Section 4

Flashpoint Issue 1
Stakeholder Engagement

CDA Corporate Engagement Project [1]

Flashpoint Issue 1
Stakeholder Engagement

The issue

Companies have experienced a steep – and shifting - learning curve in their approach to stakeholder engagement. Many recognise that obtaining a 'social licence to operate' is essential to successful business operations from the outset. Without a direct, continuing relationship, communities in underdeveloped countries view companies as foreign, wealthy entities that are ready targets for the extraction of financial benefits, or venting grievances, sometimes through violence.

Most companies channel their interactions with host communities through social investment or community relations programmes despite the reality that all other areas of business activity (compensation policies, hiring policies, construction) are equally, if not more important in establishing the terms in which communities view a company's impact on their lives. The distribution of employment opportunities and other benefits from a project, and decisions about other major impacts, particularly on the environment, require community support in order to avoid conflict. Stakeholder engagement is a vital tool through which informed strategies can be developed. To understand potential or existing conflicts, and design effective risk mitigation across the range of a company's activities, effective, respectful, regular and transparent engagement processes are essential.

Companies most frequently use two processes in working with stakeholders: consultation and negotiation. Negotiation is a process of meetings deliberately convened to reach agreement on a particular issue. A consultation process is a more open-ended set of conversations or meetings, with the objective of exchanging ideas and opinions (without necessarily coming to a formal agreement). Consultations precede formal, issue-focused negotiations and the same individuals usually participate. The degree of credibility, transparency and trust established during the consultation directly impacts the effectiveness of negotiations with stakeholders. Both processes need to be considered in light of their potential to fuel or mitigate tensions, misunderstandings and conflict.

The business case

Companies have long sought good relations with national and local governments. Increasingly they have discovered that harmonious relations with a range of other stakeholders, such as communities affected by the project, local, national and international advocacy NGOs, and development actors, also pay dividends. Such relationships can help provide companies with accurate information and context analysis, as well as professional and experienced partners for social investment and development projects. In the absence of such relationships, mistrust can grow, increasing the likelihood that conflict will arise between companies and communities. This, in turn, can impose both direct operational costs and indirect reputational costs, as advocacy networks turn hostile to a project or investment as a result of community grievances. Work stoppages, local violence, widespread political unrest and the potential for legal or reputational damage can result from poor stakeholder-engagement practice. As companies begin to recognise this, competitive bidding gains can be won from tackling stakeholder engagement pro-actively and building good relationships across the spectrum of social actors from an early stage.

Standard assumptions and responses

Some companies have managed to establish excellent relationships with the stakeholders with whom they work, but others - the majority – have been less successful. This is because of underlying incorrect assumptions:

Negotiation or consultation results in having to pay more cash or other monetary rewards. This assumption leads to negotiation avoidance, which can result in escalated frustration among communities, acts of violence, lawsuits, work stoppages or increased demands, all of which are more costly and time-consuming than the consultation and negotiation procedures.

Companies postpone consultations because they want first to come up with answers to the questions they expect will be raised. The experience of others suggests that consultation processes often generate creative ideas for dealing with issues for which management has not yet found solutions.

Negotiation or consultation delays implementation. On the contrary, a well-designed and ongoing consultation process increases public ownership, reducing the risk of delays from complaints, obstruction or sabotage.

Engagement, specifically in negotiation, should be limited to a small number of groups or representatives. This assumption prioritises negotiations with the most powerful in the community, those who are potentially most obstructive of company operations, or others whose influence can be used to convince community members to support a positive outcome. In reality, working with a small group of people can mean that other groups feel left out and do not respect the outcome of the negotiation. It can also exacerbate existing power imbalances unduly.

Engagement is a means of achieving a specific position or outcome, rather than an open process aimed at meeting stakeholders' needs, as well as a company's own. But communities say that they value discussions around non-monetary intangibles such as 'trust' or 'empowerment', rather than a focus on financial compensation or tangible settlements.

Control of the interaction with stakeholders is more important than the process. The idea that engagement should be approached with a fixed agenda and a strategy for achieving set goals limits the space available to make engagement a two-way process that is mutually satisfactory.

By focusing on 'winning' and 'outcomes', companies can overlook the importance of the process of interaction, and fail to identify and subsequently address the root causes that created the need for engagement in the first place. Where root causes are not addressed, communities will continue to bring them to the company's attention.

Key conflict issues
Flawed engagement processes directly increase the likelihood of conflict in the following ways:

Negative reinforcement. When companies respond only to acts of obstruction, work shutdowns, vandalism or violence, stakeholders experience 'negative reinforcement' which encourages them to engage in negative activities they might otherwise not have chosen. If a company responds only to negative or obstructive triggers, those triggers are certain to occur. Communities consulted over this issue say they wish to engage with the company on a regular and constructive basis, but that this non-obstructive approach tends to yield less results.[2]

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2. CDA research, op. cit.

Responding to those who display negative authority. Responding or consulting only with armed groups, or those who articulate threats of violence, kidnap staff or destroy company property, empowers and legitimises such actions. It also overlooks the potential of positive actors who represent broader interests and can bring together community members, such as women's groups, religious circles, community organisations and educational institutions. Beyond the company's immediate relations, such a response reinforces the conflict drivers in society at large, increasing the risk of long-term instability and its associated costs to the operating environment.

Partner selection reinforces local tensions. Companies naturally find it easier to interact with someone who comes to their office, speaks their language, knows the local laws and customs, and is formally educated. However, individuals who most readily present themselves, and look and sound most like company staff, can be 'elites', who may or may not represent the wider community. By supporting elites as negotiators, the company risks a dynamic in which the elite positions him or herself between the company and the community for personal gain, to the detriment of both. By supporting individuals over groups, companies undermine cohesion in the greater community.

Reactive engagement. Many companies wait to engage with communities until they are compelled to respond to a problem, or until specific issues arise that affect their ability to operate. They are reactive to problems, rather than pro-active in establishing effective relationships with communities. Allowing problems to grow in this way has knock-on effects: as companies become tainted by their negative impacts on communities, the reputational risk of working with them becomes too great for NGOs, for instance, and companies, as a result, forfeit the expertise and knowledge they can bring as intermediaries or partners.

Options and alternatives

There is a body of good practice and innovative approaches that seeks to promote more even and predictable relationships between companies and stakeholders. Identifying and working with different primary, secondary and indirect stakeholders is at the core of conflict-sensitive business practice (CSBP) and plays an important function in understanding and mitigating conflict risk at both national and local levels (see M-CRIA and P-CRIA). Following are some basic recommended steps:

1. Pro-active approach. Reversing the pattern of reactive engagement, companies should begin engaging early with communities and other stakeholders, even before exploratory operations commence. Some begin the process as early as one-and-a-half to two years prior to exploration. By recognising a community's right to be concerned about the changes a large-scale project will inevitably bring to their lives and landscape, companies send an implicit message that they consider it a partner, rather than that the community will have to fight for a stake in the relationship.

2. Commitment to the process. Companies are beginning to take commitment to the process more seriously once it has begun. Engagement with stakeholders should not be undertaken merely to meet external requirements (as part of an environmental and social impact analysis, for example). Under pressure to show tangible results some companies focus on achieving specific outcomes in an interaction, rather than giving attention to the process of building a mutually beneficial relationship which should take precedence over the actual contents of the consultation. Many communities express the view that they find companies 'unpredictable'. This is mainly due to their

limited access to information, with the effect that company decisions seem to have been made suddenly even when they have been planned for a long time. To avoid this, one method is to clarify precisely what the next steps will be at the end of any negotiation or dialogue, and who is responsible for the plan. When communities gain the impression that companies follow through consistently on what they have promised, the predictability enhances the sense of trust even when the action itself may be viewed negatively. Full documentation of occasions when the company 'kept its promises', or when 'high expectations led to disappointing results' can be a useful tool in correcting 'selective' memories.

A promise register
Communities will seek to understand the impact and significance, as well as the potential risks and benefits associated with an investment in their local area from the very first encounter with exploration geologists. Exaggerated or unfounded promises of 'jobs for everyone' and other riches by different company staff will fuel speculation, and are likely to lead to disappointment and grievance. Companies should seek to control such interactions by creating formal mechanisms for monitoring them and requiring staff to be accountable. Promises should not be made unless as part of the community relations strategy – and even then should be posted in one place that is transparently available. If early promises of jobs are likely not to be met, this should be communicated and discussed with affected communities.

3. Interaction must be carried out with an understanding of why it is being done and how it is likely to affect the project. Consultations can be informal (through discussions in the local tea shop or with local elders), formal (through workshops, public hearings, negotiations), or a combination of the two. Different strategies must be developed for different stakeholders. For the most directly affected stakeholders, face-to-face meetings are most appropriate, while open houses, public forums and documentation suits the needs of those less directly impacted. Companies and communities have implicit expectations of each other. Making expectations explicit allows each to hold the other accountable and keeps expectations realistic. A formal communication protocol can help when conflict issues arise. This should include a list of who to contact, when, through whom, by whom and so on.

4. Inclusive approach. In many countries, engagement with certain groups is politically or culturally sensitive. It is important to avoid reinforcing local tensions and to reach out as widely as possible to target affected stakeholders. In cases where the authorities do not allow communities to organise, companies have found ways to engage by:

- Negotiating with the government for the establishment of an elected village communication committee. The purpose of the committee is to discuss company/community affairs, such as social programmes. The condition is that the committee should not be involved in politics.
- Suggestion boxes. These work in some contexts, but not in others. The company must ensure that villagers know who empties the boxes and reads the messages.
- Hiring (preferably female) staff to conduct regular home visits to consult with women, collect statistics and disseminate information.
- Working through independent NGOs or foundations. They usually have more space to engage informally with stakeholders in areas where group gatherings are difficult.
- Follow-through on written and verbal commitments.

5. Reward peace rather than violence. Some companies accept violence and disturbance as part of their operating environment, but it is easier (and cheaper) to work in an atmosphere of trust than one of violence. Strategies that 'reward peace' include investing in communities that are peaceful, rather than focusing on more disruptive ones; celebrating success when milestones are achieved; and inviting stakeholders to share in building a sense of ownership over a project. In the interests of longer-term contributions to peace and stability, companies could think creatively about using their convening power and the engagement process to foster peaceful relations between different stakeholders in the region, rather than contributing to increased competition. Building on the elements in society that connect individuals across their differences, rather than reinforcing them, is more effective for companies in the long term.

6. Transparency. Transparency about the most basic details of company policies, decisions, plans and schedules demonstrates a willingness to share. Companies can supply information about hiring practices, the selection process for community relations projects, progress on company operations and long-term strategies. Transparency dispels misperception and rumour, and helps to identify issues that may be of concern to community members before they grow into grievances. Companies can use the following approaches:

- Booklets, video and audio that explain in simple language and colourful pictures the operational process
- Bulletin boards that explain hiring and tender procedures
- A public information office in a nearby village where anybody can make enquiries about company operations
- Visits to each community in the operating area, and use of video and other media to demonstrate what operations will look like when complete
- A to-scale model of what the site will look like after closure and environmental repair.

It is important that a company presents stakeholders with consistent arguments. Different departments have different mandates, objectives and timelines which can be challenging when trying to interact with communities as a team. Without a unified vision based on stakeholder input and company interest, these internal differences may work against each another, leading to frustrated staff and dissatisfied communities.

7. Get the right person for the right job. Ensuring that the staff responsible for stakeholder engagement have a willingness to listen, good understanding of the local context and a long-term commitment to the job is vital, as communities often complain that interlocutors come and go, or they do not find staff accessible or trustworthy. Companies are increasingly working with trusted third parties, such as NGOs or development agencies, to perform their communications or consultation work. In addition, international companies should realise that stakeholders also exist inside the front gate, as well as beyond it. There are opportunities to improve communication with local staff that can also serve to improve relations between the company and the larger community.

Resources

Voluntary standards
AA1000 Voluntary Process Standard for Stakeholder
Engagement. www.accountability.org.uk/

Websites
Collaborative for Development Action,
Corporate Engagement Project. www.cdainc.com/cep/

Institute of Development Studies, participation home page.
www.ids.ac.uk/ids/particip/

Mining, Minerals and Sustainable Development (MMSD),
stakeholder engagement.
www.iied.org/mmsd/global_act/stakeh.html

UN Global Compact.
www.unglobalcompact.org

Other resources
Accountability, Stakeholder Research Associates Canada and
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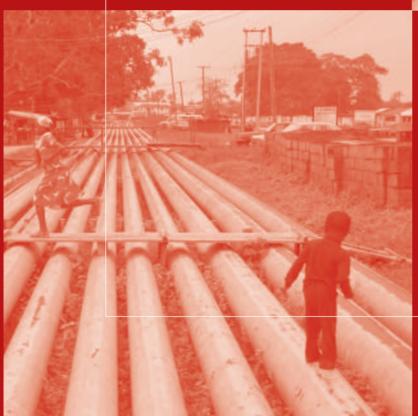www.undp.org/cso/resource/documents/empowering/intro.html

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www.worldbank.org/wbi/sourcebook/sbhome.htm

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Section 4

Flashpoint Issue 2
Resettlement

Flashpoint Issue 2
Resettlement

The issue

Acquisition of land, or rights to land, is a precursor to nearly all extractive industry operations. Where such land is occupied or used by people, or where it forms part of a community's customary or traditional resources, acquisition may involve resettlement. Under World Bank criteria, a project involves resettlement where acquisition of land for project purposes, whether temporary or permanent, results in one or more of the following:

• Relocation of people, or their loss of shelter
• People or businesses experience loss of assets (including buildings, land and crops) or loss of access to assets or resources
• People or businesses experience loss or restrictions over income sources or means of livelihood, whether or not the affected people must move to another location.

A distinction is commonly made between 'voluntary' and 'involuntary' resettlement. Resettlement is involuntary when it occurs without the informed consent of the displaced persons, or if they give their consent without having the power to refuse resettlement. The latter occurs when a state uses powers of eminent domain to acquire land, as is sometimes the case.

The resettlement of people can have far-reaching and serious impacts. As a result of displacement, systems of livelihood are disrupted, and productive assets and income sources lost. Community structures and social safety nets are weakened, human security diminished, and there are reductions in cultural identity, traditional authority and the potential for self-help. Poorly managed resettlement can cause severe, long-term social degradation, impoverishment and increased vulnerability. Wherever resettlement occurs, there is increased potential for conflict arising from many causes including: disputes over ownership, rights to land or resources; inadequacy of compensation; conflicts between resettled people and their host populations; or as a result of corrupt behaviour by implementing officials. In some cases, resettlement can exacerbate or rekindle longstanding conflicts at regional, tribal, village or neighbourhood level. Clear and publicised mechanisms for addressing grievances and resolving disputes are a critical part of any resettlement programme. Pro-active approaches that involve early assessment of conflict risks, close consultation and engagement with affected people and thorough resettlement planning can greatly reduce the potential for conflict.

The business case

Ideally, a business wants to operate with the goodwill and trust of the communities that surround it, or are affected by its operations. In many cases, projects are in remote or isolated locations where they are dependent on the goodwill of local communities for access to local roads, labour and the provision of support goods or services. Projects with linear components (e.g. pipelines, transmission lines, materials handling systems) are particularly reliant on good relations with their host communities. Conversely, their operations can be vulnerable to disruption should goodwill break down.

Inadequate attention to the impacts of land acquisition and resettlement can cause enduring hardship, resentment and opposition towards a project and its operators. This can contribute to delays in land being vacated for project construction, subsequent construction delays as a result of protests or ongoing disruptions to operations from blockages or sabotage. It can lead disaffected communities and civil society groups to lobby governments and stymie approvals for operations

expansion or new licences. Such actions are not only harmful to a company's bottom-line, they also increase its exposure to security risks and reputational harm. Under some circumstances, failure to follow good international resettlement practice may be interpreted as 'forced eviction' and leave a company vulnerable to prosecution under international human rights law.

A clearly defined and documented strategy for resettlement, developed in partnership with affected people, can assist a project to obtain political backing and faster statutory approvals. A comprehensive resettlement plan is often a pre-requisite for project financing and obtaining political risk guarantees. Other benefits include:

- Fewer delays in acquiring land through avoidance of disputes, litigation or time-consuming eminent domain procedures
- Reduced risk of confrontation with local communities or downtime as a result of community actions against construction or operations
- Reduced risk of human rights actions against the company
- Improved transparency in dealings with affected communities and governments on land acquisition and compensation matters
- Development of host community support and trust ('social licence to operate').

Standard assumptions and responses

While a few enlightened companies are beginning to adopt more sophisticated strategies for land acquisition and resettlement, many persist in acquiring land in developing countries as though they were undertaking a similar transaction in their country of origin; that is, through the payment of cash compensation to legally recognised landowners, users or affected third parties. In many developing countries, unfortunately, poorly developed legislative frameworks, lack of administrative capacity and the absence of developed land markets or regularised systems of land tenure mean that many displaced people or communities do not receive adequate compensation to cover their losses or, in the case of informal dwellers, receive no compensation at all.[1] Cash compensation alone is seldom adequate to enable people to restore their standard of living and livelihoods once they have been displaced.

Following are some of the common assumptions that companies mistakenly make in contemplating resettlement of people from project-affected lands. They are assumptions that are contrary to accepted international standards governing resettlement, and could leave a company open to human rights charges or other costs:

- Resettlement occurs only where there is physical displacement of people
- Temporary use of land by a company does not constitute grounds for resettlement
- If land is state land, or has been cleared of people by the government prior to handover to the company, the company has no resettlement obligations
- Only people or parties with legally recognised rights to land need be compensated
- Cash compensation is usually adequate to cover resettlement impacts
- If problems occur, additional compensation payments will usually resolve them
- Disclosure of information about how land and assets will be valued will lead to escalating demands from affected people
- Provided a company complies with national laws regarding resettlement, it has met international standards

1. Informal dwellers are people who may use or occupy land, but who do not have any legally recognised rights to do so. Informal dwellers can include so-called 'squatters', traditional or customary users of land such as indigenous people, seasonal fishermen or pastoralists, people who use land on the basis of verbal or informal agreements, people who have land certificates but who have failed to register their rights, or who have not paid land taxes, and so on.

- A company only needs to comply with national statutory requirements for notification of affected people about resettlement
- Once compensation has been paid, a company's resettlement responsibilities are over
- Project-affected people who are unhappy with their resettlement arrangements can always seek recourse through the courts.

Key conflict issues

This section briefly outlines some of the principal sources of conflict that can result from involuntary resettlement.

Not adequately recognising customary or traditional rights to land, particularly those of indigenous people. Failure to address traditional or customary rights to land, and to reach a full accommodation with its owners can lead to persistent land claims, or claims that re-emerge many years after the original acquisition. This is particularly, but not exclusively, true of indigenous peoples, whose customary rules governing ownership, use and transfer can be extremely complex, involve long time-frames and be difficult for outsiders to understand (see Flashpoint Issue 4: Indigenous Peoples). Whether they involve indigenous peoples or other communities, such claims can be protracted, involve significant legal and other costs, attract adverse national or international publicity and, in some cases, result in substantial settlements or the curtailment of a company's operations. Communities experiencing loss of land may also suffer from deteriorating health, loss of access to common resources and hunting domain, food insecurity, breakdown of traditional social organisation and belief systems, as well as social marginalisation.

Not recognising the losses of informal land users. In many developing countries, a high proportion of people are informal land users without legally recognised rights to the land they occupy. While informal users may not have legal entitlement to compensation, they experience losses of housing, assets, income and livelihood when displaced by a project. They may feel aggrieved where their losses are not recognised or compensated. Where people do not have recourse to legal remedies, they may be forced to explore alternative ways of drawing attention to their circumstances. These can include resisting resettlement, so that they have to be forcibly removed. National and international NGOs are increasingly supportive of the rights of informal dwellers and can assist them with legal actions, or by running international campaigns.

Failing adequately to address grievances and complaints. Where individuals feel that their complaints or grievances are not being addressed, they not uncommonly initiate escalating measures to get attention. These can include protests or invasions of a company's offices, blockading work areas or access roads, or other measures to delay construction or halt operations. Aggrieved individuals can also lobby local politicians or take their cause to NGOs, causing adverse publicity and local opposition towards the company.

Envy of compensation or benefits by those who miss out. Overly generous compensation in the form of high-quality replacement housing or large cash payments can lead to tensions and envy among those who miss out. Tensions are likely to be directed at the company responsible for the relocation and may take the form of escalating demands from surrounding communities, seeking to receive similar benefits. This is one reason why land-for-land solutions are preferable to large cash payments. Compensation should be fair, with perhaps a small premium to encourage willing sellers. Excessive compensation can also distort market prices for land.

Competition for diminished resources. Where resettlers are relocated within the area of a host community, they increase competition for communal resources such as grazing, forest, hunting and fishing grounds. This can lead to resource depletion and conflict between the resettlers and their new hosts. Resettlers may also have received improved housing or benefits that are not accessible to their hosts, creating envy. A well-conceived resettlement programme would recognise that host communities have to make accommodations for the resettlers and may also experience some losses. Offsetting benefits or resources may need to be provided.

Exacerbate existing community differences or disputes. The prospect of compensation or other benefits going to some but not all can reignite pre-existing tensions within or between neighbouring villages, tribes, ethnic groups or long-time residents and newcomers. In some cases, it can cause disputes between older members of a community and its youth who may have differing aspirations and attachments to a place and its land. A project may become a pretext for the use of military force ostensibly to secure a strategic facility, but more likely serving local political ends. In these environments, there is a high likelihood of human rights violations and the appearance of collusion between the company and state security forces.

Lack of transparency in compensation basis and entitlements. Where the basis for compensation and resettlement entitlements is not explicitly defined and disclosed, there is high potential for suspicions of favouritism or cronyism to arise between neighbours, villages or tribes. Such allegations are difficult for a company to counter when no systematic or uniform basis for payments has been disclosed.

Residents of a village in Thailand whose land was acquired for a privately funded and operated power station had suspicions that there had been irregularities in the way their land was acquired. When they were unable to get satisfactory responses from the project proponents, they lit a large fire and blocked traffic on a national highway. The blockade made headline news. Subsequently, the government called a halt to the project while land transactions related to the project were the subject of a ministerial inquiry. The project is yet to be realised, after six years delay.

Corruption and extortion. Where government officials perpetrate acts of corruption or extortion, it can cause extreme frustration for genuine compensation recipients whose receipts may be diminished. In such cases, official channels may not be a feasible avenue for lodging a complaint. Sometimes resettlers will resort to alternatives such as talking to international journalists or seeking the assistance of advocacy NGOs. In some regimes, individuals may have no other option but to succumb to extortionate practices and accept partial compensation.

Options and alternatives

The following principles are based on current international good practice for projects that involve involuntary resettlement. Reference should also be made to International Finance Corporation (IFC) Operational Directive 4.30 Involuntary Resettlement which has been widely adopted as the good practice benchmark for private sector resettlement operations.[2] The overriding goal for any resettlement programme should be that displaced people are assisted to enhance, or at least to restore, their pre-project living standards, income-earning capacity and production levels. The risk of conflict is much reduced if displaced people experience sensible improvements in their quality of lives and incomes.

1. Avoid resettlement wherever possible. Because of the inherent risks (to both resettlers and the company concerned) and the complexities involved in resettlement, it is preferable to avoid resettlement wherever possible through careful site selection, routing studies, consultation and by exploration of the alternative technical and design options.

2. Where unavoidable, minimise resettlement impacts. Every effort should be made to minimise the footprint of the project to avoid impacts on the houses, productive land, assets and resources used by communities. This should include consideration of measures to minimise safety and protection zones around pipelines and facilities that may restrict landowner's and users' activities and affect livelihoods.

3. Undertake a thorough socio-economic assessment and social risk analysis to identify and anticipate areas of potential conflict (see M-CRIA and P-CRIA**).** The assessments identify the types of impact a project will have on peoples' land, assets and livelihoods, and provides the basis for designing compensation and assistance packages. Assessment should include an analysis of potential conflict risks, and identification of primary, secondary and any indirect stakeholders so that appropriate management approaches and resources can be allocated.

4. Ensure that agreements with the host government specify that land acquisition and resettlement be conducted in accordance with international standards. Concession and related land agreements for major extractive industry projects place the responsibility for land acquisition and resettlement on the host government. The government is responsible for handing over a cleared site to the project proponent within an agreed timeframe. While ostensibly this alleviates a company from responsibility for resettlement issues, it may leave a legacy of resentful displaced people, and vocal criticism from civil society organisations and others. In order that the company has some leverage to ensure that resettlement is conducted well, the project proponent should build international standards into any contractual agreement it signs with the government.

5. Allow sufficient time for land acquisition, resettlement and related consultative processes. A common mistake is to allow insufficient time for undertaking land acquisition and resettlement. A process that involves socio-economic assessment, thorough consultation and the participation of affected people can often take two to three years, particularly for corridor projects affecting large numbers of people.

2. At the time of going to print, all the IFC safeguard standards were under review. OP4.30 could be superceded from mid-2005.

6. Pay attention to informal land users: absence of legal title should not be a bar to compensation. Many categories of land user may not have legal title to the land that they use, but will still experience loss of assets or income as a result of the project. Such people should be compensated for their losses. Particular care should be taken to identify fully the land, assets and resources traditionally used by, or belonging to, indigenous people (see Flashpoint Issue 4: Indigenous People).

7. Consult thoroughly with displaced people and provide opportunities for them to participate and be involved in resettlement planning and implementation. This is an important conflict-avoidance activity and one that is most often overlooked when schedules are tight. People to be displaced should have opportunities to be directly involved in resettlement planning and in making decisions about their future. Wherever possible, they should be offered choices and alternatives on where they might resettle, the types of replacement housing provided, livelihood restoration options, and so on. Affected people have the most complete knowledge of what works best for them, and participation leads to a greater sense of ownership of the resettlement plan. Future host communities should also be consulted and participate in resettlement planning.

8. Prepare a resettlement plan. The resettlement plan is an important document for aligning all the parties involved in the resettlement process including company, contractors, government implementing agencies and the affected people. In jurisdictions where laws relating to resettlement are undeveloped, the resettlement plan is an important document for demonstrating that shortcomings in legislation and administrative systems have been addressed, and that affected people's rights have been fully protected. It should be developed in consultation with different stakeholders. It is also good practice that an easy-to-understand summary of the resettlement plan is made available to the affected people in their local languages. This ensures that affected people have clear information about their resettlement and entitlements, and gives them an opportunity to comment on any aspects they see as unfair or incomplete.

9. Resettlement programmes should be planned and executed as development programmes. These should be directed towards providing resettlers with sufficient resources and opportunities to improve their former living standards and livelihood levels. Cash compensation alone is seldom adequate to enable resettlers to restore their living standards or livelihoods. For rural communities, where suitable land is available, land-for-land compensation is preferable.

10. Provide opportunities for stakeholders to share in project benefits and develop an interest in the company's ongoing operation. There are many avenues through which the benefits of a company's operations can be extended to local communities, such as: training and employment opportunities; opportunities to supply goods and services; extension of company infrastructure to local villages (use of roads, water supply, transport or medical services); or through support for community development initiatives. Design of such interventions should itself be conflict-sensitive (see P-CRIA and Flashpoint Issue 5: Social Investment). Where there is mutual benefit for company and community, both parties have a vested interest in maintaining good relations and ensuring company operations continue unimpeded. Delivering benefits establishes the company as a good neighbour.

11. Maintain regular consultation and information dissemination throughout resettlement planning and implementation: keep peoples' expectations realistic. Misinformation, rumours, misunderstandings or unrealistic expectations arise from time to time during the progress of a resettlement programme. For example, there may be delays in providing income opportunities for resettlers. Without adequate information and reassurance, shared across a wide range of affected people, resettlers can be misled into believing a company is reneging on its promises.

12. Undertake regular monitoring of resettlement implementation and livelihood restoration. Even with the most carefully planned resettlement, unexpected issues and problems arise. Monitoring is one of the most important tools for ensuring that conflict issues are identified early and are promptly addressed. Monitoring should ensure that resettlement entitlements are delivered in full and on time; that livelihood restoration measures are effective; and grievances are addressed in an effective and timely manner. Corrective action or changes in the resettlement programme may be required where persistent problems are encountered.

13. Establish and publicise avenues for making a complaint or grievance. Stakeholders should have straightforward avenues for making a complaint related to land acquisition, resettlement, the project itself, or its personnel. It is critically important that complaints are recorded and acknowledged, and that appropriate corrective actions are agreed and taken in a timely manner. Failure to adequately acknowledge or address complaints can lead to escalating action and protests.

14. Anticipate corruption and take pro-active measures to minimise its impacts. Because resettlement can involve considerable cash compensation transactions, there is always a risk of corruption (see Flashpoint Issue 9: Corruption and Transparency). Measures to counter corruption can include: disclosing clear information to resettlers about their compensation entitlements and the basis used for calculating compensation; providing clear documentation of compensation calculations; making direct transfers to recipients by means of bank accounts to avoid third-party handling; widely publicising that compensation payments are to be free of any deductions or taxes; publicising avenues that can be used for making a complaint; providing confidential hotlines; or supporting a respected NGO's efforts to monitor payments and complaints.

Resources

International conventions and voluntary standards
Equator Principles. www.equator-principles.com

Geneva Conventions and Additional Protocols I and II. www.genevaconventions.org

International financial institutions, Operational Policies
Asian Development Bank Involuntary Resettlement Policy . www.adb.org

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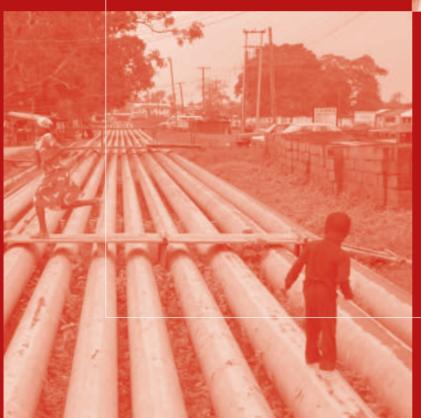
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Section 4

Flashpoint Issue 3
Compensation

Flashpoint Issue 3
Compensation

The issue
Companies become involved in compensation issues for a variety of reasons:

- To acquire land and assets
- To compensate for the impact or 'nuisance' their presence generates
- To compensate for accidents (trespass, spills, destruction, casualties).

This paper focuses on the first category.

For many communities, compensation is the only legitimate way to access company resources. In the process of land acquisition and compensation, the stakes are high for both company and community. Land acquisition and ownership have become important conflict factors for two further reasons:

- Land ownership determines if a company designates a community as a 'host' or gives it a related qualification that signals a 'special status'. The kind of qualification bestowed is directly linked to beneficiary entitlements, such as employment and contracting opportunities, or community projects.
- Being legitimised by companies as the landowner is important vis-à-vis other communities, especially in areas with a cultural attachment to land.

Companies use a variety of approaches to compensate for the land and assets they wish to acquire. Typically they follow national legislation. In some countries, like Nigeria, all land belongs to the state and the company is only obliged to compensate for pre-existing buildings and one yield of harvest. In others, land is privately owned (98 percent of land in Papua New Guinea is held privately). Companies operating there must reach an agreement with each group of owners according to well-specified procedures.

The business case
Company experience shows that the level (or lack) of protection that landowners or land users enjoy from government under existing legislation is unrelated to the level of protection they enjoy from the grievances (or satisfaction) of local stakeholders. Dealing with well-protected and compensated landowners is no guarantee of a problem-free relationship with land users. However, it is possible to deal with poorly protected land users in a cordial and constructive manner.

The manner in which compensation is made can help a company obtain a social licence to operate. If a company's compensation policies and practices are not locally perceived as fair, adequate and satisfactory, this can hinder the development of constructive relations with local stakeholders. This in turn can lead to project delays and the waste of significant management time. Associated threats of reputational and/or legal damage are high.

Standard assumptions and responses
Companies use a variety of policies and procedures to handle compensation. As noted above, they are based on government regulations, though regulations vary greatly in their specificity.

Company procedures stipulate:

- To whom compensation should be paid: landowner or land user?
- Which social unit is seen as owner: individual, family, community or clan?
- For what is compensation paid: land, non-productive assets (e.g. buildings), productive assets (e.g. crops, trees)?
- Level of compensation: is compensation based on one year's yield of the productive assets, lifetime economic value, government regulations or other regulations?
- Compensation currency: is compensation paid in cash, revenues, land/buildings, through a trust fund, through other in-kind 'currency' such as community projects, employment, contracts or a combination package?

Given the wide variety of terms under which compensation is paid, it is difficult to generalise but it is still possible to identify some basic assumptions underlying company practice that can become, or feed into, conflict issues:

Land and assets can be monetised. The assumption that land and assets can be directly compensated for in cash, given the right arrangement, does not acknowledge the cultural value of land in contexts that stress a critical relationship between people and the land on which they live.

Compensation is a finite process. A negative result of this can be demonstrated by company/community clashes that are based on divergent views about the value of land. The company claims it can do with the land whatever it wants, while local people perceive that they can never be alienated from it, and that the land always 'belongs' to them.

Compensation is a benefit to local people. This assumption leads to a company expectation that people who are compensated should show gratitude and not be too demanding in requests for employment, contracts or community services. This tends to be the case where communities have been compensated with new houses or other assets of better quality than the original ones. This expectation overlooks the reality that communities often do not associate compensation with a benefit but with loss of land, their previous community structure and other non-tangibles.

Negotiation should aim to pay the lowest compensation possible in persuading others to agree to a document. This approach, which companies sometimes bring to the negotiations during compensation claims – when their land departments are under pressure from the operations department 'to deliver' – has a negative impact on engagement. Communities may feel under pressure to sign an agreement. Companies may obtain a short-term, cost-effective legal solution but undermine their relationship with communities in the longer term.

Key conflict issues

There is considerable potential for conflict over compensation claims, usually in the form of ongoing disputes, but sometimes fuelling wider social instability and fragmentation.

Conflicts over ownership and who to compensate. There may be pre-existing conflicts over ownership of the land in which the company becomes entangled through its own designs. These can include conflicts between communities and/or local governments over boundaries; conflicts between landowners and land users; conflicts between 'real' and 'hoax' owners; and, after a company's arrival on the scene, conflicts between any of these groups and the company. Companies can fuel these tensions in a variety of ways, for example by recognising and compensating communities that host a company facility (such as a well head) to deter assaults on assets. But this community may be different from the one sitting on top of the resource, fuelling conflict over who is entitled to the compensation.

Compensation policies tend to focus on those directly impacted by company operations, such as landowners or the host village. Companies overlook those outside its operating area who may be no less impacted indirectly, due to increased costs of living, an influx of jobseekers or increases in alcohol consumption or prostitution. This can feed inter-group jealousy when groups that are or are not compensated overlap with groups who are already in conflict with one other. When land users are not the landowners (as occurs when groups have settled but never officially owned the area) owners can evict users from land they may have occupied for generations.

A village in Georgia received compensation for communal pastures and hayfields affected by the construction of a pipeline. The village leadership determined that the compensation should only be distributed among the original residents, but not more recent settlers who had relocated there after a landslide in their original village. The settlers opposed the village leaders' decision and took the matter to the district court, which found in their favour. The original residents subsequently challenged the decision in a higher court. The communal compensation created an acrimonious divide between old and new residents of the village that will take a long time to mend.

Conflict over how ownership is determined. If land ownership is based on official recognition of a community by the ministry of land, but the maps they use are old and obsolete, the company may fail to recognise new communities or settlements. This fuels a concern among communities that they are not being appropriately identified. Some companies require owners to be physically present on their land when an ownership survey takes place. Despite a company's best efforts to announce assessments widely, this allows false owners to claim land and be compensated, leading to conflict when the 'real' owners arrive. Some company policies assume individual land ownership in areas that traditionally have known only communal ownership. Acquiring land from individuals without going through traditional structures gives rise to community distrust and jealousy of the individuals who collect compensation. A non-inclusive approach to benefit distribution (individual land owners, host or spearhead communities only) means that groups and individuals have to compete to distinguish themselves. This creates conflict where it did not exist before. Rewarding groups based on narrow identities leads to social fragmentation and increases the number of stakeholders a company has to satisfy.

One company hired an anthropologist to help get its compensation policy 'right'. The anthropologist reported that there were seven major societal groupings and 23 smaller sub-groups with distinct identities in the area. To be as responsive as possible to local realities, the company launched compensation negotiations with all 23 sub-groups and soon found itself facing a growing number of sub-sub groupings with further special claims. More and more people demanded compensation payments and fights broke out between sub-groups. While trying to be as inclusive as possible, the company had focused on the differences between groups, rather than basing its policy on shared interests.

Conflict over the level of compensation. Companies may strictly follow government compensation standards but these may be outdated and not reflect current values, leading to owners feeling cheated. Companies may apply different standards to different people. For example, if a company first reaches agreement with the 'easy' landowners and, under pressure from colleagues in operations, settles a higher amount of compensation for the 'difficult' landowners, this can cause serious grievances among the former, however much they received. It also sets a precedent for company/community interaction across a range of associated areas. In other cases, ongoing negotiations over (relatively small) differences in compensation levels between what owners request and the company is prepared to pay can considerably delay the process of final purchase. Some companies reward their staff for making minimal compensation payments. Such a policy can result in staff 'cutting corners' or being non-transparent. Regardless of how reasonable the compensation, the process of negotiation can become a conflict issue if owners feel pressured into agreement. Lastly, compensation policies often only consider the immediate interests of those directly impacted by company operations (i.e. for loss of crops for one season only) and do not take into account future losses that a community might suffer. Faced with these losses, communities become hostile from the outset.

Lack of transparency about compensation policies. If there is insufficient transparency about the amount of compensation, who receives it and why, a climate is created in which rumour and jealousy flourish, and this can degenerate into violent inter-group conflict. In some cases, conflicts arise over the anticipated routes for a pipeline and their implications for land use. The transparency of compensation payments is a related issue. Paying compensation at company headquarters or in locations where the transactional details can be concealed can lead to allegations of mismanagement or abuse. Community leaders may face scrutiny on returning to their community. Similarly, if claims agents represent the landowners, a lack of transparency about payment details can lead to accusations of deal making and similarly backfire on the company.

Compensation currency. Cash impacts the social dynamics of resource-scarce communities and has implications for a region's long-term stability, a fact that companies often underestimate. When communities have little experience of dealing with cash, particularly large amounts, its presence can upset traditional power balances and relationships between groups. In many societies, hierarchy is still based on wisdom and age. When cash is introduced, it alters how prestige and political importance are attained. For example, a company's presence can change a society from a traditional system involving community responsibility to a cash-based system in which loyalty and, in some cases, security, can be bought and sold. Youth, who in traditional systems would not pass these social benchmarks, become empowered to exert their influence in a community based on wealth acquired by compensation payments.

Options and alternatives

Companies have at their disposal a number of methods to avoid doing unintended harm through their compensation policies. These include:

1. Conduct context analysis and impact assessment (see P-CRIA). Context analysis and impact assessment is an essential tool in the design of a compensation policy, ensuring that it is based on accurate understanding of potential conflict issues, including land ownership history, the socio-economic context into which compensation will play, the most appropriate channels of communication and compensation, and so on. Such assessments are also essential in identifying the inter-group divisions that could become possible conflict pressure points during negotiations over compensation.

2. Explore 'yield-based' or direct revenue distribution approaches to compensation. Some companies have experimented with these approaches which can promote stronger buy-in to the project production by affected communities.

3. Consider payment above government standards. Where government and communities are at odds over land ownership, buying land from local owners in spite of legal arrangements with the government can reduce the risk of hindrance by people who may lose out from the company's presence. Some companies have lobbied governments to ensure their outdated compensation terms conform to current market rates.

4. Be consistent in paying compensation rates. Some companies have a clause in their contract with land owners that no compensation is paid until an agreement is reached with all landowners. This is to avoid causing later conflict by paying different rates to owners.

5. Validate non-monetary value of land. Through careful context analysis and an appreciation of land's non-monetary value, companies can endeavour to be sensitive to local cultural values in their project design and compensation policies.

6. Provide land-for-land compensation. This guarantees economic stability for villagers who have little hope of successfully investing their money in the long term.

7. Take steps to ensure that compensation is used effectively. Increasingly, companies take responsibility not only for compensation but also to ensure that the compensation is used effectively. Some provide beneficiaries with advice and assistance in selecting investment opportunities. Others help landowners set up scholarship or trust funds and even their own companies to invest the compensation wisely.

8. Compensate according to traditional ownership structures. A context analysis should inform the compensation policy so that traditional ownership structures are respected and reinforced. This requires a focus on shared interests rather than separate identities. Staff should enquire from communities in the immediate and broader impact areas what the affected communities identify as issues/ideas/histories/assets that connect, rather than divide them. For example, a company might construct a hospital serving several communities or an entire region, rather than making services available only to residents of the host community. This helps bring communities together through shared use of this resource, rather than fostering jealousy or frustration that they must compete for services provided to one community over another.

9. Be transparent about all aspects of the compensation policy. Compensation policies should be developed in consultation with a wide range of stakeholders and a copy of background work should be made available to the affected communities.

10. Respect the process as much as the result. The tone of negotiations is as important for longer-term outcomes as the result. Companies often rush this phase of a project, when allowing communities to develop a sense of ownership over outcomes is a critical conflict-avoidance factor. When discussing compensation policies, companies benefit from sitting down with communities to focus first on the relational aspects, before addressing the legal detail.

11. Emphasise long-term impacts over short-term payments. Community representatives feel that the company has a responsibility to thoroughly inform the population prior to negotiations about the social consequences of its impacts. People cannot realistically be expected to have a comprehensive overview of the impact of a mine or an oil installation and may be too easily impressed with the instant wealth they anticipate. Some communities say that the cash poured into their social structure as a result of compensation payments can have detrimental effects. Landowners could be compensated in cash, but in reasonable amounts and in phases, rather than as a one-time payment. Companies can invest from the outset in community development as part of the compensation package, depositing the remainder of any revenues or compensation into a trust fund for future generations. Developing such long-term approaches through dialogue and consultation with communities is an excellent way to insure an overall positive impact from investment.

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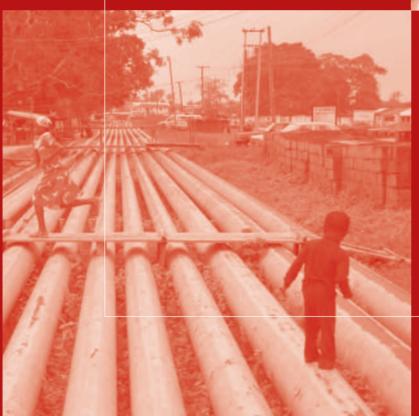ghts/downloads/full1998_landtenureinsecurityreport.pdf

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Section 4

Flashpoint Issue 4
Indigenous Peoples

Flashpoint Issue 4
Indigenous Peoples

The issue

There are various estimates of the scope and breadth of the indigenous populations in the world today.[1] Commonly quoted figures place them at around 300 million in more than 70 territories from the Arctic Circle to equatorial rainforests and the tips of the South American and African continents. The extractive industries have a history of violent and troubled interaction with indigenous groups, who continue to dwell on the frontiers of investment.

The complexity of the dynamic between indigenous people and multinational companies challenges the best company and community leaders even in circumstances where both are willing to work together. Companies, whose mission is to remove natural resources, operate near communities that are physically, culturally, spiritually and economically tied to traditional habitats and the resources lying under them. Through long histories of colonisation and turmoil, these communities exist within nation-states that have treated them much differently than full citizens living within the same borders. Successor governments are now dependent on revenues from natural resources in their territories. Add to this explosive mix opposing perspectives on development, power differentials and centuries of prejudice about indigenous culture, and the result is a recipe for conflict.

Business case

Companies working in developed and developing countries experience serious difficulties when relationships with indigenous peoples deteriorate, including:

Work stoppages. Because of unaddressed concerns over the potentially negative impact of company operations on water resources, indigenous communities blocked access to a mine in Peru for weeks, supported by international and national NGOs. Protests shut down a major portion of the mining operation.

Local-level violence. After several years of vainly requesting government assistance to remove illegal diamond miners from their protected lands, a Brazilian indigenous group resorted to violence, killing 24 miners.

Widespread political unrest. When it was learned that most of the benefits from a large-scale gas project in Bolivia would flow out of the country or to the capital, protests by indigenous peoples and labour unions brought down the presidency in late 2003.

In situations where companies do not have good relations with indigenous peoples, they face loss of permits and contracts, law suits, hostile advocacy campaigns, the reopening of assessment and negotiation processes, and the re-drawing of project plans in mid-cycle.

1. Several definitions are used to differentiate indigenous peoples from other groups, depending on different national contexts. There are also several terms used in different national contexts by these peoples, including aboriginal, native and indigenous – often these terms are shown capitalised. For the sake of editorial consistency and with all due respect, this paper uses 'indigenous'. One definition tries to capture what it is that different indigenous peoples share, despite the enormous variety between them around the world: 'Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop, and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.' Cobo, J. M., (1981). **Study on the Problem of Discrimination Against Indigenous Populations, Volume 1** UN document EC/CN.4/Sub.2/476; successive volumes E/CN.4/Sub.2/1986/7; and Add.1-4.

Such pressures influence public and private investors, national and multilateral institutions, and other external stakeholders who are paying increased attention to a company's ability to engage constructively with indigenous peoples. For companies that have changed their practices, results include easier permitting, greater access to finance, more effective local planning and investment, lower project design costs and fewer outbreaks of violence. When relationships are based upon trust and mutual respect, some companies have experienced a direct competitive advantage after indigenous communities requested them by name during a later bidding process.

Standard assumptions and responses
Relationships between indigenous peoples and extractive companies are affected by many of the same procedures and assumptions that companies use for 'communities' in general (see Flashpoint Issue 1: Stakeholder Engagement), but there are a few critical – and some unique – factors that come into play:

Historical grievances or concerns of indigenous peoples (either with national governments or past industry practices) are outside the remit of engagement and project design processes. Many companies assume that any attempt to deal with historical grievances will mire them in endless local disputes and demands for compensation.

The major concerns of indigenous peoples are beyond the sphere of companies' influence. Land rights and access to services are issues for governments, not companies. Economic development is the sphere of development agencies and NGOs, so companies should stick to their core business and not get involved.

Companies tend to wait until all their 'ducks are in a row' before approaching those locally who bear the greatest impact. When affected peoples are contacted, it is usually to tell them what will happen since many companies assume indigenous peoples are incapable of participating in project design and planning because of cultural or historical marginalisation. It is further assumed that it is not in the company's best interest to concern itself with raising the community's capacity to plan or negotiate as this might weaken its advantage.

Defining the goal as getting a community signature on a document at the beginning of the project is the most important outcome. Companies assume that such a signature means the same to indigenous peoples that it does to them and that once a signature is obtained, the community has consented for the life of the project. More often that not, this is far from true.

Conventional assessment processes suffice. Social assessments, when they occur, focus on conventional indicators, such as health or income, and show little knowledge of indigenous cultural values, needs and aspirations, nor of the likely way a project will impact on these.

Indigenous cultures are 'backward'. Moving toward a more 'modern' existence and leaving behind antiquated practices is assumed to be good both for indigenous peoples and the rest of society.

Indigenous peoples 'will not know what to do with real money'. Benefits provided to indigenous peoples are either funneled through national distribution schemes or, if localised, focus on compensation, the provision of infrastructure or contributions to social services and jobs. More often than not, they do not validate traditional cultures, but serve to undermine them.

Key conflict issues

Conflict issues with indigenous peoples run the full gamut, involving the company, national and local governments, affected communities and neighbouring communities. Critical issues include:

History. Many company personnel say historical mistrust is the first hurdle to overcome. Targets for extractive operations are usually in territories that have experienced contact between the indigenous peoples, governments and previous extractive activities, and the experience has not generally been positive due to environmental degradation, loss of land, lack of compensation, cultural degradation or the loss of livelihood. Some communities have closed their doors to extractive activities altogether. Where companies or governments ignore past grievances and move forward on a project, conflict may erupt immediately or mistrust may simmer for several years, but it surfaces eventually.

Land. The most critical factor dividing indigenous peoples from other ethnic or minority groups is their ancestral relationship to land. Land is the basis for identity, spirituality, culture, medicine, food, housing and livelihood. Conflicts over land entail high stakes for everyone, including governments and companies. They can occur over rights and access, since governments, rather than inhabitants, hold the mineral rights. Companies rely for mineral rights on governments, placing both at odds with affected communities who must deal with the impact of losing almost everything they value. In instances where companies respect surface rights and negotiate directly with landowners, problems may yet arise if the company has an incomplete knowledge of ownership patterns, causing conflicts between landowners. Another issue that can cause conflict is resource use and protection. Indigenous people govern land and resource use through long-standing customary laws designed to manage resource use (plants, wildlife, water, earth) within the community and between neighbouring communities to ensure their sustainable supply. Customs protect those resources and areas that are considered sacred. Conflicts arise between individuals and communities when resource-use patterns are interrupted or destabilised by company activity. Conflict can also arise between company and communities when traditional resource use is curtailed, operations result in environmental degradation or sacred places are disturbed.

Benefits. There are two ways in which the provision and distribution of benefits from extractive industries has been at the root of local and national conflict. Many schemes for distributing rents, royalties and taxes flow into capitals rather than local centres. Indigenous peoples have tended to receive less of the basic services that national budgets are designed to fund. When combined with the fact that monies come from the development of resources in their own territory, such discrepancies fuel historical grievance. In cases where governments have tried to overcome such discrepancies by creating funds specifically earmarked for indigenous peoples, experience has shown them to be relative failures, with the funds not being distributed down to the local level. When benefits are distributed locally, they can be problematic if the distribution is poorly conceived. Indigenous peoples point to problems with the company practice of using payments to individuals to secure access and agreement for the project, fueling local divisions. They also point to a notable trend of indigenous peoples receiving lower compensation payments than non-indigenous peoples

for land and resource use, fueling conflict between communities. Conflict can arise when community expectations of royalties, compensation, jobs and services outweigh the reality. High expectations can result from a company overselling in order to win community support, from a community's ignorance of the industry or a project's ability to deliver benefits.

Development impacts. Infrastructure development, especially the development of roads, is generally described as having a positive impact from a company's investment in remote communities by helping inhabitants to reach towns and markets. However, it can also have negative effects as other groups move into the area in hope of finding jobs. In operations lasting decades, in-migration can attain monumental proportions, overwhelming indigenous communities and bringing pressure on land, as well as disease, crime, prostitution and increased inter-community conflict.

Cultural impacts. In-migration has critical cultural impacts, bringing different languages, practices, gender concerns and values. Cultural conflict is also a common outcome of the meeting between indigenous peoples and company personnel.

Local decision-making. Companies are challenged by traditional decision-making structures and practices. In the provision of information to communities, they tend to offer only that which is required by law, and then to rely on standard regulatory procedures. Such procedures place critical information about a project in the capital, other government bodies and usually in formats inaccessible to indigenous residents. Given the pattern of their historical relationship with governments, indigenous people assume that they are being ignored, that they are the last to know of critical developments and that companies have something to hide. Levels of mistrust rise higher if the information is later leaked by third parties. By and large, indigenous decision-making systems are not bureaucratic, so they may seem to companies ad hoc, convoluted or mysterious. This may lead companies to employ 'relationship brokers' or create local structures that make them feel more at ease. Companies argue that such steps create greater efficiency, but they also generate issues of legitimacy. Conflict may then arise between traditional and non-traditional structures, and between the different decision-makers.

Consent. The topic of consent, in the sense of 'free, prior, informed consent', has been at the head of debate on extractive industry practice for several years. It is usually discussed as a concern for all communities, but has specific and important implications for relations with indigenous peoples. The issue is that consent embodies the fundamental rights of 'a people' to shape and control its future as a collective identity; rights that indigenous peoples are actively fighting for at national and international levels. It also embodies the concepts of historic rights and empowerment of indigenous peoples in all facets of life, and is enshrined in international law in ILO Convention 169:

The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.[2]

2. International Labour Organisation Convention 169: Concerning Indigenous and Tribal Peoples in Independent Countries (1991), Article 7.1.

Indigenous peoples are not necessarily or inevitably against extractive operations. But there are risks if companies find themselves in situations where indigenous peoples do not consent to an operation. This issue is intimately related to access to land and land rights. Companies increasingly find that reliance solely on national governments for a legal right to operate is not sufficient. Indigenous and non-indigenous communities use protest and international pressure to access the critical points in decision-making about a project, but indigenous peoples also increasingly find relief in influencing national or international court rulings that uphold their right of consent. Judicial systems have begun to focus their attention on governments' responsibility for demarcating and titling indigenous lands, and ensuring indigenous participation in decisions with regard to those lands.

Options and alternatives

There are many ways in which extractive companies have recognised the need to build more successful, less conflictual relationships with indigenous peoples, and a growing body of industry practice brings this recognition to the operational level.

Companies are learning to see that indigenous peoples are not the same as others. They have histories, relations with government, laws, livelihoods and values that set them apart from other communities, and their goals may be different to those assumed by others around them. To ignore the difference is to neglect something that might be critical to a project. Companies have learned that such differences should be taken into account throughout a project cycle, from the earliest stage to closure.

Some specific examples of changed practices include:

1. **Assessment and risk analysis** (see M-CRIA and P-CRIA). Industry and other experts say that the best and most neglected opportunity to build a positive relationship with indigenous peoples is in the research phase, and this means knowing enough to ask the right questions. Assessments should investigate local indigenous cultures, land rights (including demarcation and titling), inter-community relationships, the specifics of subsistence economies, local trade relationships and sacred areas. Companies find that community participation is crucial in the assessment process if it is to be done accurately. Companies have also begun to place greater attention on assessing government policies, capacity and performance with regard to indigenous peoples' rights.

2. **Engagement process.** Companies are beginning to develop direct relationships with indigenous peoples at much earlier stages, even before government permitting. To do this effectively, engagement practices need to change to accommodate indigenous decision-making and cultures. Company personnel are visiting communities, providing more information and in formats that are more accessible. Processes have been slowed to promote greater inclusion. More importantly, company personnel are learning that strong community negotiating partners benefit the company. Support is provided to improve negotiating skills and knowledge about rights, legal agreements, potential impacts and other key issues. The emphasis is increasingly on direct negotiation, but there are still challenges for companies in their understanding of indigenous decision-making. Some communities have begun to document these in order to come to an internal understanding about their dealings with a large commercial operation, but also to make it more transparent to the companies with whom they work.

Companies are also starting to develop company/community committees to help carry the relationship through the project cycle, and to resolve conflict before it gets out of hand. These joint committees provide a transparent mechanism for either party to discuss concerns, develop projects, or measure and evaluate changes in the operation as it moves through its cycle. These mechanisms incorporate measures of the parties' different cultures, providing an atmosphere of joint learning and trust.

3. Impact and benefit-sharing agreements. This term describes the kinds of formal, negotiated agreements that companies have developed with indigenous peoples. They include agreement on where roads are to be built, the number of jobs provided, the use of traditional foods in company cafeterias and adjusted schedules to accommodate traditional livelihoods such as hunting and fishing. Even with these tools to mitigate possible areas of conflict, there can be differences in interpreting the formal documents that result. Companies often see them as the opportunity to come to an early and final agreement on benefits, while indigenous communities see the document as a work-in-progress and solely the measure of the relationship at one point along the way.

4. Cross-cultural training. As part of the local engagement process, but often on a broader scale, companies are developing cross-cultural training programmes with the help of indigenous peoples in their areas of operation. These courses focus on helping company personnel to understand indigenous cultures, values and practices, but there are some that help company personnel explain company culture and operations to indigenous communities.

5. Land rights. Rather than become mired in the conflict between whether governments or indigenous peoples have the right to grant consent to operate, companies are moving toward acknowledging that both have rights and that both must be accommodated if a project is to be successful. This has led to companies supporting community efforts to clarify surface rights and demarcate and title territories.

Resources

International conventions and voluntary standards
Equator Principles. www.equator-principles.org.

International Labour Organisation Convention 169: Concerning Indigenous and Tribal Peoples in Independent Countries. www.unhchr.ch/html/menu3/b/62.htm

Proposed American Declaration on the Rights of Indigenous Peoples. www.cidh.oas.org/Indigenous.htm

UN Draft Declaration on the Rights of Indigenous Peoples. www1.umn.edu/humanrts/instree/declra.htm

International financial institutions, Operational Policies
Asian Development Bank, Indigenous Peoples Policy. www.adb.org/IndigenousPeoples/default.asp

Inter-American Development Bank, Indigenous Peoples Policy Framework. www.iadb.org/sds/IND/site_401_e.htm

World Bank Operational Policy 4.10 Indigenous Peoples. www.worldbank.org/indigenous

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Forest Peoples Programme. www.forestpeoples.org

International Work Group for Indigenous Affairs. www.iwgia.org

North-South Institute. www.nsi-ins.ca

UNHCHR Working Group on Indigenous Populations. www.unhchr.ch/indigenous/groups-01.htm

UN Permanent Forum on Indigenous Issues. www.un.org/esa/socdev/unpfii/

University of Melbourne, Indigenous Studies Program, Agreements, Treaties and Negotiated Settlements Project. www.atns.net.au

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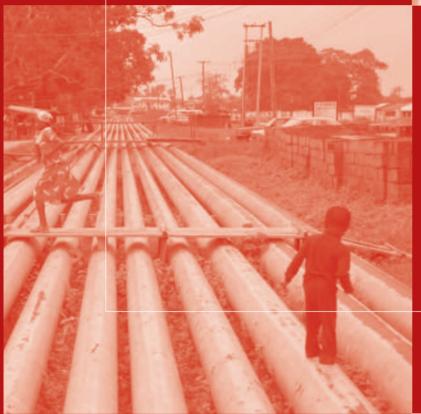
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Section 4

Flashpoint Issue 5
Social Investment

CDA Corporate Engagement Project [1]

Flashpoint Issue 5
Social Investment

The issue

Many companies undertake extensive efforts to implement community social investment programmes, such as building schools, hospitals or roads in the areas in which they operate. These programmes have become increasingly grounded in the experience of local and international NGOs and other development actors, with innovative partnerships emerging between different sectors, pooling their 'core competences' toward shared goals. Companies engage in such projects through a combination of motivations, including seeing social investment as a strategy for risk mitigation and a desire to deliver – and to be seen to deliver – a 'net benefit' to communities that are affected by their operations.

However, many such projects show disappointing results. Well-intentioned development initiatives, such as school construction or the promotion of local economic activities, can unintentionally feed into local tensions and fuel conflict through their selection of recipients or priorities. They can also divert attention away from the social impacts of other areas of business activity. Companies are inescapably part of any context in which they operate: their day-to-day activities all have impacts on the societies in which they work. Such impacts can be positive or negative but, in contexts of social or political tension, they are never neutral. Understanding how all activities, including the philanthropic, can have harmful impacts, and how to take steps to avoid them, are core features of designing conflict-sensitive business practices (CSBP).

The business case

Social investment is a tool for ensuring that even in operational contexts where local governance and service delivery are poor, the communities most directly impacted by a company's investment experience some tangible benefits. It represents one of the major channels of interaction available to companies seeking a 'social licence to operate' through winning the support of local stakeholders. If companies successfully manage to contribute to the social and economic development of a particular place, they are investing in their own security in terms of more harmonious relationships with host communities, and by limiting the costs imposed on operations by underdeveloped and/or conflicted contexts. These can range from poor infrastructure, unskilled local work forces and political or physical insecurity, and are evident at the local, regional and national levels.

Increasingly, governments and international creditors expect companies to make some commitment to community development programmes, so competitive gains are also to be enjoyed from taking this area of business seriously. A competitive-minded approach to social investment has its own pitfalls, however, and as the international debate on corporate social responsibility becomes more sophisticated, NGOs and others have begun to scrutinise the content and impact of social investment programmes more rigorously, and to ask more difficult questions about their relevance to the overall impact of companies' operations. Common complaints that companies give with one hand, while taking away with the other, or are inconsistent across business areas, or insincere in their rhetoric about community development, need to be taken seriously if the gains to be made through social investment programmes are to be realised. And when social investment programmes themselves become a source of conflict or competition within communities, as has been seen most markedly in Nigeria, companies may, in effect, undermine the security of their own operations. Competition over resources of any kind is inevitable in resource-scarce contexts: managing social investments in such a way that they do not fuel competition – or enable it to become violent – should be a priority.

Standard assumptions and responses

Companies tend to go into social investment projects with some of the following assumptions, feeding into detrimental policies or impacts:

Social investment projects are always 'good'. Companies often assume that social investment or community relations efforts will, by definition, contribute to improved relations between companies and host communities. There is evidence from a range of contexts that programmes that benefit some people very often disadvantage others, and do not necessarily contribute to stability.

To be satisfied, the community needs to see immediate, tangible benefits. Companies assume that local communities will not be satisfied until they see direct benefits from their presence in the form of physical structures or financial investment. This assumption often leads to an emphasis on outcomes without determining process and, more importantly, without fully understanding who will benefit and who will not. When companies work to anticipate impacts (including avoiding negative ones), to respond to community needs and communicate with communities during the process, local hosts are often satisfied despite the fact that tangible benefits are slower to come. A focus on the immediate and tangible misses out on opportunities for companies to contribute to community development through emphasising skills training and capacity building, for instance. An approach focused on infrastructure alone, moreover, can increase communities' dependence on companies.

The community is against us, so we need to pacify it. Companies assume that conflict with communities is inevitable; that regardless of how they operate their core activities, communities will always seek compensation; and that companies will be subject to general waves of violence over which they have no control. Rather than analysing a specific conflict and addressing its root causes, community relations staff may seek to address existing grievances by 'giving away' schools, speedboats, soccer fields and so forth. This is an inadequate response to the root causes of many grievances.

Social investment strategies are a tool for responding to apparent threats. Often a company will establish a community relations project in the village that is most affected by its presence and with whom the company inevitably has most contact. This reinforces smaller identities rather than broader ones, feeds jealousy between groups and increases the risk of inter-group conflict. This approach can backfire when those who feel they have been left out direct their grievances towards the company, or try to obtain 'their share' through violent means. It also rewards violent rather than non-violent behaviour. If companies only respond to potential threats of violence or work obstruction, communities may feel they can only achieve their goals through such threats. By rewarding violent behaviour or the threat of violence with social investment projects, companies reward negative rather than positive behaviour. By only responding to the trigger, companies ensure that the trigger will happen.

Key conflict issues

Social investment as a social divider or conflict resource. Unless social investment programmes are designed so that they do not reinforce divisions among sub-groups, or historical inequities and concentrations of wealth and power, such efforts can worsen, rather than improve, corporate/community relations and relations between local sub-groups. In conflict areas, the latter impacts can be extreme.

Creating dependency. In many contexts, companies become a region's major provider of basic services through the sheer scale of their social investment programming. If this is judicious and grounded on a good understanding of local power dynamics and rivalries so as to avoid fuelling conflict, it may have short-term benefits. In the long run, however, by introducing large financial investments to which communities would otherwise not have access, companies often create a standard of living that cannot be maintained once they have left. Hand-outs create dependency and erode state legitimacy and accountability. State weakness or illegitimacy is a correlate to conflict.

Negative behaviour reinforcement. By using social investment as a tool for managing disturbances, companies often inadvertently reward violent behaviour, which quickly develops into a pattern of disturbance and reward, raising the level and likelihood of conflict. To avoid this impact, social investment should instead be based on a context analysis and participatory research, leading to a comprehensive strategy.

Options and alternatives

Some companies are beginning to exhibit more nuanced and creative approaches to social investment that seek to avoid its potentially harmful impacts and maximise its potential as a conduit for contributing to peaceful societies:

1. Look at social investment through an operations lens, rather than as an add-on. Establishing and maintaining relations with local stakeholders through social investment projects cannot simply be contracted out or delegated to a specialised department, while other departments conduct 'business as usual'. Responsibility for community relations projects may be localised in one department, but implementation needs to be spread throughout the company. For example, as long as local communities perceive the personnel department's hiring criteria as unfair or local staff feel threatened by operations, the efforts of the community relations department will be unsuccessful.

2. Conduct a context analysis and impact assessment prior to designing a social investment policy. A first step towards establishing relations with local stakeholders is to identify pre-existing schisms in the host society and identify how the company's day-to-day activities either positively or negatively impact existing conflicts. Such an assessment is the basis of any effective social investment policy and an essential ingredient for success. Only by understanding these dynamics can companies establish cordial relations and a stable working environment, and support forces in society that integrate communities and build toward a peaceful, inclusive future. A conflict-sensitive social investment strategy, grounded in such context analysis, is a key output of CSBP, as described in the mitigation steps of M-CRIA and P-CRIA.

3. Ensure that social investment projects address root causes, and are not just reactions to episodic symptoms. When a company considers implementing a social investment project in response to a local demand or an episode of violence, companies should evaluate with the community the root causes of dissatisfaction and develop a project that will address them, however indirectly. Social investment projects should not be awarded to meet community demands that do not also address the underlying root causes of violence against the company or tension in society. Participatory analysis in order to understand communities' grievances and their wider context can identify the underlying issues of conflict that social investment helps to remedy. Designing projects in consultation with stakeholders is also important. In this respect, social investment is an opportunity to contribute to peacebuilding.

4. Involve the government. Companies should ensure buy-in from local government authorities prior to establishing social investment projects. This can be done by working with the government to implement an existing development plan (provided the plan ensures equal distribution of services). Without government buy-in, there may be no local funding or staff capacity to manage the facilities once they have been built. School buildings have been constructed in areas in great need of education which continue to stand empty for lack of teachers' salaries or funds to purchase blackboards and other supplies. This leads to frustration and anger among community members, who often direct their grievances against companies, or governments, once companies have departed. Companies may be inclined to exclude government officials because they view them as ineffective, burdened by bureaucracy, tainted by corruption or because they want to be solely responsible for the services and funding the company provides. Over the long term, however, it is local government that must deliver on the demands of local communities. Working to support and strengthen its effectiveness will have greater long-term benefits.

5. Collaborate with others. The competitive goals of companies sometimes undermine the strength of initiatives in the social arena. Partnering with other multinational companies, as well as NGOs, local businesses, INGOs and development agencies, will enhance the impact of initiatives and maximise the long term gains for all parties.

6. Focus on impact rather than input. People often assess effectiveness in terms of the successful completion of plans. For example, if the plan was to run 15 training sessions or rehabilitate four clinics, the activity is judged successful when those goals are achieved. However, such indicators tell only about programmatic inputs and give no information about how completing these activities affected either the intended beneficiaries, or larger society. For a genuine assessment of social investment programmes, companies must develop systems that trace the impact of an input on the society it was intended to benefit. Some companies do this through public meetings in which they hear the reactions of the communities directly. Others monitor increasing, or decreasing, trends in the number and type of complaints received in suggestion boxes. Others point at trends in security incidents.

7. Be clear about the objectives of social investment projects. Companies are often unclear about the specific, strategic objectives of their social investment efforts. They may feel pressured to 'do something', or have vaguely defined conflict-reduction objectives. To be most effective, companies need to be clearer and more transparent about their project objectives and the strategies used to implement them.

Resources

Websites

Bibliographic database on private sector foundations, Mining and Environment Research Network (MERN), University of Warwick. www.iipm-mpri.org/biblioteca/index.cfm?action= ficha&lang=eng&cod=107

Business for Social Responsibility, community investment page. www.bsr.org/AdvisoryServices/CI.cfm

Collaborative for Development Action, Corporate Engagement Project. www.cdainc.com/cep/

Imagine Canada. www.imaginecanada.ca/

International Institute for Sustainable Development, communities and livelihoods page. www.iisd.org

World Bank, local economic development and mining page. www.worldbank.org/ogmc/wbminingled.htm

World Bank, Oil and Gas Sector Issues and Policy, social and economic impact page. www.worldbank.org/ogmc/wbogpolicysocioeconomic.htm

World Business Council for Sustainable Development, sustainable livelihoods page. www.wbcsd.org

Other resources

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International Finance Corporation (2001) **Investing in People: Sustaining Communities through Improved Business Practice** (Washington, D.C.: IFC).

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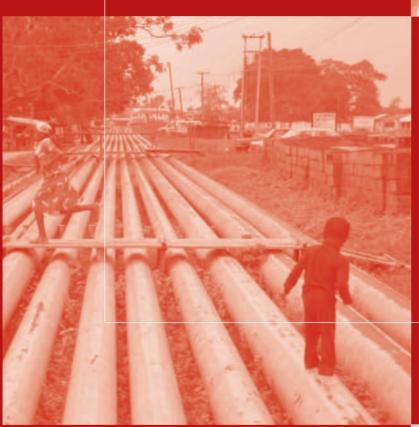Mining and Environment Research Network (2003) **Private Sector Development Institutions: Drivers and Practice** (Montevideo: Mining Policy Research Initiative). www.iipm-mpri.org/biblioteca/docs/mern_foundation_report.pdf

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Section 4

Flashpoint Issue 6
Dealing with Armed Groups

Flashpoint Issue 6
Dealing with Armed Groups

The issue

The overwhelming majority of armed conflicts are intra-state, between governments and groups not under their control who are termed 'rebels', 'guerillas', 'insurgents', 'terrorists' or 'freedom fighters', depending on the context and who is describing them. These groups range from small, isolated guerilla bands to quasi-states that field armies and control large territories. Their ideologies, means of support and constituencies vary tremendously. What they do have in common is their unrecognised status and the fact that they are armed, both of which create real problems for companies that encounter them.

Armed groups are illegal – considered traitors at home and terrorists abroad, though, over time, they can acquire a more elevated status by evolving into the *de facto* rulers of breakaway territories. In addition to their informality, they usually sustain themselves through illicit means and their members live underground.

Companies find it hard to sustain relationships with such groups – though there is a probability that they will be invited to do so because they are seen as a source of revenue, either through 'taxes' in exchange for safe access to lands they control, or other levies, such as kidnapping and extortion. Is it legitimate to engage with armed groups and, if so, when? What are the risks? If companies do strike up relations with armed groups, how should they structure the engagement?

The business case

There is a range of business-case arguments against engaging with armed groups. However, in certain circumstances, there may be arguments in favour, though the risks remain steep.

Against engaging:

- Transparent contractual relationships with armed groups are difficult, if not impossible, given their illegality and unrecognised status. Engaging with them at a business level exposes a company to allegations of bribery, corruption and illegality.

- In the pursuit of their political and military objectives, armed groups are likely to have committed human rights abuses, and companies expose themselves to local and international criticism for any association with them. Legal prosecution under the doctrine of 'complicity' may follow if it can be proved that a company provided financial or logistical support to perpetrators of humanitarian crimes (see Introduction and Screening Tool).

- Political pressure from host governments against companies dealing with rebel groups is more than likely to be intense because of the threat they represent to national sovereignty and territorial integrity, leading in the most extreme cases to expulsion or seizure of assets.

- Because investments represent a source of revenue for both governments and armed groups, a company's mere presence can directly fuel violent competition between these factions, opening it to reputational damage and physical insecurity.

For engaging:

- Where government security forces are absent or unable to deal effectively with attacks on company staff or property, managers may decide to make the case against attack directly to an armed group. This rationale is useful in the short term, but could lead to later extortion demands, incurring the risks mentioned above.

- Armed groups can have strong links to local communities or others affected by a company investment and may as political actors represent long-term historical grievances in the host society. In a bid to develop good relations with a spectrum of stakeholders, companies may try to acknowledge these grievances by seeking tolerant relations with them.

- As part of a thorough context analysis (see M-CRIA and P-CRIA), companies need to gather information to minimise risk. Talking to aggrieved parties, including armed groups, can be viewed as a normal exercise in due diligence by the company to confirm that its context analysis is correct. Where it is safe and the government tolerates such contacts, it may be sensible to meet the representatives of armed groups in order to understand their motivations, threat perception and views on company's investment, or to use a third party to do so.

Standard assumptions and responses

Some companies harbour a number of standard assumptions about armed groups:

Dealing with armed groups is dangerous. While this is clearly true, there may be some situations in which it is necessary or legitimate to engage with them, as discussed above.

There is no choice but to pay them off. Companies expose themselves to a range of legal, material and reputational risks if they engage in extortion payments with armed groups. International legal authority is extending its reach and a number of former rebel commanders have ended up in court. Some companies have begun to develop creative solutions to extortion demands, as discussed below.

We can engage readily with those who stand up to tyranny. Where an armed group's campaign enjoys domestic and international support, and the regime it opposes is isolated (and perhaps sanctioned by the UN), it may be less problematic to engage in contacts with it. However, few conflict situations are morally simple and it is highly probable that the group will be engaging in abusive practices that can still rebound on a company's reputation.

If a rebel group is likely to win, prior engagement is a sensible investment of resources. Armed conflict is not an exercise in venture capitalism and companies should be wary of building relationships with armed groups on the basis of future gain. Engaging in order to win influence can promote violence since it promises rewards to those who have taken up arms. Companies should remember that civil wars are unpredictable. In short, betting on the winner is neither practical nor ethical.

Armed groups are all terrorists. Armed groups attack civilians and use violence to force the authorities to respond to their demands, but the term 'terrorist' is loaded because state security forces often use similar methods. The majority of civilians killed in conflict are victims of forces under state control or sponsorship, not rebels. Using pejorative descriptions can undermine a company's ability to understand accurately the conflict context.

Most are communist or anti-capitalist. Stemming from cold war experiences and legacies, this stereotype is also false. Groups take up arms for a bewildering variety of reasons and study of recent conflicts shows that many do so from profit motives. Using simplistic labels to define armed groups demonstrates a lack of understanding of the conflict context that will express itself in a poor management strategy.

Political armed groups are different to criminal gangs. Most armed groups finance their activities through crime, and many groups founded on political principles continue to fight for criminal gains, such as smuggling or plunder. However, Mafiosi and other primarily criminal gangs have also been prepared to contest the power of political authorities. Understanding the complex interplay between criminal and political agendas can help to inform a more accurate assessment of the conflict context.

Key conflict issues

Companies should ensure that when they are present in conflict zones their actions do not exacerbate violence. Where possible, they should take steps to promote peaceful outcomes. The risk that engaging with armed groups at any level will make the situation worse could outweigh any benefits. There are three basic but critical categories of risk in this regard:

Companies are a source of finance for war. Given their status as economic actors and potential sources of finance, companies should exercise extreme caution when considering engagement with armed groups. They can easily become caught in a mesh of extortion and bribery, the revenue from which directly fuels violence. Allowing this to happen incurs legal and reputational risks, and fundamentally jars with the CSBP approach.

Conferring legitimacy on armed groups. Most armed groups crave the legitimacy that comes from being acknowledged, whether formally or informally. Engaging with them can confer a legitimacy that may or may not be warranted. It is also important to recognise that, in situations of open violence, company investments confer a similar legitimacy – and revenue – on the host government, which is also party to the conflict.

Rewarding violence. By engaging with armed groups, companies inadvertently send a message to the community that violence is rewarded, in this case through access to foreign business and financial gain. This can contribute to endemic cycles of violence.

Options and alternatives

Developing a strategy for safely dealing with armed groups operating in proximity to a company investment is not simple. In fact, it poses such serious challenges that, from a conflict-sensitive perspective, it is a factor that should make a company re-think its investment, if identified early as a potential risk.

Humanitarian and peace groups, which aim to end war or at least mitigate its consequences, have a mandate to engage with all parties to a conflict. Their need to do so is self-evident and the various actors accept it. The case for companies engaging with armed groups is less clear-cut precisely because, as economic actors, they can easily become a source of finance for escalating the conflict.

Engagement can be appropriate in specific ways in specific contexts. To ascertain whether this is the case or not, companies need to understand accurately the conflict context, its actors and profile. This requires detailed stakeholder mapping and conflict analysis tools (see M-CRIA and P-CRIA), and careful consideration of the following questions:

Understand the armed group(s). Armed groups are as diverse as the situations in which they take up arms. Companies need to understand both thoroughly. Key points to consider:

- **Leadership.** Is it in control? Is it cohesive? Is there a political wing and, if so, how much influence does it exert? Is there in-fighting between groups?

- **Ideological basis.** What motivates the group(s) and which aspects of ideology create openings for humanitarian and peace objectives? What types of people/groups are targeted as a result of the group's ideology?

- **Constituency.** Who supports the struggle? Who does the group say it is fighting for?

- **Sponsors.** What foreign governments or other actors give political or material support to the group(s)? Who are the local sponsors?

- **Means of support.** How are armed groups sustained?

- **Assessment of the company.** The group or groups' view of the company is likely to be based on its national origin. What is that nation's stance in the specific conflict; its historic involvement in the host country; its alliances; the identity of local staff? etc.

Factor in state attitudes. Companies that seek to engage armed groups need to consider how the state would view such contacts. They may be illegal and therefore not an option. However, the state might permit such contacts – or tolerate them – but later use them in ways that rebound negatively on the company. As a general rule, a company would be wise to assess the likely government response to it contacting an armed group before doing so. An armed group's tactics can only be understood in relation to those of the government's forces.

Once a company is certain it understands these different dimensions to a conflict, the following options are open:

1. Principled non-engagement in extortion and bribery. In some circumstances, the most significant contribution a company can make to peace is strict non-engagement. This choice may incur threats to its operations, but adopting a long-term approach in the interests of peace require that these are faced down. Again, the presence of such demands is in itself a risk factor so serious that it could well point to a no-go situation. When operating in such contexts, companies need stringent security arrangements, but it is essential that these themselves do not contribute to the climate of violence. Security forces should be trained in human rights and conduct themselves in accordance with humanitarian law and best practice (see Flashpoint Issue 6: Security Arrangements). A company can help by using its influence with other companies in the region to ensure that the industry as a whole resists pressure to finance the conflict.

2. Development of strong relations with local communities. Strong relationships with communities, particularly those sympathetic to armed groups operating in the area, can act as a *cordon sanitaire* to counteract the security risks incurred through non-engagement. If the community is convinced that the company's presence is in its interest and not just the government's, this encourages an armed group to protect it. Companies in Colombia have turned this idea into a workable strategy of discouraging attacks from the various armed groups in their operating environment.

3. Use of influence to support humanitarian and peace efforts. There may be discrete ways, through its core competencies or through use of trusted third parties, that a company can use its presence to promote peace by influencing armed groups. For example, staff can serve as intermediaries between rebel commanders and peace negotiators; companies can express strong disapproval of acts of violence; and companies can lobby governments to initiate peace talks, negotiate settlement and address any structural grievances that fuel the conflict.
The CSBP approach is designed for companies both to understand conflict and ensure that intervention through all areas of their business 'do no harm' and contribute to peace. Indirectly therefore, companies can seek to address armed groups' grievance issues within their spheres of influence, where appropriate (see mitigation sections in M-CRIA and P-CRIA).

Resources

International conventions and voluntary standards
Geneva Conventions and Additional Protocols I and II.
www.genevaconventions.org

UN Draft Norms on the Responsibilities of Transnational
Corporations with Regard to Human Rights.
www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.
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Control Arms Campaign. www.controlarms.org

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www.icrc.org/Web/eng/siteeng0.nsf/iwpList2/
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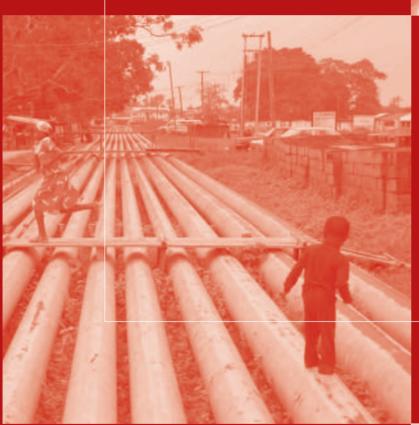(Geneva: ICRC). www.icrc.org

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Section 4

Flashpoint Issue 7
Security Arrangements

Flashpoint Issue 7
Security Arrangements

The issue

Companies have a legitimate responsibility to staff and shareholders to ensure that their property and personnel are physically protected from violent or illegal acts. Security threats can emanate from local communities, company employees, armed groups or other factions, artisan miners and migrant workers. They include:

- Petty theft
- Demonstrations (armed or unarmed)
- Riots
- Illegal mining on an undeveloped area
- Sabotage of pipelines and other installations
- Kidnapping, intimidation or assassination of staff.

The types of security arrangements companies make to handle these threats can have significant repercussions on the conflict-risk context. Cases exist where, through the conduct of security forces appointed on their behalf, companies have become implicated in human rights abuses, suffered deteriorating relationships with local communities and even loss of control in a volatile context. Security arrangements that are not founded on a substantial understanding of the context, stakeholders and international best practice run the risk of aggravating the very risk factors from which a company seeks to shield itself. Companies increasingly recognise that the most effective security strategies are developed with community perspectives and relations to the fore.

The business case

There is a strong business case for companies in unstable regions to take all possible steps to design conflict-sensitive security management strategies. Failure to so can impose a range of costs, including:

Security. Security forces that are not trained, or do not conduct themselves according to the highest standard of professionalism and with regard to International law, can all too easily become an aggravating factor in unstable contexts. Companies may then face ongoing security risks to property and personnel.

Reputation. An aggravated security context, in which company security staff become involved in violent skirmishes with local communities, is likely to attract the attention of local or international NGOs and media, leaving the company open to allegations from which, given the escalating nature of violence, it might be difficult to distance itself. Conversely, seeking out conflict-sensitive alternatives can enhance reputation locally, internationally and among peers.

Security and community relations are best managed separately. Traditionally, security managers are located far from community relations departments in terms of institutional cooperation. Increasingly companies recognise that these two departments need to work closely together if their individual targets are to be met.

Legal. Companies run the risk of becoming implicated in abuses of human rights and criminal law if the security forces protecting their project are involved in such abuses.[1]

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1. As demonstrated by recent cases brought against companies under the US Alien Tort Claims Act (ATCA). See Fafo AIS
   www.fafo.no/liabilities/index.htm

Deteriorating local relationships. If security forces conduct themselves in a way that contributes to an escalation of tension or directly commit abuses against local communities, local perceptions of the company itself will be tarnished, sometimes irrevocably. This can impose business costs.

Repercussions on civil conflict. Companies that rely on security forces provided by a repressive regime (whether through choice or contractual requirement) increase local perceptions that the company's activities are an arm of government. Any claim to neutrality risks collapsing if a company is seen to extend unruly state power into an already volatile region.

Standard assumptions and responses
Companies carry a number of standard assumptions about the kinds of security arrangements that are appropriate in unstable regions, some of which can lead to poor strategies:

Security can be bought. Political or security risks are conventionally analysed as cost factors, to be dealt with by means of increased security budgets. Some companies are taking a more qualitative, strategic approach, which is essential to designing effective security arrangements.

To protect staff, build fences higher. There is a tendency for some companies operating near violence, or who have become its target, to adopt a siege mentality. Symptoms of this include armed guards, high fences, curfews, CCTV cameras and radio checks, fast driving in the field and the tendency of staff to avoid integrating with local residents as far as possible. While retreat is a natural response to threat, it exacerbates local perceptions of company employees as alien, privileged and unsympathetic to the community or country's needs and identity. This alienation increases the chances that company staff will be perceived as a source of grievance and eventually be attacked.

The conduct of state security forces is beyond our sphere of responsibility. Companies are often required to use state security forces by host governments. Companies may assume that the protection provided by state security forces exonerates them from any blame arising from the methods employed to enforce security. This is not entirely the case. While direct responsibility may be hard to prove, legal cases are on the rise, and reputational risks of association are high, with international media and local stakeholders tending not to distinguish between the finer shades of complicity.

In Colombia, one oil company facing a lawsuit under the ATCA has been accused of aiding and abetting paramilitary forces which committed human rights violations. The company denies the charges. In the late 1990s, another oil company was accused of passing information to paramilitary forces who used it to commit human rights abuses against communities sympathetic to an opposition group, that had previously attacked company assets. In Burma, the military asked an oil company to supply jeeps that were later used to commit human rights abuses. In Nigeria, oil companies have been accused of providing weapons, or the means of acquiring them, to security forces who used them to commit human rights abuses.

Local police are ineffective. Local police can be underpaid, under-trained and corrupt, leading companies using outside private security to be dismissive of their competence. Set against this, however, local police usually have a better acquaintance with the people living in their districts. Competent, impartial and effective law enforcement is critical to a region's long-term security.

Companies that find ways of working with and building the capacity of local policing, while bolstering their own security, will have improved long-term impacts on their host communities.

Key conflict issues
Security is at the frontline between a company and its operating environment and is critical for all areas of business.

Acts of violence. Violence breeds violence. If security forces protecting company assets engage in disproportionate or repressive acts of violence, they will reinforce a culture of violence and conflict that can easily escalate.

Handling grievances. When community grievances against a company over jobs, benefits or environmental hazards are met by armed security rather than dialogue, it increases the distance between community and company, increasing the likelihood of conflict. When one community is favoured over another, it can also fuel intra-community tensions.

Macro impacts on human rights situation. Turning a blind eye to misconduct by state security forces contributes to a worsening human rights situation and further instability in the country.

Options and alternatives
The security of an investment is inextricably bound up in the security situation at large. Designing effective security management requires thorough context analysis at both macro and micro levels (see M-CRIA and P-CRIA). These tools enable companies to identify structural and trigger security threats that can be addressed at various levels: by designing more effective security management strategies; by tackling security sector reform or weapons flow (if they are identifiable as issues of concern); and through social investment and policy dialogue activities.

In 2000, the US and UK governments (later joined by the Netherlands and Norway) convened a group of representatives of leading extractive industry companies and NGOs working on human rights, conflict transformation and corporate social responsibility, in order to develop some guiding principles for managing security arrangements in a manner consistent with human rights. The outcome was the Voluntary Principles on Security and Human Rights which offers options and alternatives for companies in three key areas: risk assessment; interactions with state security; and interactions with private security.

The challenge for the current Voluntary Principles group is to demonstrate that the Principles are a workable and effective tool, through implementation, collecting and sharing best practice, developing monitoring mechanisms and accountability to the principles, and extending their reach to a wider group of companies and to new policy fora.

If followed carefully, the principles offer a useful mechanism for managing security arrangements, and addressing the issues and risks raised above. They call for a regularly updated context analysis of the specific conflict-risk situation, and the engagement of local communities in designing security strategies, human rights training, monitoring of security forces and macro-level policy dialogue. An augmented institutional role for security and cross-departmental dialogue between headquarters and on-the-ground managers are required to ensure their full implementation. The Voluntary Principles are included in full in box 1.

Box 1: The Voluntary Principles on Security and Human Rights

Introduction

Governments of the United States, the United Kingdom, the Netherlands and Norway, companies in the extractive and energy sectors ('companies'), and non-governmental organisations ('NGOs'), all with an interest in human rights and corporate social responsibility, have engaged in a dialogue on security and human rights.

The participants recognise the importance of the promotion and protection of human rights throughout the world and the constructive role business and civil society – including NGOs, labour/trade unions and local communities – can play in advancing these goals. Through this dialogue, the participants have developed the following set of voluntary principles to guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms. Mindful of these goals, the participants agree to the importance of continuing this dialogue and keeping under review these principles to ensure their continuing relevance and efficacy.

Acknowledging that security is a fundamental need, shared by individuals, communities, businesses, and governments alike, and acknowledging the difficult security issues faced by companies operating globally, we recognise that security and respect for human rights can and should be consistent;

Understanding that governments have the primary responsibility to promote and protect human rights and that all parties to a conflict are obliged to observe applicable international humanitarian law, we recognise that we share the common goal of promoting respect for human rights, particularly those set forth in the Universal Declaration of Human Rights, and international humanitarian law;

Emphasising the importance of safeguarding the integrity of company personnel and property, companies recognise a commitment to act in a manner consistent with the laws of the countries within which they are present, to be mindful of the highest applicable international standards, and to promote the observance of applicable international law enforcement principles (e.g. the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials), particularly with regard to the use of force;

Taking note of the effect that companies' activities may have on local communities, we recognise the value of engaging with civil society, and host and home governments to contribute to the welfare of the local community while mitigating any potential for conflict where possible;

Understanding that useful, credible information is a vital component of security and human rights, we recognise the importance of sharing and understanding our respective experiences regarding, inter alia, best security practices and procedures, country human rights situations, and public and private security, subject to confidentiality constraints;

Acknowledging that home governments and multilateral institutions may, on occasion, assist host governments with security sector reform, developing institutional capacities and strengthening the rule of law, we recognise the important role companies and civil society can play in supporting these efforts;

Box 1 (continued)

We hereby express our support for the following voluntary principles regarding security and human rights in the extractive sector, which fall into three categories: risk assessment, relations with public security and relations with private security.

Risk assessment

The ability to assess accurately risks present in a company's operating environment is critical to the security of personnel, local communities and assets; the success of the company's short and long-term operations; and to the promotion and protection of human rights. In some circumstances, this is relatively simple; in others, it is important to obtain extensive background information from different sources; monitoring and adapting to changing, complex political, economic, law enforcement, military and social situations; and maintaining productive relations with local communities and government officials.

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The quality of complicated risk assessments is largely dependent on the assembling of regularly updated, credible information from a broad range of perspectives – local and national governments, security firms, other companies, home governments, multilateral institutions and civil society knowledgeable about local conditions. This information may be most effective when shared to the fullest extent possible (bearing in mind confidentiality considerations) between companies, concerned civil society and governments.

Bearing in mind these general principles, we recognise that accurate, effective risk assessments should consider the following factors:

Identification of security risks. Security risks can result from political, economic, civil or social factors. Moreover, certain personnel and assets may be at greater risk than others. Identification of security risks allows a company to take measures to minimise risk and to assess whether company actions may heighten risk.

Potential for violence. Depending on the environment, violence can be widespread or limited to particular regions, and it can develop with little or no warning. Civil society, home and host government representatives, and other sources should be consulted to identify risks presented by the potential for violence. Risk assessments should examine patterns of violence in areas of company operations for educational, predictive and preventative purposes.

Human rights records. Risk assessments should consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security. Awareness of past abuses and allegations can help companies to

avoid recurrences as well as to promote accountability. Also, identification of the capability of the above entities to respond to situations of violence in a lawful manner (i.e. consistent with applicable international standards) allows companies to develop appropriate measures in operating environments.

Rule of law. Risk assessments should consider the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses, and for those responsible for violations of international humanitarian law in a manner that respects the rights of the accused.

Conflict analysis. Identification of and understanding the root causes and nature of local conflicts, as well as the level of adherence to human rights and international humanitarian law standards by key actors, can be instructive for the development of strategies for managing relations between the company, local communities, company employees and their unions and host governments. Risk assessments should also consider the potential for future conflicts.

Equipment transfers. Where companies provide equipment (including lethal and non-lethal equipment) to public or private security, they should consider the risk of such transfers, any relevant export licensing requirements, and the feasibility of measures to mitigate foreseeable negative consequences, including adequate controls to prevent misappropriation or diversion of equipment which may lead to human rights abuses. In making risk assessments, companies should consider any relevant past incidents involving previous equipment transfers.

Interactions between companies and public security

Although governments have the primary role of maintaining law and order, security and respect for human rights, companies have an interest in ensuring that actions taken by governments, particularly the actions of public security providers, are consistent with the protection and promotion of human rights. In cases where there is a need to supplement security provided by host governments, companies may be required or expected to contribute to, or otherwise reimburse, the costs of protecting company facilities and personnel borne by public security. While public security is expected to act in a manner consistent with local and national laws as well as with human rights standards and international humanitarian law, within this context abuses may nevertheless occur.

In an effort to reduce the risk of such abuses and to promote respect for human rights generally, we have identified the following voluntary principles to guide relationships between companies and public security regarding security provided to companies:

Security arrangements

Companies should consult regularly with host governments and local communities about the impact of their security arrangements on those communities.

Companies should communicate their policies regarding ethical conduct and human rights to public security providers, and express their desire that security be provided in a manner consistent with those policies by personnel with adequate and effective training.

Box 1 (continued)

Companies should encourage host governments to permit making security arrangements transparent and accessible to the public, subject to any overriding safety and security concerns.

Deployment and conduct
The primary role of public security should be to maintain the rule of law, including safeguarding human rights and deterring acts that threaten company personnel and facilities. The type and number of public security forces deployed should be competent, appropriate and proportional to the threat.

Equipment imports and exports should comply with all applicable law and regulations. Companies that provide equipment to public security should take all appropriate and lawful measures to mitigate any foreseeable negative consequences, including human rights abuses and violations of international humanitarian law.

Companies should use their influence to promote the following principles with public security: (a) individuals credibly implicated in human rights abuses should not provide security services for companies; (b) force should be used only when strictly necessary and to an extent proportional to the threat; and (c) the rights of individuals should not be violated while exercising the right to exercise freedom of association and peaceful assembly, the right to engage in collective bargaining, or other related rights of company employees as recognised by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

In cases where physical force is used by public security, such incidents should be reported to the appropriate authorities and to the company. Where force is used, medical aid should be provided to injured persons, including to offenders.

Consultation and advice
Companies should hold structured meetings with public security on a regular basis to discuss security, human rights and related work-place safety issues. Companies should also consult regularly with other companies, host and home governments, and civil society to discuss security and human rights. Where companies operating in the same region have common concerns, they should consider collectively raising those concerns with the host and home governments.

In their consultations with host governments, companies should take all appropriate measures to promote observance of applicable international law enforcement principles, particularly those reflected in the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms.

Companies should support efforts by governments, civil society and multilateral institutions to provide human rights training and education for public security as well as their efforts to strengthen state institutions to ensure accountability and respect for human rights.

Responses to human rights abuses

Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate, companies should urge investigation and that action be taken to prevent any recurrence.

Companies should actively monitor the status of investigations and press for their proper resolution.

Companies should, to the extent reasonable, monitor the use of equipment provided by the company and to investigate properly situations in which such equipment is used in an inappropriate manner.

Every effort should be made to ensure that information used as the basis for allegations of human rights abuses is credible and based on reliable evidence. The security and safety of sources should be protected. Additional or more accurate information that may alter previous allegations should be made available as appropriate to concerned parties.

Interactions between companies and private security

Where host governments are unable or unwilling to provide adequate security to protect a company's personnel or assets, it may be necessary to engage private security providers as a complement to public security. In this context, private security may have to coordinate with state forces, (law enforcement, in particular) to carry weapons and to consider the defensive local use of force. Given the risks associated with such activities, we recognise the following voluntary principles to guide private security conduct:

Private security should observe the policies of the contracting company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; emerging best practices developed by industry, civil society, and governments; and promote the observance of international humanitarian law.

Private security should maintain high levels of technical and professional proficiency, particularly with regard to the local use of force and firearms.

Private security should act in a lawful manner. They should exercise restraint and caution in a manner consistent with applicable international guidelines regarding the local use of force, including the UN Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials, as well as with emerging best practices developed by companies, civil society and governments.

Private security should have policies regarding appropriate conduct and the local use of force (e.g. rules of engagement). Practice under these policies should be capable of being monitored by companies or, where appropriate, by independent third parties. Such monitoring should encompass detailed investigations into allegations of abusive or unlawful acts; the availability of disciplinary measures sufficient to prevent and deter; and procedures for reporting allegations to relevant local law enforcement authorities when appropriate.

Box 1 (continued)

All allegations of human rights abuses by private security should be recorded. Credible allegations should be properly investigated. In those cases where allegations against private security providers are forwarded to the relevant law enforcement authorities, companies should actively monitor the status of investigations and press for their proper resolution.

Consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities. Companies should designate services, technology and equipment capable of offensive and defensive purposes as being for defensive use only.

Private security should (a) not employ individuals credibly implicated in human rights abuses to provide security services; (b) use force only when strictly necessary and to an extent proportional to the threat; and (c) not violate the rights of individuals while exercising the right to exercise freedom of association and peaceful assembly, to engage in collective bargaining or other related rights of company employees as recognised by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

In cases where physical force is used, private security should properly investigate and report the incident to the company. Private security should refer the matter to local authorities and/or take disciplinary action where appropriate. Where force is used, medical aid should be provided to injured persons, including to offenders.

Private security should maintain the confidentiality of information obtained as a result of its position as security provider, except where to do so would jeopardise the principles contained herein.

To minimise the risk that private security exceed their authority as providers of security, and to promote respect for human rights generally, we have developed the following additional voluntary principles and guidelines:

Where appropriate, companies should include the principles outlined above as contractual provisions in agreements with private security providers, and ensure that private security personnel are adequately trained to respect the rights of employees and the local community. To the extent practicable, agreements between companies and private security should require investigation of unlawful or abusive behavior and appropriate disciplinary action. Agreements should also permit termination of the relationship by companies where there is credible evidence of unlawful or abusive behaviour by private security personnel.

Companies should consult and monitor private security providers to ensure they fulfil their obligation to provide security in a manner consistent with the principles outlined above. Where appropriate, companies should seek to employ private security providers that are representative of the local population.

Companies should review the background of private security they intend to employ, particularly with regard to the use of excessive force. Such reviews should include an assessment of previous services provided to the host government, and whether these services raise concern about the private security firm's dual role as a private security provider and government contractor.

Companies should consult with other companies, home country officials, host country officials and civil society regarding experiences with private security. Where appropriate and lawful, companies should facilitate the exchange of information about unlawful activity and abuses committed by private security providers.

Source: www.voluntaryprinciples.org

Resources

International conventions and voluntary standards
Geneva Conventions and Additional Protocols I and II.
www.genevaconventions.org

International Convention for the Suppression
of the Financing of Terrorism.
www1.umn.edu/humanrts/instree/financingterrorism.html

UN Code of Conduct for Law Enforcement Officials and
Basic Principles on the Use of Force and Firearms by Law
Enforcement Officials.
www.uncjin.org/Standards/Conduct/conduct.html

UN Convention against the Recruitment, Use, Financing
and Training of Mercenaries.
www1.umn.edu/humanrts/instree/1989a.htm

UN Draft Norms on the Responsibilities of Transnational
Corporations with Regard to Human Rights.
www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.
2.2003.12.Rev.2.En?Opendocument

Voluntary Principles on Security and Human Rights.
www.voluntaryprinciples.org

Websites
Amnesty International UK, **Human Rights Guidelines
for Companies**. www.amnesty.org.uk/business/pubs/hrgc.shtml

Business and Human Rights Resource Centre,
security and conflict page. www.business-
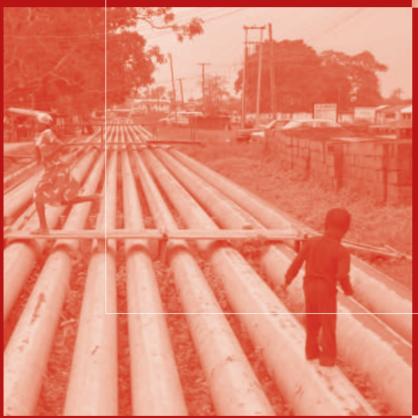humanrights.org/Categories/Issues/Security

Danish Centre for Human Rights Human Rights
Compliance Assessment tool for companies.
www.humanrightsbusiness.org/compliance
_assessment.htm

Human Rights Watch
www.hrw.org/advocacy/corporations/index.htm

International Business Leaders Forum, conflict
and security page.
www.iblf.org/csr/csrwebassist.nsf/content/a1a2a3a4a5.html

London School of Economics, Centre for the
Study of Global Governance, oil and conflict page.
www.lse.ac.uk/Depts/global/OtherProjects.htm

Section 4

Flashpoint Issue 8
Human Rights

Flashpoint Issue 8
Human Rights

The issue

Companies frequently find themselves operating in countries with poor human rights records. While there is not enough empirical evidence to support a direct, causative correlation between countries with poor human rights records and countries in conflict, the likelihood of these conditions co-existing is high. A high incidence of human rights abuse is often a precursor to conflict and the most egregious abuses of human rights take place during violent conflict. Conflict, and even potential or pre-conflict, can affect many rights, such as:

• The right to life
• The right to freedom of thought, conscience or religion
• The right to own property
• The right against forced displacement, plunder, pillage or profiteering
• The right against torture and inhumane or degrading treatment
• The right against arbitrary arrest and detention
• The right to a fair trial
• The right to freedom of expression
• The right against discrimination
• The right to free association and free assembly
• The right to a minimum adequate standard of living.[1]

In a number of countries, companies are faced with significant legal and moral dilemmas relating to human rights abuses:

• In Indonesia, oil companies operate in areas where armed opposition groups are seeking independence and where conflict with the state has led to human rights abuses.
• In Nigeria's oil-rich Delta province, companies operate in an environment where decades of economic neglect have angered local communities who now target them, and again where state response has involved human rights abuses.
• In Angola, the diamond industry has been accused until recently of trading with rebel groups who committed human rights abuses during the civil war.
• In Colombia, rebels regularly attack pipelines owned and managed by oil companies, whom they accuse of cooperating with unscrupulous state or paramilitary forces and view as legitimate targets.

Companies that try to ignore these complex features in their operating contexts by adopting a 'business as usual' approach have suffered widespread condemnation by civil society groups, sometimes culminating in consumer boycotts or lawsuits. Increasingly, companies are being called on to respect international human rights and humanitarian law in all areas of their operations.

The business case

There is a strong business case for companies to respect human rights, particularly in conflict-prone areas:

Reputation. When a company operates in a conflict-risk state, it becomes a lightning rod for activist groups. Neglecting human rights can have consequences on reputation locally and internationally, including repercussions on share price and the capacity to raise capital, win further contracts, maintain good security on the ground and hire the best staff.

1. See Annex for more detail on the relevant international instruments.

Boycott. NGOs have called for boycotts of companies' products and services. If the company has a high-street presence, for example through petrol pumps or jewellery retailing, its outlets can be picketed. If the company has no downstream operations, boycotts can be waged by placing pressure on ethical investor groups, trade unions, credit-rating agencies and institutional investors.

Shareholder pressure. Some activist groups buy shares, introducing hostile resolutions at annual general meetings. When allied with a sizeable group of other investors, this kind of campaign can have a significant impact on the company's public reputation, affecting share price. Since the campaign against apartheid, activist pension funds, mutual funds, ethical funds, trade unions and civil society organisations, have learned to use shareholder pressure – through resolutions, votes and demands for divestment – which forms another risk for companies.

Cost of capital and management time. A drop in a company's share price can have consequences on its ability to raise further capital. If a company does not pay adequate attention to human rights concerns before investing, or fails to reassess its portfolio when conflict ignites in its operating environment, it may face significantly increased costs in the time devoted by senior management or legal advisors in devising and implementing an effective counter-strategy.

Legal risks. Increasingly, activist groups, victims' groups and tort lawyers are using the law, particularly the Alien Tort Claims Act (ATCA) in the United States, to sue companies for complicity in human rights abuses. In addition to the cost of management time and legal representation, which can run into millions of dollars, there is a genuine possibility of an adverse judgment with serious repercussions in determining a company's liability and assessing punitive damages.

Incipient legislation. Reports by the UN Expert Panel on natural resource exploitation in the Democratic Republic of Congo (DRC) have been a wake-up call for many Western governments which are now looking at ways to strengthen their legislative frameworks.[2] New voluntary initiatives that could pave the way for longer-term legislative developments include the UN Draft Norms on the Responsibilities of Transnational Corporations with regard to Human Rights currently being considered by the UN High Commission for Human Rights. The initiative offers companies a comprehensive set of human rights responsibilities within their spheres of influence that assists in clarifying their roles.[3] Efforts to strengthen the OECD Guidelines for Multinational Enterprises as they relate to countries with weak governance,[4] as well as the UN Global Compact (the first two principles of which call for companies to respect human rights law and ensure that they are not complicit in human rights abuses), are also indications of this search for clearer rules.

Standard assumptions and responses
Since the mid-1990s, many companies have developed policies and standards on human rights, but full implementation has been hampered by a number of ongoing assumptions and practices:

It is not the business of companies to protect human rights. Many companies believe that they should respect human rights, but voluntarily. Legal responsibility for human rights lies with the state and companies should not interfere in sovereign or internal political affairs. Companies' responsibilities are wealth creation, the payment of taxes and, where feasible, the generation of good works through corporate citizenship, or corporate social responsibility. While international

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2. See the reports of the Panel of Experts on the Illegal Exploitation of Natural Resources and Other Forms of Wealth of the Democratic Republic of Congo; April 2001; October 2002; and October 2003. All texts available at www.globalpolicy.org/security/issues/kongidx.htm#links
3. At the time of going to print, debate at the OHCHR as to the future status of this document is ongoing – with clarification possibly due to emerge from the 61st session of the Commission scheduled for April 2005. U.N. Doc. E/CN.4/Sub.2/2003/12/Rev.2 (2003). See also Amnesty International (2004) **The UN Human Rights Norms For Business: Towards Legal Accountability**.
4. See www.oecd.org/document/7/0,2340,en_2649_34889_34070151_1_1_1_1,00.html

human rights law does indeed locate primary responsibility for protecting human rights with the state, this does not help companies to meet the moral dilemmas they may encounter in certain countries. Limited interpretation of the law ignores the reality that companies have come under severe pressure when operating in the vicinity of human rights abuses.

Human rights issues are best handled by external relations departments. Companies have responded to the human rights challenge by drawing up voluntary codes of conduct that guide performance in their own operations and within their spheres of influence. The codes have been drafted in response to concerns in civil society about the role, activities and impact of companies on the human rights of their workers and communities in their operational areas. One problem relating to this has been the tendency for such codes to be developed at headquarters level – the level at which reputational, financial and legal risks are felt most keenly – while management of human rights issues takes place on the ground. There is, therefore, commonly a disconnect between headquarters aspirations and operational experience that opens space for ineffective strategy. Typically, external affairs specialists at headquarters level are called in reactively to cope with human rights crises, but managing human rights situations effectively requires a more integrated approach. These institutional complexities hamper an effective response to crises, and are indicative of an overall failure to deal pro-actively with the issue.

Key conflict issues
There are various ways in which company practices relating to human rights can exacerbate the incidence of conflict:

Security arrangements. In zones of conflict, the most direct exposure a company has to a potential human rights crisis is through its security arrangements. Who provides security? What methods do they use? What weapons are used? Are security personnel trained to ensure they use their equipment lawfully? What is their prior record? Companies have a legitimate right to protect staff and assets, but in several instances the security forces the companies employ are poorly trained and equipped, and not familiar with international human rights standards. This can result in a disproportionate use of force and human rights violations in which the company quickly becomes mired (also see Flashpoint Issue 7: Security Arrangements).

Labour practices. Recruitment policy is another area where company actions can have negative repercussions on human rights. An operational requirement in Burma is the need to take on a domestic partner, usually an arm of the government. Burma has a particularly egregious human rights record and credible reports allege that its military used forced labour to build an energy pipeline in the 1990s. A US energy company recently settled an ATCA case out of court, pledging to make financial contributions to support communities around their project area in response to charges that it had been complicit in slavery.

Building and operating oil exploration wells, refineries and mines requires a highly skilled workforce and companies find it difficult to hire local people for senior positions given low levels of technical expertise. In addition, they may experience political pressure to provide jobs to ethnic groups associated with the government. Companies run the risk of violating the right against discrimination through recruitment practices, fueling local competition and violence.

Community relations. When companies feel obliged to provide amenities and services to communities around their operations, especially in weakly governed states, they can inadvertently create situations that lead to human rights abuses. This happens when companies build schools, clinics and canals for example, but limit their engagement to the needs of communities closest to their facilities. This deprives other communities and breeds grievances that can lead to militant youth targeting a company's assets or committing human rights abuses. Widespread perceptions that a company benefits from the region, but is not doing enough for it, or for a particular group living there, can be sufficient for members of some groups to turn to violence. Lack of transparency about the distribution of the benefits – from employment to development projects – can contribute to feelings of suspicion and grievance. In volatile situations, these dynamics can lead to violence (see Flashpoint Issue 5: Social Investment).

From good intention to human rights abuse
1. A company sees widespread poverty in the community and provides a public good (a school or clinic) that the state does not provide
2. The company decides to provide the service to five villages immediately around its operations
3. Villages beyond that perimeter feel denied and develop grievances
4. These villages make demands on the company that it fails to provide
5. Militant youths in the village target the company by sabotaging operations, abducting officials or damaging infrastructure
6. The company turns to the state to provide security forces to protect its installations
7. The forces are poorly equipped so the company provides resources to acquire equipment
8. The security forces commit human rights abuses, implicating the company.

Complicity. Since the UN Expert Panels reported on links between the exploitation of natural resources and conflict in the DRC, businesses have started to think carefully about laws relating to complicity, plunder, the doctrines of 'known-and-should-have-known', and aiding and abetting. Defining complicity is a contentious issue in human rights law, but even in the absence of a legally binding definition, companies must be careful if they have business relationships that bring them into proximity with perpetrators of human rights abuses; if their operations are close to the site of human rights abuses; if they are in a relationship which could be defined as a 'joint criminal conspiracy'; or otherwise benefit from plunder, pillage or profiteering. In zones of conflict, the closer the relationship, the louder the alarm bells. Clearly, this has implications at the level of supply-chain management, requiring that companies be fully apprised of the links of those from whom they purchase to human rights abuses or war crimes.[5]

Options and alternatives
1. Recognise and adhere to the law. Recent research shows that voluntary initiatives, though welcome, are not sufficient to make the environment safe for human rights.[6] There has been a growing recognition in recent years of the need to regulate corporate activity from a human rights perspective. While voluntary approaches to human rights are a starting point, forward-thinking companies should be looking ahead.

2. Take adequate steps not to aid or abet human rights violations or abuses by state or non-state actors. In practical terms, companies should understand and mitigate their own scope for complicity through their conduct, or that of their partners suspected of committing abuses, including

5. See www.fafo.no/liabilities/index.htm
6. See Resources.

plunder, forced labour and discrimination. The CSBP Screening Tool, M-CRIA and P-CRIA are designed to help determine this.

3. Conduct due diligence and human rights assessment. Understanding the human rights context and the likely impact of operations on different human rights challenges should be a key part of due diligence and assessment prior to engaging, and be regularly updated. The method should take into account the fact that it is difficult to access freely expressed opinion in many countries because of a systematic pattern of violation by the state, or it may be difficult to get the opinion of specific groups, such as women or minority groups. Again, CSBP tools are useful, and specialist human rights assessment tools are also emerging.[7]

4. Take responsibility for security arrangements. The UN has two codes of conduct – one on the use of firearms, another on the use of force by law enforcement officials – that define responsible conduct.[8] Companies should also sign up to and implement the Voluntary Principles for Security and Human Rights (see Flashpoint Issue 7: Security Arrangements).[9]

5. Develop indicators and benchmarks for managing human rights challenges. To close the gap between headquarters policies and on-the-ground challenges, and to ensure businesses operate in a manner consistent with human rights responsibilities, companies are beginning to develop indicators and other measurable benchmarks. This will enable performance on the ground to be measured in this area, as well as on production targets. These can include:

- Verifying the human rights record of security forces
- Providing human rights training for staff
- Monitoring the human rights situation in the region
- Reporting specific problematic incidents to the relevant authorities
- Taking steps to ensure that funds or facilities provided to, or built for, security forces are used for their intended purpose
- Ensuring that the response time to alert top management about security breaches or other human rights crises is minimal
- Making sure all policies regarding payments to communities are transparent
- Devising non-discriminatory recruitment and compensation policies.

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7.   Danish Institute of Human Rights, **Human Rights Compliance Assessment Tool**.
    www.humanrightsbusiness.org/compliance_assessment.htm
8.   These are the **United Nations Code of Conduct for Law Enforcement Officials** of 1979, adopted by General Assembly resolution
    34/169 of 17 December 1979, and the **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**, adopted
    by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August
    to 7 September 1990
9.   www.voluntaryprinciples.org

Annex

The UN Charter of 1945 and the Universal Declaration of Human Rights (UDHR) of 1948 spelled out a number of important human rights obligations. In many instances, these obligations have become customary international law, binding on all states. Two major international covenants, signed in 1966 and ratified in 1976, clarify the obligations of states: the International Covenant on Economic, Social and Cultural Rights was adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966. It entered into force on 3 Jan 1976. Likewise, the International Covenant on Civil and Political Rights (ICCPR) was passed in the UN General Assembly as per resolution 2200A (XXI), also in 1966, entering into force on 23 March 1976. Other major human rights conventions include: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; the Convention on the Elimination of All Forms of Discrimination against Women; the Second Optional Protocol to the ICCPR, aiming at the abolition of the death penalty; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Similarly, there is the tripartite declaration of the International Labour Organisation, which includes the core conventions applicable for workplace concerns: Freedom of Association and Collective Bargaining (Conv. 87 and 98); Elimination of all forms of Forced or Compulsory Labour (Conv. 29 and 105); Non-Discrimination in Employment and Occupation (Conv. 100 and 111); and Minimum Age (Conv. 138) and Elimination of Worst Forms of Child Labour (Conv. 182).

Laws of war are governed by the Hague Convention of 1899 and 1907, and the 1945 Charter of the International Military Tribunal at Nuremburg that defined war crimes as 'violations of the laws or customs of war'. These included murder, ill-treatment or deportation of civilians in occupied territory; murder or ill-treatment of prisoners of war; killing of hostages; plunder of public or private property; wanton destruction of municipalities; and unnecessary military devastation. The Geneva Conventions of 1949 codify war crimes as grave breaches of the four conventions. These include willful killing, torture or inhuman treatment, including medical experiments, willfully causing great suffering or serious injury to body or health; extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly; compelling a prisoner of war or civilian to serve in the forces of the hostile power; willfully depriving a prisoner of war or protected civilian of the rights of a fair and regular trial; unlawful deportation or transfer of a protected civilian; unlawful confinement of a protected civilian; and the taking of hostages. Additional Protocol I of 1977 expands the protection of the Geneva Conventions for international conflicts to include as grave breaches certain medical experimentation; making civilians and non-defended localities the object, or inevitable victims, of attack; the perfidious use of the Red Cross or Red Crescent emblem; the transfer of an occupying power of parts of its population to occupied territory; unjustified delays in repatriating POWs; apartheid; the attack on historic monuments; and depriving protected persons of a fair trial. Under the Geneva Conventions and Additional Protocol I, states must prosecute persons accused of grave breaches or hand them over to a state willing to do so.

Resources

International conventions and voluntary standards

Global Sullivan Principles.
www.globalsullivanprinciples.org/principles.htm

OECD Guidelines for Multinational Enterprises.
www.oecd.org/document/28/0,2340,en_2649_34889_2397532
_1_1_1_1,00.html

UN Global Compact. www.unglobalcompact.org

UN legal documents on human rights are available at:
www.hrweb.org/legal/undocs.html#UDHR

UN Draft Norms on the Responsibilities of Transnational
Corporations with Regard to Human Rights.
www.unhchr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.Sub.
2.2003.12.Rev.2.En?Opendocument

Voluntary Principles on Security and Human Rights.
www.voluntaryprinciples.org

Websites

Amnesty International UK, business group.
www.amnesty.org.uk/business/

Amnesty International USA, business and human rights page.
www.amnestyusa.org/business/index.do

Business and Human Rights resource centre.
www.business-humanrights.org/Home

Fafo AIS. www.fafo.no/liabilities/index.htm

Fund for Peace Human Rights and Business Round Table.
www.fundforpeace.org/programs/hrbrt/hrbrt.php

Human Rights Watch. www.hrw.org/doc/?t=corporations_extract

International Business Leaders Forum.
www.iblf.org/csr/csrwebassist.nsf/content/a1a2a3.html

Office of the UN High Commissioner for Human Rights, business
page. www.ohchr.org/issues/globalization/business.htm

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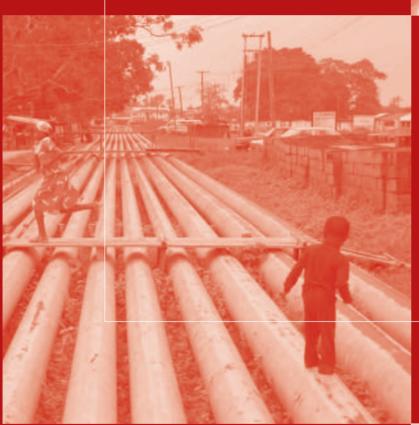www.iblf.org/csr/csrwebassist.nsf/content/f1d2a3a4c5.html

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Rights in Business Practice** (New York and Geneva: UN
Department of Public Information).

Section 4

Flashpoint Issue 9
Corruption and Transparency

2

Conflict-Sensitive Business Practice: Guidance for Extractive Industries
Flashpoint Issue 9: Corruption and Transparency

Flashpoint Issue 9
Corruption and Transparency

The issue

Revenue from extractive industry investment represents one of the most significant forms of foreign investment across the developing world, making its way to governments in the form of taxes, fees, royalties and payments for access to, and extraction of, natural resources. These funds should and could promote equitable and sustainable development, but governments and the other institutions that manage them are often not accountable to their citizens. Lack of transparency and accountability facilitate embezzlement, corruption and misappropriation.

Companies may see their legitimate revenues squandered in this way and find themselves open to accusations of complicity with corruption. Corruption and poor governance at national and local levels can be major contributing factors to conflict, leading to disaffection among population groups excluded from a share in the country's wealth, and providing a source of revenue for armed elites. In such contexts, domestic politics can be reduced to a struggle between different constituencies over access to resource rents. This 'rentier' model of state behaviour is inherently unstable since the competing groups may resort to violence. While natural resource wealth cannot be said to be the only source of conflict in a specific country, it is clear that the mismanagement of those resources can aggravate existing political, social or other grievances, and heighten the risk of conflict.

The business case

There is little value to international companies in having their legitimate payments to governments used in this way, since it leads to social divisiveness and an instability that threatens their long-term operational environment, with associated risks to reputation. Or, in the words of a joint statement issued in 2003 by 57 major North American, European and South African investment houses (managing US$6.9 trillion in funds and holding significant stakes in all the main international oil companies):

Legitimate, but undisclosed, payments to governments may be accused of contributing to the conditions under which corruption can thrive. This is a significant business risk, making companies vulnerable to accusations of complicity in corrupt behaviour, impairing their local and global 'licence to operate', rendering them vulnerable to local conflict and insecurity, and possibly compromising their long-term commercial prospects in these markets.[1]

In addition to reputational threats, an opaque financial environment allows unfair competition from unscrupulous rivals who may pay bribes or backhanders for resource access. As the Enron and similar scandals demonstrated, a company that manages its finances in a non-transparent way poses a clear risk to the interests of its investors. Moreover, using corrupt means to win future contacts leaves a company subject to ongoing pressure thereafter, a challenge faced by Total which inherited the liabilities of French state oil company Elf Aquitaine in countries such as Congo Brazzaville. Disclosure of revenue flows to governments could have partly prevented a recent spate of international corruption scandals involving oil companies in Angola, Congo Brazzaville, Equatorial Guinea, Gabon and Iran.

Corruption and bribe paying at the local level also imposes business costs. First, it is illegal under the OECD Convention Combating Bribery of Foreign Public Officials, and has associated reputational and legal risks. Second, corrupt relationships between companies and local officials reinforce mistrust within local communities and perpetuate poor governance and the likelihood of instability in the immediate operating environment.

1. Joint statement by ISIS Asset Management et al. 17 June 2003, revised February 2004. **Investors' Statement on Transparency in the Extractives Sector**. www.insightinvestment.com/Documents/ responsibility/eiti_investor_statement.pdf

Standard assumptions and responses

Until recently, most companies viewed the promotion of greater transparency as the sole responsibility of host-country governments. However, as a result of advocacy campaigns and international initiatives geared towards promoting more positive impacts from extractive industry investment in developing countries, it is now accepted that a lack of financial transparency requires companies to 'publish what they pay' to governments; governments to publish what they receive from companies; and a process in which civil society and international organisations can compare these disclosures and investigate discrepancies. This is the approach embodied in the Extractive Industry Transparency Initiative (EITI) launched by UK Prime Minister Tony Blair in June 2003. The EITI has received broad support from major international companies and an increasing number of governments and NGOs, although significant disputes about its operational detail still need to be resolved.

With regard to local bribery and corruption, many companies have developed strict internal standards on corporate governance and on corruption in operations since the introduction of the OECD Convention in 1997, and other OECD integrity instruments also during the 1990s. Most recently, the UN adopted a Convention against Corruption, and the UN Global Compact reflected this by adopting a tenth principle on the subject.[2]

Despite this mind-shift with regard to tackling grand corruption through improved transparency, and petty corruption at the local level, efforts to translate codes of conduct and policy statements into action on the ground have been poor, in part because of certain persistent assumptions:

Operational realities require compromise on principles of transparency and anti-corruption. Most companies are party to contracts with host-country governments that contain gagging clauses that prevent financial information from being publicly disclosed without government permission. They feel inhibited from finding creative ways to overcome these constraints. Companies continue to assume that bribe paying is simply part of doing business in a developing country. There are still several instances each year of bribery scandals involving major companies.

It is competitively disadvantageous to disclose information on payments to governments unilaterally. The risk a company takes by playing by the rules is that others fail to follow suit, leaving less scrupulous operators to take advantage. One company's figures represent only a fraction of all revenue flows to a government. It is argued that it will only be possible to obtain a complete picture of government earnings in a given country when all companies disclose at the same time and in a comparable format. Disclosure, therefore, is only possible after a level playing field has been established that guarantees competitiveness and existing contractual agreements. The EITI takes this approach into account, but companies still have a role to play by using their good offices to advance improved practice in potential host countries.

Transparency over payments would impose higher costs in terms of setting up additional accounting procedures. In fact, companies already have the necessary information in their group accounts to prepare annual financial statements. Though complicated, company interactions with host governments are not unfathomable and a few simple reporting rules would capture most company and government interactions. Much of the work on deciding who should report, what should be reported and when it should be reported has already been finalised under the auspices of the EITI.

2. See www.unodc.org/pdf/crime/convention_ corruption/signing/Convention-e.pdf and www.unglobalcompact.org

Key conflict issues

The mere presence of natural resources in a developing country does not automatically equate to conflict and corruption. It is the governance structures surrounding the management of such industries that determine the development impact. However, the large and sustained flow of revenues from extractive industries has clearly been a driver of conflict in many of the world's worst-affected countries. The fight for access to, and control of, resource-rich areas by rebel groups or different ethnic, religious and social factions has devastated these countries, and undermined efforts to alleviate poverty and stabilise economies.

Undisclosed payments by foreign companies and revenues to the Angolan government from the oil and diamond industries aided and abetted the country's devastating civil war. Angola receives up to 90 per cent of its state income from oil production. Since much of this revenue has been – and continues to be – misappropriated because of the lack of transparency and accountability, companies cannot absolve themselves from this direct causal relationship without full disclosure of payments. This does not mean that all companies engage in bribery and state looting in Angola and other resource-dependent and corrupt countries. It means that more effort must be made to open up company and government accounts.

Corporate and government entanglement. Recent grand-scale corruption scandals in Africa and Central Asia demonstrate that revenue transparency is not only needed for the sake of developing countries, but also supports the interests of companies by helping to prevent bribery and promote better corporate governance.

Misuse of company funds by employees of the French oil company Elf Aquitaine (now merged with Total) resulted in the conviction of 30 former senior executives in November 2003. The trial revealed that the executives, unconstrained by transparency requirements in the countries in which they operated, had for many years paid vast sums in bribes to politicians in several African countries, including Angola. They also enriched themselves at the company's expense, siphoning off commissions into secret bank accounts, buying multimillion-dollar properties and jewellery, and embezzling money for divorce and alimony fees.

Bribery. According to Transparency International's Bribe Payers' Index, the petroleum and mining sectors are the third and fourth most likely sectors in which government officials extort or accept bribes. The three main reasons are political pressure. commercial pressure and financial pressure (for example, differential tax rates). The laxity of laws and regulations is also a significant factor, as are the low salaries of government officials in developing countries. Bribery and the lack of financial transparency over legitimate revenue flows to governments directly exacerbate corruption and conflict. The key difference is that paying bribes for favourable treatment in contract procurement (or fees extracted by extortion) is illegal in the many developed jurisdictions in which companies are registered and listed on stock exchanges. However, there is often a grey area between what can be considered legitimate payments to governments and bribes. Bribe paying to local public officials is also illegal, but at times companies exploit the grey area of defining what is a bribe. Engaging in corrupt relationships with local officials can contribute to undermining development and damage a company's community relations.

Provoking grievances at the local level. Since company payments generally flow to state governments in capitals, local communities may feel marginalised and adversely compensated for the impact of a company's operations on, or near, their territory. Feelings of resentment can worsen company relations with local communities and lead to civil unrest. Local citizens may air their grievances against the company through protest or violence. Companies operating in unstable and volatile countries are at times faced with ransom demands and extortion from rebel groups in the host community. Company staff may be directly targeted though more often it is the actual oil fields, pipelines or mines that are most vulnerable. In these circumstances, companies often have no choice but to succumb to demands, albeit illegally, in order to ensure the security of their operations and personnel. Some companies recruit their own security services for protection. Payments to these groups are categorised as 'off-the-book' transactions, thereby evading scrutiny. This simply perpetuates a cycle of violence and mistrust within host communities, damaging a company's reputation and further alienating people from their governments.

Revenue transparency – a cause for further conflict? In politically unstable countries, companies may feel that the disclosure of revenues could in fact provoke greater conflict by contributing to higher expectations and increased activism by local citizens, who may turn against their government, or fight among themselves about how the money should be spent. Transparency of payments and revenues is a mechanism that allows local citizens and other observers to track how such incomes are spent through national budgets. It is difficult to predict whether publishing revenue data would ignite further conflict among already marginalised peoples or lead to violence. Any potentially adverse impact of publication could be mitigated by a clear strategy to provide civil society organisations with the necessary tools to interpret the data and manage its nationwide dissemination.

Options and alternatives
Transparency allows citizens and other observers to scrutinise the management and distribution of resource revenues. If financial flows in resource industries are opened to greater scrutiny, this can help close down the channelling of funds to rebel groups, militants and terrorists who profit from the lack of transparency. In turn, the chance of civil war breaking out – or re-igniting – over control of natural resource revenues in such countries is greatly reduced. Institutional capacity building to provide governments with the means to manage revenues for the benefit of a more diversified economy and a better educated civil service is also essential.

Revenue and contract transparency is fundamental to the effectiveness of any anti-corruption and conflict prevention strategy in resource-dependent developing and transitional countries. Revenue transparency and committment to codes countering all forms of bribery will not curb corruption completely, nor prevent civil conflict outright. They are nevertheless important measures for companies to take, and it is in their best interests to ensure that natural resource industries are managed accountably and that opportunities for corrupt behaviour by extractive industry members and government officials are limited.

Some companies have made considerable progress in trying to check both grand and local-level corruption, including moving towards enhanced transparency of payments. Given the growing international consensus that transparency is integral for good governance, corporate social responsibility and development for poor but energy-rich countries, it is in companies' best interests to take a pro-active approach to the issue and get involved in working towards the necessary reforms by:

1. Making a clear and unequivocal commitment to transparency of all revenue flows to governments. This should apply to every country in which a company operates and involve publishing figures in a clear and accessible format. Some companies already publish amounts paid as 'signature bonuses' to governments on winning new concessions, or are negotiating exemptions from a blanket waiver on disclosure. Others have gone further: Talisman Energy provides a breakdown on its website and in company reports of overall fiscal contributions to each country in which it operates. Talisman was prompted to do this following allegations that the revenue it paid to the Sudanese government was used to buy arms for the civil war. Communicating intentions and information about payments clearly and meaningfully within local communities, media and industry groups helps ensure that information disclosure fulfils its objective of raising awareness and accountability.

2. Cooperating with other companies to form effective industry lobbies. The anxiety that disclosure of payments or any other activity that promotes transparency will cause a company to lose out to competitors can be overcome by improved industry cooperation at the national and international level. In some cases, companies have formed an effective pro-transparency lobby (as in Azerbaijan); in others, they have not, and paid the price (Equatorial Guinea).

3. Highlighting commitments to transparency and the non-payment of bribes. Sending a strong signal on this issue to host governments and others through publication of business principles on the company website and in annual reports is also an important step, provided it is backed up in practice.

4. Ensuring that all subsidiaries adhere to company policy on transparency of payments. This should apply to contract procurement processes through internal governance and management structures, and active encouragement to business partners to follow suit.

5. Engaging constructively in multi-stakeholder processes, such as the EITI, at both national and international levels. This includes working collaboratively with home and host governments, IFIs, investors, civil society organisations, industry representative associations and other companies, including state-owned enterprises, toward ensuring that such initiatives evolve into meaningful and accountable standards of practice.

6. Assisting in the development of a reporting framework. Reporting frameworks need to be comprehensive and consistent for companies at a country level, and allow for proper analysis by civil society organisations and other observers.

7. Supporting the implementation of 'integrity pacts'. These ensure fair and transparent contract procurement in the extractive industries.

8. Devising methods of strengthening democratic institutions in their spheres of influence. Helping to provide a secure domestic environment in which citizens can question their leaders and air grievances about the management of national resource is critical in resource-rich developing countries. Companies can support relevant initiatives as part of their social investment programmes to complement core business and policy engagement activities.

Resources

International conventions and voluntary standards

Council of Europe Conventions on Corruption.www.coe.int

IMF **Code of Good Practices on Fiscal Transparency**.
www.imf.org/external/np/fad/trans/code.htm

International Chamber of Commerce Extortion and Bribery
in International Business Transactions.
www.iccwbo.org/home/statements_rules/rules/1999/briberyd
oc99.asp

OAS Inter-American Convention Against Corruption.
www.oas.org/juridico/english/Treaties/b-58.html

OECD Convention Combating Bribery of Public Officials, and
integrity instruments.
www.oecd.org/department/0,2688,en_2649_34855_1_1_1_1_
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OECD Guidelines for Multinational Enterprises.
www.oecd.org/dataoecd/56/36/1922428.pdf

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www.transparency.org/building_coalitions/private_sector
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Transparency International Integrity Pacts.
www.transparency.org/integrity_pact/index.html

UN Global Compact. www.unglobalcompact.org

UN Convention against Corruption.
www.unodc.org/pdf/crime/convention_
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Wolfsberg Principles. www.wolfsberg-principles.com

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Extractive Industries Transparency Initiative.
www.eitransparency.org

Global Reporting Initiative. www.globalreporting.org

Global Witness. www.globalwitness.org

Open Society Institute. www.soros.org

Publish What You Pay. www.publishwhatyoupay.org

Transparency International. www.transparency.org

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