corporations do not speak out about human rights abuses by governments. The concept of silent complicity suggests that under certain circumstances corporations who do not speak out about human rights abuses become silently complicit with those who commit them. This implies that corporations have moral obligations beyond simply not causing harm when they conduct their business. It also implies that corporations have a moral responsibility to help protect human rights by pressuring governments of the countries in which they have operations not to commit human rights abuses.

This article contributes to the ongoing debate about the boundaries of corporate responsibility. It provides an analysis of the underlying conditions that need to be met in order for:

1. Moral agents – in this case, corporations – to be said to have a duty to protect human rights; and
2. When they can be considered to be silently complicit in the violation of human rights by other actors, such as host governments.

Background
Silent complicity is contrasted with active forms of complicity: direct complicity, where a corporation directly supports the violation of human rights, and indirect complicity, where a corporation merely facilitates another party’s human rights violations. It is also contrasted with a passive form of complicity, namely beneficial complicity, where a corporation serves to benefit from human rights violations by remaining silent when it is aware of them. On the researcher’s analysis, while silent complicity is passive, it need not benefit the corporation for it to be blameworthy in remaining silent.

In 1993, the activist group “Movement for the Survival of the Ogoni People” was protesting against the widespread environmental degradation and exploitation caused by various extractive industries with operations in Nigeria. As the movement grew in strength and popularity, the Nigerian government violently repressed these demonstrations.

Over 2,000 people were killed and 80,000 people were displaced from their homes and land. Two years later, Ken Saro-Wiwa and eight of his followers were executed by the Nigerian government for their involvement in the protests. Shell was criticized for not doing enough to stop the government from carrying out the executions. Indeed, many reporters and non-governmental organizations (NGOs) held Shell to be silently complicit in the unjust execution of these protestors.

What did the Researcher do?
Using the Nigerian example as a case study throughout, the researcher argues that silent complicity has two components:

1. The omission requirement, which is the failure to act in response to a wrongful action; and
2. The legitimization requirement, which implies that, by staying silent, a corporation can indirectly or directly support and legitimate a government’s violation of human rights.

According to the researcher, the combination of the omission and the legitimization requirements place positive duties on corporations to come to the aid of victims or speak out against human rights violations of which it is aware. If it does not, it has undermined human rights and can be blamed accordingly.

The researcher then details four criteria that jointly serve to identify when a corporation can be seen as having a duty to speak out against human rights abuses or, by not doing so, being silently complicit...
What did the Researcher Find Out?

According to the UN Protect, Respect and Remedy Framework, corporations only have negative duties to respect human rights. This implies that, while corporations are required to do no harm, they do not have a positive duty to protect human rights. The researcher claims that this is a problem from the standpoint of silent complicity, which would have no application to corporate action. This is because in many cases, corporations are not doing any harm directly and are not benefiting from human rights violations. Nonetheless, there seem to be cases, such as the case of Shell in Nigeria, where corporations would face moral criticism for remaining silent in the face of human rights violations.

The researcher outlines four criteria that place a duty on corporations to speak out against human rights abuses. In the absence of doing so, corporations risk being silently complicit in those abuses.

1) Voluntariness: To be morally responsible for an action, which includes not speaking out against an abuse, the agent must be able to freely choose that action from a range of options. In other words, the corporation must be able to genuinely choose between speaking out and remaining silent.

2) Connection to Human Rights Violations: The corporation must have a moral connection to the victims (or the perpetrator) of the violations. This does not mean being involved in the violation, since direct involvement with a human rights abuse would make the corporation directly complicit. Rather, the agent must be associated or connected with the violation in a morally significant manner beyond involvement. The researcher notes that while a corporation may benefit from such a stance, that benefit isn’t necessary for silent complicity.

3) Power/Influence: Silent complicity requires that the corporation has the resources needed to exert pressure to improve the situation for the victims. This is a difficult consideration, since one must carefully weigh the consequences that the corporation will face should it speak out. If those consequences are too great, then the corporation lacks sufficient power and influence to be silently complicit.

4) Social or Political Status: The researcher builds on research by Cragg, Cutler, and Kobrin who state that, as corporations grow in power and stature, they use that power to affect public policy. Corporations can set standards, influence law making, and aid in delivering public services. As they do this, corporations take on characteristics of governments and may begin to have similar positive duties that governments have in protecting human rights.

When a corporation meets all four of these conditions and remains silent in the face of human rights abuses of which it is aware, it may be silently complicit in the violation of those abuses.

Why this is Relevant to:
The research community

The researcher provides a compelling analysis of silent complicity and situates it within a broader framework that holds corporations to have both positive and negative human rights obligations. Both his analysis and the framework the researcher develops is novel and contribute to a growing body of work on both complicity and positive corporate human rights obligations.

The policy community

Governmental and corporate policymakers should find the four criteria listed above useful in creating guidelines for best practices in their dealings with governments that are involved in human rights abuses. The case studies of Microsoft in Russia and Shell in Nigeria examined by the researcher provide helpful accounts of how corporations can respond successfully to protect human rights when silent complicity might arise.