



global witness

Oil and Mining in Violent Places

**Why voluntary codes for companies
don't guarantee human rights**

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global witness

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Overview



In many countries, companies operate in regions of violent conflict where government security forces or other armed groups may carry out killings of civilians and other serious abuses of human rights. How does a company which operates in a conflict zone ensure that its activities do not contribute to human rights abuses?

This question can apply to companies in various economic sectors but the focus of this briefing paper is the oil, gas and mining industries, which frequently make large and long-lasting capital investments in unstable regions and have often been accused of complicity in human rights abuses carried out by armed groups.

One response by oil and mining companies has been to join voluntary frameworks on human rights, which typically consist of a set of principles or guidelines for companies to apply in their day-to-day operations. Companies sign up to these frameworks (which can also include governments and civil society groups) and are supposed to put them into practice, although the frameworks are not legally binding on participants.

Do such frameworks actually ensure that companies which adopt them have taken all reasonable steps to avoid contributing to human rights abuses in conflict zones? To answer this question, Global Witness looked at four frameworks – the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the Global Reporting Initiative and, most relevantly, the Voluntary Principles on Security and Human Rights.

We set out to test them by examining their treatment of a central and vexed issue – the provision of money, logistical support or facilities by a company to armed groups taking part in a conflict. So many allegations have been raised against companies that have provided this kind of material support to government forces, paramilitaries or rebels, that the issue is a basic test of a framework's credibility.

This paper asks three questions of each framework: does it impose clear rules on companies which prevent any such support from contributing to human rights abuses? If so, is there a credible mechanism for testing whether or not companies are following the rules? Is there enough transparency that third parties can make an informed assessment of relationships between companies and armed groups?

Unfortunately, none of the four frameworks convincingly meets these tests. Two of them, the Global Compact and the OECD Guidelines, are too loosely constructed to pin down what a company should or should not be doing in a conflict zone. The other two, the Global Reporting Initiative and the Voluntary Principles, have basic limitations, explored in detail in this briefing paper, which prevent them offering a credible answer.

Companies often give prominence to their membership of such frameworks, on their websites and in public statements. The Voluntary Principles, in particular, is starting to be referred to by companies, and by financial institutions that invest in the extractive industries, as if it were a benchmark for corporate behaviour.

However, these voluntary frameworks do not objectively measure what companies do on the ground and are mostly not designed to. As a result, companies which may be doing little or nothing in practice can still claim credit for supporting them: the frameworks themselves appear to have no effective way of dealing with this "free rider" problem.

This is not to say voluntary frameworks have no value. On the contrary, some oil and mining companies have thought hard about how to incorporate the Voluntary Principles, in particular, into their human rights policies. It is to be hoped that these policies will result in fewer abuses around extractive projects, though they seem to result from the will of the companies themselves, rather than any pressure exerted on them by the frameworks.

But none of the frameworks makes sufficiently clear what companies are expected to do (or not do) in a conflict zone, or ensures that companies will disclose enough information for independent scrutiny of their human rights performance to be possible.

For example, it should be clear (but is not) that companies should not be providing money, transport or other forms of support to any armed party to a conflict unless there is an unambiguous legal requirement to do so, and should disclose full information about the destination, purpose and use of any support which the law does compel them to provide, to make clear that this support is not making the company complicit in human rights abuses.

Even if voluntary frameworks could be adapted to provide the necessary degree of clarity and specificity, the problem remains that companies which do not want to be bound by a voluntary framework will simply opt not to join. This problem will grow as extractive companies from China, India, Russia and other countries play an increasing role in resource extraction, because companies from these countries have typically not been exposed to the kind of pressure from activist shareholders, non-governmental organisations and class-action plaintiffs that have made Western-based multinationals more sensitive to their reputations on human rights than they used to be.

As a result, there is a widening void between the need for clear and enforceable standards against corporate complicity in human rights abuses and the medley of non-binding principles and guidelines that are being offered as a solution to the problem.

1. Extractive companies in conflict zones: the problem stated

Extractive companies often operate in regions where armed conflict has broken out, or is at high risk of breaking out, for the simple reason that many of the world's deposits of oil, gas and other minerals are buried under such regions. This relationship between natural resource wealth and conflict is not accidental. The desire of rival political factions to control resource rents can become a cause of conflict and a means of continuing it, as armed groups (whether government or rebel) capitalise on their control of resources to fund their war effort and enrich themselves.

Human rights abuses against civilians are common in conflict zones and extractive companies that operate in such zones are frequently accused of colluding in such abuses. The United Nations Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises (SRSG) was appointed by Kofi Annan in July 2005 to clarify the responsibilities and accountability of corporations in respect of human rights. The SRSG's interim report, published in February 2006, stated that:

"To provide an illustrative profile of alleged corporate human rights abuses and their correlates, the SRSG surveyed sixty-five instances recently reported by NGOs. ... The extractive sector – oil, gas, and mining – utterly dominates this sample of reported abuses, with two-thirds of the total. ... The extractive industries also account for most allegations of the worst abuses, up to and including complicity in crimes against humanity, typically for acts committed by public and private security forces protecting company assets and property; large-scale corruption; violations of labor rights; and a broad array of abuses in relation to local communities, especially indigenous people."¹

Legal cases against companies

There is at the moment no clear-cut and generally accepted international standard by which to judge specific cases. Several lawsuits, mostly brought under the U.S. Alien Tort Claims Act (ATCA), have attempted to define the point at which a company becomes complicit in abuses committed by armed men who protect its operations. Such cases include:

ExxonMobil in Indonesia In June 2001 a US non-profit organisation, the International Labor Rights Fund, filed a claim under the ATCA against ExxonMobil and subsidiaries on behalf of eleven Indonesian citizens from the province of Aceh, where Indonesian troops and local guerrillas

fought a vicious war that only ended in 2005. The claim was that Indonesian military personnel, "retained by ExxonMobil" and allegedly paid by the company, had committed murders, torture and other human rights abuses against civilians.² ExxonMobil has denied the allegations. As of March 2007, the case had moved into the discovery phase, which would precede a trial.³

Unocal in Burma In January 2006, the oil company Unocal (now part of Chevron) agreed to compensate Burmese villagers who sued the firm for complicity in forced labour, rape and murder committed in the mid-1990s by Burmese troops guarding a natural gas pipeline. The company has denied that any abuses occurred. The value of the settlement was not disclosed but a report in *Businessweek* magazine put it at around US\$30 million.⁴ The settlement ended a series of civil cases under the ATCA.

Total in Burma In November 2005, Total and the French Sherpa Association, an NGO, agreed to settle a French court case in which the latter represented eight Burmese civilians who alleged they had been forced by the Burmese army to work on the same gas pipeline. Total denied involvement in forced labour but agreed to compensate the plaintiffs.⁵

Chevron in Nigeria Nigerian plaintiffs, aided by non-governmental organisations and human rights lawyers, filed two cases in the United States against ChevronTexaco (now Chevron) under ATCA for killings of civilians in 1998 and 1999 by Nigerian soldiers guarding Chevron's oil facilities. The plaintiffs alleged that Chevron had paid the soldiers and provided them with transport. One of the cases was filed in the California state court, and is due for trial in December 2007. The other case is moving through the US federal courts: Chevron has filed motions calling for it to be dismissed.⁶

Talisman in Sudan The Presbyterian Church of Sudan and other plaintiffs brought suit in the United States under ATCA in 2001 against Canadian company Talisman Energy and the Republic of Sudan, alleging that by providing logistical support to Sudanese forces and allowing them to use company facilities (including an airfield) for military operations, the company had conspired in, or aided and abetted, human rights violations by Sudanese troops. In September 2006, a US judge dismissed the case on the grounds that the plaintiffs "had failed to locate admissible evidence that Talisman has violated international law".⁷

2. Voluntary frameworks on human rights



Backs turned on human rights? Soldiers in the Democratic Republic of Congo. *Sven Torfinn/Panos Pictures*

Many oil and mining companies are keen to demonstrate that they are concerned about the potential human rights impact of their presence in unstable regions. This concern has been intensified by a spate of scandals in the 1990s and early 2000s in which oil, gas and mining companies were accused of complicity in killings, torture, mass displacements of people and other human rights abuses carried out by armed groups around their operations in conflict zones.

There are several voluntary frameworks that companies can sign up to in order to demonstrate their concern for human rights. These frameworks often combine human rights issues with the environment and other areas of concern: they typically offer normative guidelines which companies are supposed to implement in their day-to-day operations. These frameworks are often given legitimacy through their association with an international body like the United Nations, or through the participation of human rights groups.

Global Witness set out to find out whether any such frameworks adequately deal with a particularly vexed question:

material transactions between companies and armed groups in conflict zones. Companies sometimes provide cash, equipment or other forms of material support to soldiers, police or other armed groups around their operating areas: allegations of collusion by companies in human rights abuses often centre on the assertion that by providing some form of material support to an armed group, the company has enabled that group to commit the abuses.

Because material support to armed groups is so central to the risk of corporate collusion in human rights abuses, this specific issue is a good test of the general credibility of a human rights framework. Global Witness has looked at four such frameworks to see how they deal with the issue.

The four frameworks are the UN Global Compact, the OECD Guidelines for Multinational Enterprises, the Voluntary Principles on Security and Human Rights and the Global Reporting Initiative. The first two address, in a general way, the principles of human rights. The second two specifically address the relationship between companies and armed

groups. The Voluntary Principles is by far the most detailed in this respect, and thus is the focus of this briefing paper.

We have not attempted to survey every aspect of these frameworks but simply asked two questions: what obligations does the framework impose on member companies that deal with armed groups in conflict zones, and does the framework have verification and disclosure provisions which allow a third party to be sure that the company is genuinely meeting these obligations?

Although the question of material transactions between companies and armed groups is central to the risk of corporate collusion in human rights abuses in conflict zones, the next sections of this briefing paper will show that none of the four frameworks deals with this question in a convincing way.

The United Nations Global Compact

Announced by the United Nations in 1999 and launched a year later, the Global Compact is a voluntary initiative which brings together hundreds of companies with labour and civil society groups to advance ten principles in the areas of human rights, labour, the environment and opposition to corruption.

As of April 2007, 83 metals and mining companies and 93 oil and gas companies were participants in the Global Compact and had therefore endorsed the ten principles. Three of these principles could be said to address, in a general sense, the implications of companies' activities in conflict zones.

Principle 1. Businesses should support and respect the protection of internationally proclaimed human rights.

Principle 2. Businesses should make sure they are not complicit in human rights abuses.

Principle 10. Businesses should work against corruption in all its forms, including extortion and bribery.⁸

Companies that join the Global Compact are expected to make regular public reports showing how they have implemented the principles, but the Global Compact is not a regulatory instrument. In its own words, it does not police, enforce or measure the behaviour or actions of companies. Rather, the Global Compact "relies on public accountability, transparency and the enlightened self-interest of companies, labour and civil society to initiate and share substantive action in pursuing the principles upon which the Global Compact is based."⁹ In addition: "The initiative is

not designed, not does it have the mandate or resources, to monitor or measure participants' performance."¹⁰

It is not exactly clear what a company that subscribes to the Global Compact is supposed to do in order to implement the principles of the framework. Global Witness has raised concerns in another context, not related to conflict zones, about the relationship between Deutsche Bank and Turkmenistan, which was a notoriously repressive dictatorship under its president, Sapurmurat Niyazov, who died in late 2006.¹¹ In a recent article on Deutsche Bank which discussed the bank's endorsement of the Global Compact, the Financial Times quoted "a person close to the bank" as saying: "There are no rules [in the Compact] that say this is allowed and this is not."¹²

There is a complaints mechanism for drawing the attention of the Global Compact to companies that appear to be committing "systemic or egregious abuse" of its overall aims and principles.¹³ As a last resort, such companies can be removed from the list of participants in the Global Compact, but the chief aim of the complaints mechanism seems to be creating dialogue between the complainer and the target of the complaint with a view to putting pressure on the latter to change its behaviour.

The Global Compact website lists companies which are "non-communicating" and "inactive" but does not distinguish between companies that have been dropped for actually violating the Global Compact principles and those dropped simply for neglecting to regularly report on how they are implementing these principles.

In short, the Global Compact is a loosely normative initiative which may well have beneficial effects in encouraging member companies to embody a set of principles in their operations, but does not seem to put pressure on them to actually do so. The principles themselves are broadly defined and the Global Compact process does not appear to offer a clear-cut or timely way for third parties to determine whether a particular company has lived up to the principles or not.

The Global Compact does not address the specific questions that arise from corporate activities in conflict zones or require companies to provide evidence that they are implementing its principles on human rights, corruption or extortion. Thus the mere fact of a company belonging to the Global Compact does not necessarily say anything about its activities in conflict zones, beyond the fact that the company would like to show that it is aware of human rights concerns in general.

Anvil Mining in the Democratic Republic of Congo (DRC)



The Kilwa incident

Anvil Mining Limited is an Australian-Canadian company. On October 14th 2004, a group of six or seven people attempted to occupy the town of Kilwa near Anvil's Dikulushi copper-silver mine in south-eastern Democratic Republic of Congo (DRC), causing Anvil to suspend work at the mine.¹⁴ The next day, the Congolese army, known as the FARDC, launched a military operation in Kilwa, during which they committed grave human rights violations against civilians, including summary executions and arbitrary arrests and detentions. At least 73 civilians died.¹⁵ An Anvil press release said: "government and military response on both provincial and national levels was rapid and supportive of the prompt resumption of operations."¹⁶

FARDC troops used vehicles and logistics belonging to Anvil Mining. According to the UN peacekeeping force MONUC, the FARDC regional army commander stated "that the FARDC's intervention [...] had been made possible thanks to the logistical efforts provided by Anvil Mining."¹⁷ In a television interview, Anvil Mining's Chief Executive Officer Bill Turner confirmed that Anvil provided air transport and vehicles to the FARDC so that they could get their soldiers down to Kilwa.¹⁸ There were allegations that FARDC troops used Anvil vehicles to transport goods they had looted in Kilwa and to transport corpses of some of those who died during the military operation.¹⁹ Witnesses also testified that FARDC troops used Anvil vehicles to transport detainees to sites where they were executed.²⁰ Mass graves were identified in the vicinity of Kilwa.²¹ According to the MONUC report, "three of Anvil Mining's drivers drove the vehicles used by the FARDC and food rations were supplied to the armed forces [by Anvil] ... Anvil has also admitted that it contributed to the payment of a certain number of soldiers."²²

Anvil's response

In June 2005, after an Australian television documentary had drawn attention to Anvil's role in the Kilwa incident²³, the company issued a press release asserting that:

"The DRC military requested access to Anvil's air services and vehicles, to facilitate troop movements in response to the rebel activity. Anvil had no option but to agree to the request made by the military of the lawful Government of the DRC, as any other company would have done in similar circumstances. ... Anvil had no knowledge of what was planned for the military operation, and was not involved in the military operation in any way."²⁴

At the request of two non-governmental organisations and a number of Congolese victims, the Australian Federal Police began to investigate Anvil's role in the incident in August 2005.²⁵ In a press release, Bill Turner said that Anvil was working "to simplify and improve protocols in dealing with the Military, in line with the UKUSA Voluntary Principles on Security and Human Rights, and if a similar incident were to re-occur, local and external NGOs and the Australian, Canadian and DRC governments would be made aware of the situation immediately."²⁶

The trial

On 12 October 2006, a Congolese military court indicted nine Congolese soldiers for war crimes and three Anvil employees for complicity in war crimes committed in Kilwa. The Anvil employees were accused of having "voluntarily failed to withdraw the vehicles placed at the disposal of the 62nd Brigade in the context of the counter-offensive of [15-18] October 2004 to recapture the town of Kilwa" and of having "knowingly facilitated the commission of war crimes".²⁷ Anvil claimed that the allegations against the company and its three employees were "unfounded and without merit."²⁸

The trial before the military court opened on 12 December 2006 in the Congolese city of Lubumbashi. At the trial, the defence argued that Anvil had no choice but to provide vehicles and logistical support to the FARDC.²⁹ However, there were inconsistencies in the statements of some of the defendants, including the Anvil employees, some of whom had previously given different explanations about the circumstances in which the company provided assistance to the military.³⁰ Eye-witnesses who testified at the trial spoke about the presence of Anvil staff during the events in Kilwa.³¹ The trial concluded on 28 June 2007. The nine military defendants and three Anvil Mining employees were acquitted on war crimes charges in relation to the events in Kilwa.³²

The trial was plagued with serious flaws and irregularities, including political interference, intimidation of witnesses and the replacement of the prosecutor who had initiated the case. These obstructions are documented in a detailed chronology by NGOs Global Witness, Rights and Accountability in Development (RAID), ACIDH and ASADHO/Katanga.³³ The NGOs concluded that the Congolese court had failed to deliver justice to the victims of the Kilwa events.³⁴ Louise Arbour, the UN High Commissioner for Human Rights, also criticised the conduct of the trial and the verdict.³⁵ Journalists reported that the government put pressure on official media outlets not to cover the trial.³⁶

The OECD Guidelines for Multinational Enterprises

The OECD Guidelines are recommendations addressed by governments to multinational enterprises which provide “voluntary principles and standards for responsible business conduct in a variety of areas”.³⁷ They were adopted by OECD governments in 1976 and amended in 2000. Countries that adhere to the Guidelines include all thirty OECD member states plus nine others (Argentina, Brazil, Chile, Estonia, Israel, Latvia, Lithuania, Romania and Slovenia).³⁸

The Guidelines include provisions on human rights, disclosure and combating bribery: these make no specific reference to corporate transactions with public security forces and other armed groups, though they could be construed as applying to this issue, as a subset of the wider provisions.³⁹ Under the Guidelines, companies are not required to provide the OECD, or their home governments, with regular reports of their adherence to the Guidelines.

The Guidelines do have a limited accountability mechanism. Each OECD member state has a National Contact Point (NCP) which can receive complaints about “specific instances” of breaches of the Guidelines and facilitate confidential proceedings to try to resolve disputes. The “specific instances mechanism” provides an opportunity for complainants to engage with an OECD company on its conduct under the scrutiny of the government of its home country. However, the process has been criticised by human rights groups as biased against complainants and lacking in transparency.⁴⁰

A further problem is that if the company and the complainant do not find a resolution, the only action the National Contact Point will take is to “issue a statement, and make recommendations as appropriate, on the implementation of the Guidelines”.⁴¹ Such statements and recommendations have also been criticised by human rights groups as weak, vague and inconclusive.⁴² In the United Kingdom, such statements have tended simply to cite text from the Guidelines rather than make any specific recommendations for better practice or remedial measures on the part of the company. Such statements do not have any legal power since the OECD Guidelines are explicitly voluntary.

In short, the OECD Guidelines recommend that companies respect human rights, make disclosures and combat bribery, but they are not accompanied by mechanisms to consistently monitor what companies do and ensure that they change their behaviour if necessary. The Guidelines thus do not evaluate companies’ transactions with armed groups to prevent these transactions from playing a role in human rights abuses, or other crimes such as corruption and extortion.

The Global Reporting Initiative

The Global Reporting Initiative (GRI) is a global non-profit organisation with a secretariat in Amsterdam which provides guidelines to companies on how to report their social and environmental impacts. Funded by donations from companies and governments, the GRI aims to ensure that “that reporting on economic, environmental, and social performance by all organizations becomes as routine as and comparable as financial reporting”.⁴³ In October 2006, the GRI announced a “strategic alliance” with the UN Global Compact.

The latest version of the GRI guidelines, known as the G3, was launched in October 2006. The G3 includes indicators on human rights with a specific point on Security Practices (HR9). Organisations which choose to use this indicator in their reporting disclose the “percentage of security personnel trained in [the] organization’s policies or procedures regarding human rights.”

The inclusion of this indicator in the G3 shows that the human rights impact of companies’ security arrangements is a significant concern, though the indicator does not distinguish between public security personnel and a company’s own privately-hired security staff. Such a disclosure, however, would not provide sufficient information to clarify whether or not a company is providing material support to public security forces and if it has, whether or not such support has contributed to human rights abuses or other crimes such as corruption and extortion.

A Draft GRI Sector Supplement has been developed for the mining industry and the International Council on Mining and Metals, which represents the industry, has agreed that its members,⁴⁴ many of whom are also participants in the Voluntary Principles, will use this supplement in their future reporting.⁴⁵ The supplement states that: “Companies should demonstrate that: their rules of conduct for security personnel support human rights principles; and the rules of conduct apply to security personnel either as employees or as contractors.”⁴⁶

This step is welcome in that it emphasises the imperative for companies to publish information in order to demonstrate how they have handled human rights risks. However, the G3 Guidelines and the GRI Metals and Mining Sector Supplement do not seem to provide a way for companies to show that they have taken all reasonable measures to prevent any material support to public security forces from contributing to human rights abuses or, for that matter, other crimes such as corruption and extortion.

3. The Voluntary Principles on Security and Human Rights

The Voluntary Principles in outline

Launched in 2000, the Voluntary Principles on Security and Human Rights is a set of guidelines for companies to reduce the risk of their security arrangements leading to human rights abuses.⁴⁷ The Voluntary Principles is increasingly seen as emerging international best practice on this issue and is echoed in some other corporate responsibility frameworks. For this reason, the framework deserves detailed study.

As of April 2007, sixteen extractive companies had committed themselves to implementing the Voluntary Principles, including many of the major Western oil and mining companies. Other members of the framework include the governments of the Netherlands, Norway, the United Kingdom and the United States, seven non-governmental organisations and three observer organisations, including two industry associations and the International Committee of the Red Cross.⁴⁸ The Voluntary Principles has a Secretariat which is jointly hosted by two non-profit bodies, the International Business Leaders Forum and Business for Social Responsibility.⁴⁹

The Voluntary Principles states that companies should undertake a risk assessment and follow fourteen clusters of recommendations concerning companies' dealings with public security forces (grouped under "Security Arrangements", "Deployment and Conduct", "Consultation and Advice" and "Responses to Human Rights Abuses") and fourteen for dealing with private security forces.

The implementation of some of these recommendations by a company could theoretically be measured by a third party, given access to the right information. For example: "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."

However, many other recommendations seem to offer a large degree of discretion to the company as to how much effort it puts into implementation. An example is the recommendation that companies "use their influence" to promote the principle that "individuals credibly implicated in human rights abuses" should not provide security services for companies. In such a case, how much influence should a company use in attempting to dissuade the local military from posting a human rights abuser to its facilities? And if the military ignores the company's requests – in other words, if the company's intervention does not actually

make any difference – has the company nonetheless discharged its commitment under the Voluntary Principles?

There are also recommendations which are open to criticism because they do not seem comprehensive. For example, the Voluntary Principles states that: "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." Although this recommendation is a strong one in principle, it seems to place the responsibility on third parties such as local communities, human rights groups and the media, rather than on the company itself, to bring up such allegations and demonstrate that they are "credible".

The open-endedness of many recommendations may be intended to ensure that they can be applied in situations that are various, fluid and politically sensitive, even dangerous, for companies. But as a result, it is hard for any third party to know whether or not a company has done what it is supposed to in order to be deemed compliant with the Voluntary Principles. At a time when the Voluntary Principles is starting to be treated as an objective standard of corporate behaviour (see below), this vagueness about what it means in practice is a serious flaw.

Corporate support to public security forces

Unlike the other three frameworks studied in this briefing paper, the Voluntary Principles addresses the question of corporate support to armed groups in an explicit and detailed way, stating: "Companies may be required or expected to contribute to, or otherwise reimburse, the costs ... borne by public security" and that "within this context [human rights] abuses may nevertheless occur".⁵⁰

The Voluntary Principles states that where companies provide equipment to public security forces, companies should take "measures to mitigate any foreseeable negative consequences, including human rights abuses and violations of international humanitarian law" and that they should "monitor the use of equipment provided by the Company and ... investigate properly situations in which such equipment is used in an inappropriate manner."⁵¹ Although this is a good thing in principle, it is not clear what measures a company should take, and what is required of the company if it turns out that abuses have taken place, and that equipment has been misused.

The Voluntary Principles also states that companies “should encourage host governments to permit making security arrangements transparent and accessible to the public, subject to any overriding safety and security concerns.” The implication is that companies cannot disclose details of their security arrangements without the permission of host governments and that they may choose not to disclose this information on safety and security grounds.

There is no clear distinction between information about the military details of “security arrangements” and information about how these arrangements are financed, which is a major weakness. There might be grounds for not publishing information about the strengths, locations and timings of troop deployments in a conflict zone, for example, in order to reduce the risk of attacks on those troops. It is far less clear why information about payments by a company to troops or police should be kept secret.

If these transactions are legal, legitimate and not linked to corruption or extortion, then no risk to the company should arise from describing them in public, just as in normal circumstances there should be no risk for a company in disclosing the taxes that it pays to the state. It can be that lack of transparency about such transactions even increases the risk to the company, by fostering a perception that the company is colluding in abuses committed by armed groups, even if this is not true.

In short, the Voluntary Principles does address the question of corporate support to armed groups but not in such a way that a third party can actually find out what a company that supports the framework is doing on the ground.

What companies say they are doing

There is an embryonic reporting process within the Voluntary Principles but this process is opaque. In 2006, companies reported to the annual plenary meeting of the Voluntary Principles for the first time about their implementation activities: there are said to have been wide differences in the amount of detail reported from one company to another. The companies reported again in 2007.

The reports by individual companies are not made public unless the companies themselves choose to disclose them (as a few have done). The Voluntary Principles itself only provides a summary, which is useful in a general way for finding out the kinds of issues that concern the extractive industries, but useless as a measure of implementation because it does not identify named companies.

As of May 2007, the Voluntary Principles adopted new participation criteria which will require participants to report once a year on their implementation of the framework. The Voluntary Principles website states that “the new criteria enshrine a commitment by participants to report publicly on their implementation of the VPs or their support for implementation once formal reporting criteria are finalized”.⁵²

It is not yet clear what will be reported by participating companies or how much information will end up being disclosed to the public. An internal discussion has thrown up a long list of possible items that companies might report on: there is a hope that participants can come to a consensus during 2007 about what to report on, so that they can reflect this in their reports to the next plenary in March 2008.

As things stand, the Voluntary Principles process generates little verifiable information about what each of what its member countries is doing on the ground, so the only source of this information to date has been the companies themselves, which include Anglo American, BG Group, BHP Billiton, BP, Chevron, ConocoPhillips, ExxonMobil, Freeport McMoRan Copper & Gold, Hess, Marathon Oil, Newmont Mining, Norsk Hydro, Occidental Petroleum, Rio Tinto, Shell and Statoil.

All these companies refer to the Voluntary Principles on their websites, but the amount of detail varies widely. Some companies describe specific activities in particular countries, while others merely note that they have policies and guidelines on human rights, without providing much detail about what this means in practice.

To find out how transparent the companies were willing to be about their implementation of the Voluntary Principles, Global Witness wrote to all of them with the exception of Freeport McMoRan and Rio Tinto (see box, page 12) and asked them a set of detailed questions. The aim was to find out what steps each company is taking to put the Voluntary Principles into practice, how it ensures that staff actually do so, and how implementation is overseen within the company.

BHP Billiton, ExxonMobil and Hess responded in writing and BP and Statoil in interviews with Global Witness. In a detailed letter, BHP Billiton said that “where security personnel are required, systems are in place to ensure they are familiar with and operate in accordance with the [Voluntary Principles].” Company line managers are responsible for ensuring that staff meet this requirement and there are routine field assessments to check compliance, as well as site-specific training, in implementing the Voluntary Principles. A board subcommittee is responsible for oversight.⁵³

The company says that it “engages site security forces as and where it is required and is transparent that fair pay is made for the service. In regions with rebel activity, the Company does not disclose how much security forces are paid to minimise the risk of Company employees being targeted.” It adds: “As a general rule, we do not directly employ government security providers (ie police, army or military/intelligence) to protect our assets. Indirectly, we maintain relationships with these providers as part of our relationship building/stakeholder management strategy in the same way that we interact with community groups, within the tenants [sic] of the Voluntary Principles.” The company said that in Algeria and Pakistan, however, its oil operations are directly protected by police and/or military forces.⁵⁴

BHP Billiton says that it provides human rights training to security forces at some of the sites where it operates. The company said, for example, that it had trained more than 500 soldiers, policemen and security guards at its Cerrejon Coal site in Colombia. The company says it has guidelines on the provision of security equipment which are consistent with the Voluntary Principles.⁵⁵

Global Witness asked companies whether there had been any violations of the Voluntary Principles by security personnel guarding their sites. BHP Billiton said it had “no knowledge of breaches of the [Voluntary Principles]” and cited an incident at its Tintaya copper mine in Peru where local people occupied the mine and clashed with local police, causing several injuries on both sides. The company asserts that: “BHPB received widespread support and recognition for the manner in which the incident was managed, including local and international NGOs.”⁵⁶ Global Witness has not investigated this incident.

Officials from BP said that the company was working to implement the Voluntary Principles in Algeria, Colombia, Indonesia and the countries crossed by the Baku-Tbilisi-Ceyhan Pipeline (Azerbaijan, Georgia and Turkey). BP “undertook training in aspects of the Voluntary Principles” in Pakistan, Russia and Angola – in the last case, this training included representatives from the Angolan state oil company and the police.⁵⁷ In Algeria, BP requires its own security staff to observe the Voluntary Principles but seems to have had less success in involving the Algerian authorities, compared to other countries. The company says that it is planning to “implement [its] commitment to the Voluntary Principles” worldwide, over a two-year period.⁵⁸ BP has also led two efforts to bind the Voluntary Principles more formally into the relationship between extractive companies and host governments. One is in the South Caucasus, the other a natural gas project in Indonesia (see below, page 16).

A senior official at Statoil, the Norwegian oil company, told Global Witness that as of August 2006, its operating procedures and impact assessments were being updated to fit the company’s commitment to the Voluntary Principles. Statoil has only had dialogues with security forces in two countries, Nigeria and Algeria.⁵⁹

In Nigeria, Statoil says that it uses police escorts to guard its staff as they move around and has provided training to these police in avoiding the excessive use of force, since an incident in the mid-1990s when a policeman opened fire on a man who tried to get into a company car, possibly to rob the people inside. No-one was hurt in the incident but it illustrated the risks of poor police training.⁶⁰

In Algeria, Statoil has bought into oil operations run by BP, which has handled the dialogue on security with the government. There are military camps close to these operations. Statoil is also doing exploration work in Algeria and has asked the security forces for protection. The company has talked to local commanders about security but without referring to the Voluntary Principles. Statoil, BP and BHP Billiton plan to jointly approach the Algerian armed forces at a higher level in the command structure to talk about the Voluntary Principles.

The Statoil official told Global Witness that the company had not been asked for money or other support by public security forces, adding that if this happened “alarm bells would start ringing in the Statoil system” because of the risk of corruption. The official added that it is hard to see why a company would not disclose such payments in the event that it made them, noting: “If you don’t disclose, then you give the impression that you have something to hide.”⁶¹

ExxonMobil provided Global Witness with its report to the Voluntary Principles plenary, which is also available on the company’s website. The report says that since 2003, ExxonMobil has developed a statement of principles on security and human rights with an accompanying framework which includes model guidelines and a model memorandum of understanding for staff to use in dealing with government security forces, as well as standard language for contracts with private security providers and reporting and record-keeping templates.

ExxonMobil said it has “rolled out” this framework to its affiliates in Angola, Cameroon, Chad, Equatorial Guinea, Indonesia, Nigeria and Venezuela, identified areas for improvement in each country and planned to roll out the framework to the rest of its affiliates. The company is also thinking about how to promote the Voluntary Principles in joint ventures where it is a minority shareholder, and with contractors who work for ExxonMobil and use private security.⁶²

Freeport McMoRan in Indonesia



Freeport paid for soldiers' food and other benefits. But what else did it pay for? *Koran Tempo / Budi Yanto*

PT Freeport Indonesia, a subsidiary of US mining company Freeport McMoRan Copper & Gold, operates the huge Grasberg mine in the eastern Indonesian region of Papua. Indonesian troops and police, who guard the mine, have also been involved since the 1960s in a counter-insurgency war against the Papuan independence movement.

Over the years, Indonesian troops have been implicated in mass killings and other serious human rights abuses in Papua and other regions, so the close relationship between Freeport and the security forces has been a source of grievance for many Papuans. As in other institutions of the Indonesian state, corruption is endemic in the Indonesian armed forces and the police.

Freeport McMoRan has disclosed some information about its material support for public security forces and cited the Voluntary Principles in defence of this support. But there is a disturbing gap between these disclosures and what appears to have happened on the ground, as revealed by the July 2005 Global Witness report: *Paying for Protection: the Freeport mine and the Indonesian security forces*.

Following the killings of three company employees by gunmen in August 2002, concerns were raised about the human rights impact of the relationship between Freeport and the security forces by New York City municipal pension funds with shares in the US parent company. In particular, the pension funds noted that Freeport gave financial and material support to its Indonesian military garrison and raised concerns about human rights and the possibility of corruption and extortion. There were allegations in the international press that Indonesian soldiers had taken part in,

or otherwise colluded in, the killings, but in November 2006, seven Papuans were convicted over the killings: their leader, a self-professed rebel, has claimed that he mistook the victims for Indonesian soldiers, who often use Freeport vehicles.⁶³

Freeport denied any problems in its dealings with the Indonesian security forces but started disclosing headline figures for its financial support to them, which the company described as "support costs for government-provided security", including "various infrastructure and other costs, such as food and dining hall costs, housing, fuel, travel, vehicle repairs, allowances to cover incidental costs and community assistance programmes conducted by the military/police." This support was reported by the company to be worth US\$4.7 million in 2001, \$5.6 million in 2002, \$5.9 million in 2003 and \$6.9 million in 2004.

The legal basis of these payments was, and remains, unclear. Freeport has said in the past that the payments were consistent with its contract, but the New York Times obtained copies of the original contract from 1967 and its updated version from 1991 and reported that: "They contained no language requiring payments to the military."⁶⁴

Rio Tinto, which has a financial interest in the Grasberg mine, has said in a statement about the project that it "believes that such payments are legally required and legitimate."⁶⁵ Global Witness asked Rio Tinto which law was being complied with, but the company declined to reply. The Indonesian military leadership, by contrast, described the payments as a goodwill gesture by Freeport and said that the money went directly to the units in the field, not via military headquarters in the capital, Jakarta.



Questionable payments

Global Witness learned that large sums of Freeport's money appeared to have gone, not to the Indonesian government, but directly to individual military and police officers. It also appeared that in mid-2003, after the New York City pension funds had raised concerns about possible corruption, Freeport had dismissed such concerns but quietly changed its practices so that payments went to military and police units and no longer to individuals.

The New York Times reported similar findings in December 2005 and cited "current and former Freeport employees" as saying "the accounting categories [used by Freeport] did not reflect what the money was actually used for, and that it was likely that much of the money went into the officers' pockets".⁶⁶ The company has denied any violations of anti-corruption laws. It has also disclosed in its regulatory filings since January 2006 that US and Indonesian government agencies are inquiring into its support for the Indonesian security forces.

The most troubling finding was that between 2001 and 2003, payments totalling \$247,705 appeared to have gone directly to Major-General Mahidin Simbolon, the Indonesian commanding officer in Papua. Simbolon denied to Global Witness that he had received any money from the company. In 1999, Simbolon had been chief of staff of an army command whose troops committed mass killings and other crimes against humanity in East Timor. Simbolon had not been prosecuted in connection with these crimes. In fact, all the senior Indonesian officers in the chain of command for East Timor were either not prosecuted or were brought to court but later acquitted.

Global Witness did not allege that Simbolon had committed or instigated any human rights abuses at the time he was apparently receiving large sums of money from Freeport, though troops under his command did murder a prominent local politician and were jailed for the killing. But Simbolon's past history, and his command responsibility for the behaviour of troops in East Timor in 1999, were a matter of public knowledge at the time when Freeport appears to have been paying him.

Hiding behind the Voluntary Principles?

Global Witness wrote to Freeport McMoRan asking the company to explain in detail its financial dealings with the Indonesian security forces, including such questions as what kinds of payments were permissible, who the recipients were and what checks were in place to ensure that the money was used correctly.

The company replied but did not answer most of Global Witness' specific questions. The letter said that "in accordance with our obligations under the Contract of Work [with Indonesia] and con-

sistent with Indonesian law, U.S. law and our adoption of the U.S. State Department-British Foreign Office Voluntary Principles on Security and Human Rights, we have taken appropriate steps and are committed to providing a safe and secure working environment for our 18,000 employees and contract workers."⁶⁷

The letter also said that "the Voluntary Principles on Security and Human Rights expressly recognise that companies "may be required or expected to contribute to, or otherwise reimburse, the costs of protecting company facilities and personnel borne by public security."⁶⁸

Yet the Voluntary Principles also state that companies should "use their influence" to promote the principle that "individuals credibly implicated in human rights abuses should not provide security services to companies."⁶⁹ It remains unclear how Freeport reconciled the promotion of this principle with the apparent payment to Major-General Simbolon of nearly quarter of a million dollars over two years, a sum that would be vastly larger than his official salary.

Global Witness also wrote to Rio Tinto plc, which has a financial interest in the Grasberg mine, and asked the same questions. The company replied that "in the case of joint ventures or operations where we do not have management control, we encourage our partners to adopt policies consistent with the international standards Rio Tinto has signed up to, including the US/UK Voluntary Principles on Security and Human Rights, the UN Global Compact and the disclosure requirements of the Extractive Industries Transparency Initiative." The letter added: "Our intent and purpose to act with integrity on issues of social responsibility should be clear to your organisation."⁷⁰

The problem with these payments was not just that they were made in support of a military with a troubling human rights record. It was that large sums did not seem to have gone through official channels at all, but straight to some of its individual officers, in a country where public corruption is endemic and where the military's access to opaque sources of funds have given it significant freedom from public accountability. The headline information disclosed by Freeport McMoRan to its investors, far from proving the company's transparency about its dealings with the Indonesian security forces, failed to reveal significant and very troubling transactions.

Whatever the outcome of official inquiries into Freeport's dealings with the Indonesian security forces, the case underlines a fundamental problem with non-binding human rights frameworks. Companies are free to assert that they endorse a framework like the Voluntary Principles, but there is no objective way of testing whether they are truly complying with the principles or not, even in cases serious enough to have drawn the attention of law-enforcement agencies.

Thus ExxonMobil seems to have detailed plans for fleshing out the meaning of the Voluntary Principles and applying the principles across its operations. However, the company has not disclosed much information on what these plans mean in practice, so there is no way for local communities or any other third parties to tell whether ExxonMobil is doing all it reasonably can to avoid contributing to human rights abuses.

Hess Corporation, formerly Amerada Hess, noted in its reply to Global Witness that the issue of reporting or verification mechanisms in the Voluntary Principles was discussed at the annual plenary meeting of the initiative in early 2006 and although all but one participant had reported on their implementation activities, a working group had been set up to “increase transparency and credibility in the reporting process.”⁷¹

Hess added: “We support the current effort to improve the reporting process within that group. While the Plenary is progressing on this and other issues of governance, we think it is best for our Company at this time, to channel all reporting of its VP-related activities through the Plenary.”⁷² Hess did not provide Global Witness with a copy of its report to the plenary.

In summary, a number of companies in the Voluntary Principles seem to be taking steps to put them into practice in ways that, it is to be hoped, should reduce the risk of these companies’ activities contributing to human rights abuses. Some companies are relatively open about what they are doing, while others appear wary of giving out information, or do not seem to regard transparency on this topic as a high priority.

But in all cases, the degree of transparency – and thus the ability of third parties to measure whether or not the company means what it says – depends on the company concerned, not on the Voluntary Principles as a process. This problem could be addressed if the framework adopts reporting requirements for companies, but only if the reporting requirements are specific and detailed enough for third parties to be able to check them. The Freeport case (box, page 12) provides an example where a company has made public reports on its activities which look detailed at first glance but appear in practice to have been seriously misleading.

For this reason, membership of the Voluntary Principles cannot be treated, in itself, a reliable indicator that a company is taking all reasonable steps to avoid contributing to human rights abuses.

Lack of monitoring or verification: the risk of free-riding

This paucity of public disclosure creates an obvious free-rider problem. Companies that sign up to the Voluntary Principles but fail to implement them have not been not under any obvious pressure to change their behaviour, which could discredit the efforts of those companies that do seem to take implementation seriously.

The participants in the Voluntary Principles have started to address the free-rider problem with new participation criteria, though only after the NGOs involved in the process issued a statement effectively threatening to pull out of the framework at some point in future, unless it was revised to include “robust reporting guidelines on the implementation of the Principles, and an effective process for appointing investigative panels and recommending remedial action for non-compliance”.⁷³ Global Witness understands that last-minute resistance from a number of companies was only overcome shortly before the annual plenary meeting in May 2007 which agreed the criteria.

Yet it is still far from clear that the risk of free-riding has been addressed, even with the introduction of the new criteria. Companies agree to “communicate publicly on efforts to implement or assist in the implementation of the Voluntary Principles at least annually” but it is not specified what this communication should involve, or how detailed the resulting information will be.⁷⁴

Participants in the Voluntary Principles also agree to submit an annual report on their ‘efforts to implement or assist in the implementation of the Voluntary Principles’ to the Voluntary Principles Steering Committee and this report is required to satisfy ‘criteria agreed upon by the participants’. However, at this stage it is not clear what such criteria will include, and in any case confidentiality applies to all communication within the Voluntary Principles process.⁷⁵

Participants will now have the right to raise concerns within the framework about whether or not other participants have met the new participation criteria. This will happen first through direct dialogue, then via a steering committee and ultimately via the annual plenary meeting of the Voluntary Principles, which has the right to suggest recommendations for the participant to improve its performance. The criteria say that “Categorical failure to implement that Plenary’s recommendations within a reasonable period as defined by that Plenary will result in inactive status.” Companies can only be pushed out of the Voluntary Principles by a consensus vote, though other measures can be taken by a majority.⁷⁶

So for the first time since its founding seven years ago, there is a recognition that companies which join the Voluntary Principles and fail to put it into practice could potentially be kicked out, provided that other participants agree. But all of this will be taking place behind a veil of secrecy, for the criteria also say that: “all proceedings of the Voluntary Principles process are on a non-attribution and non-quotation basis and no distribution of documents to non-participants is permitted except as required by valid legal process or otherwise required by law.” In short, the Voluntary Principles will remain a closed shop, policed by the participants themselves.⁷⁷

As described earlier, the open-endedness of some actions required by the Voluntary Principles makes it unclear what implementation would actually look like in practice. It is also clear that the new criteria, although they may be an improvement on what has gone before, do not move any closer towards resolution of the crucial question of material transactions between companies and armed groups in conflict zones.

The Voluntary Principles as an emerging benchmark

The limitations in the Voluntary Principles would matter less if the framework were used only as a discussion forum for companies to talk to each other and other concerned parties, such as human rights NGOs. Indeed, there is an obvious value in creating a confidential forum for companies to freely share ideas about improving their human rights practice. But there is a world of difference between a closed forum for discussion and a process that objectively measures companies' performance on human rights. Unfortunately, these two things are being increasingly confused.

The Voluntary Principles is starting to be treated as if it were a benchmark for measuring corporate performance on human rights. For example, the International Finance Corporation (IFC), a private-sector arm of the World Bank Group which invests in private-sector projects in developing countries, has adopted the language of the Voluntary Principles into its Performance Standards on Social and Environmental Sustainability, which companies must satisfy in order to receive financial support.

The paragraph on Public Security Personnel Requirements in Performance Standard Four, which covers community health, safety and security, states “If government security personnel are deployed to provide security services for the client, the client will assess risks arising from such use, communicate its intent that the security personnel act in a manner consistent with [the] paragraph ... above, [which reflects the Voluntary Principles,] and encourage the relevant public authorities to

disclose the security arrangements for the client's facilities to the public, subject to overriding security concerns.”⁷⁸

IFC social and environmental standards are also applied by the Equator Principles, a corporate social responsibility framework for banks. Forty banks have agreed to apply these principles in project financings with total capital costs of \$10 million or more. This means that a significant source of project financing available to companies operating in developing countries is now becoming, at least in theory, conditional upon implementation of the Voluntary Principles. This implies that the ambiguous language on transparency of corporate security arrangements has also been transferred into the IFC's performance standards and thus into the Equator Principles.

The use of the Voluntary Principles by other frameworks is welcome insofar as it suggests a growing awareness amongst lenders that the human rights risks of corporate investment need to be effectively mitigated. But the same question remains to arise: what exactly does it mean to implement the Voluntary Principles, if some of the principles are defined in a vague and open-ended way, if the process itself is opaque and there is no objective way of measuring implementation?

If companies are to show that their relationships with public security forces are not contributing to human rights abuses or crimes such as corruption and extortion, then there is a need for a set of rules to make clear what the limits of these relationships should be, ensure that the relationships are transparent and make sure that different companies' performance can be evaluated against a common standard. Unfortunately, the Voluntary Principles framework does not amount to such a set of rules and it would be a category mistake to suggest that it does.

Small steps in the right direction?

The Voluntary Principles, at present, is not nearly transparent or comprehensive enough to serve as an international standard for corporate transactions with armed groups. But could the framework evolve into such a standard?

There are a few cases where the Voluntary Principles is being embedded in agreements between extractive companies and the governments of countries where they operate. In Colombia, according to the Voluntary Principles website, the Ministry of Defence agreed to include language on human rights protection, including a commitment to the Voluntary Principles, in agreements that the state-owned oil company, Ecopetrol, signs with the Colombian armed forces to provide protection for oil operations.⁷⁹ Global Witness has not researched the actual impact of these measures on the ground in Colombia, a country with a long history of weak law enforcement and atrocities by armed groups.

In Indonesia, according to the Voluntary Principles website, five energy companies have signed memoranda of understanding with the state agency for oil and gas, BP Migas, and local police commands in their areas of operation. Indonesia also has a history of violence against civilians by the security forces in resource-rich regions.

An agreement that follows from one such memorandum is the 2004 Security Guidelines Agreement between BP Berau Ltd, operator of the Tangguh LNG natural gas project in Indonesia, and the regional police command. The guidelines commit the security personnel of both parties to “at all times conduct themselves in compliance with all relevant local and international law. Each commits unreservedly to comply with the standards of and be trained with regard to the Voluntary Principles on Security and Human Rights and the U.N. Basic Principles on the Use of Force and Treatment of Offenders.” Human rights training for police and company security staff is required by the guidelines.⁸⁰

The guidelines set out the conditions under which the company can call in help from the police and specify that BP Migas, the Indonesian government regulator, can pay certain costs for police protection of the project, including “transport, lodging, meals and daily allowances”, though not lethal equipment or munitions. These costs can be paid by BP under certain circumstances: the guidelines stipulate that payment to the police is into an “institutional account”, an important safeguard to prevent ad-hoc payments to individual police officers which could be considered corrupt.

All material support to the police is to be transparent and either side is free to disclose it. BP says on its website that from mid-2003 to mid-2005, it paid a total of \$24,100 for police teams, typically of five people based in two villages near the project: this amounts to \$5 for a “daily allowance” and \$5 per day for meals for each policeman.⁸¹

The guidelines are part of a wider security strategy which is designed to minimise the role of the Indonesian security forces, particularly the army, by giving a more prominent role to the local community and locally-recruited security guards. This strategy has been a conscious attempt by BP to avoid the kind of problems that have dogged Freeport McMoRan’s Grasberg mine, which is in the same region of Indonesia (see box, page 12).

BP has also brought in external monitors to assess the extent to which BP-led consortia are meeting their human rights commitments. It has commissioned a US law firm, Foley Hoag, to monitor its compliance with the Voluntary Principles at the Tangguh gas project (and in the South Caucasus, where BP has included the Voluntary Principles in its agree-

ments with host governments). Foley Hoag’s reports are either published on BP’s website or due to be posted there.

There is also a four-member panel of public figures (former US Senator George Mitchell, a British former diplomat, an Indonesian former diplomat and a churchman from Papua) who regularly review the social, environmental and human rights impacts of Tangguh LNG: this panel holds public meetings with local communities and observers and publishes its findings, to which BP also responds in public.

The panel concluded in March 2006 that: “the Field Guidelines for Security, entered into by BP and the Papua police last year, which commit the parties to uphold basic principles of human rights and incorporate the Voluntary Principles on Security, seem to be understood by police chiefs [in the surrounding region] and are being applied.”⁸²

It is not clear that these guidelines are legally binding on either party: the preamble to the guidelines merely says that they are necessary “to implement the Memorandum of Understanding” between the Indonesian state oil and gas regulator and the Indonesian police. Global Witness asked BP to clarify this question of legal enforceability and a company spokesman replied: “We don’t really feel in a position to provide, to third parties, interpretations of agreements we have entered into.”⁸³ A former BP official told Global Witness that the company is required to uphold the Voluntary Principles by a separate route, in that a commitment to do so has been included in the project’s environmental and social impact assessment, which is legally enforceable.⁸⁴

A similar approach is being applied by the BP-led consortium that runs the Baku-Tbilisi-Ceyhan pipeline, which carries oil from Azerbaijan across Georgia to Turkey.

This way of doing things would seem to be a step forward in that it formally embeds human rights norms and the commitments of the Voluntary Principles in the relationships between companies and security forces and should make any material transactions between the two more transparent. It does not mean that a company cannot become complicit in human rights abuses in future, but it does at least allow third parties a greater chance to test whether a company’s actions match its rhetoric.

But this approach does not, in itself, answer the ambiguities about what it means to implement the Voluntary Principles and does not ensure, other than through power of example, that any other company will necessarily follow suit. This in a nutshell is the problem with voluntarism: it only works for companies that are willing to volunteer.

Conclusion



Gas pipelines in military-run Burma were built on human rights abuses. *Earthrights International*

As long as there is demand for oil, gas and other natural resources, extractive companies will want to invest in countries that have these resources, including unstable countries at risk of conflict. At the same time, the people of these countries have human rights which must not be overridden or set aside.

It is clear from the numerous cases where extractive companies have been blamed for complicity in human rights abuses that there are grounds for serious concern, in many countries, about the human rights implications of companies' operations. So what steps should a company be expected to take in order to avoid complicity?

In response to this question, many major extractive companies have signed up to voluntary human rights frameworks of the kind described in this briefing paper. Such voluntary frameworks are far from worthless: they have led some companies to improve their policies on human rights protection and have helped a wider debate between companies, governments and civil society groups.

But as an attempt to offer a comprehensive and credible answer to the question, they have so far failed. As this paper has shown, no voluntary framework deals adequately with the vital issue of material support by companies to armed groups.

Even if the frameworks were revised to address this issue, the limitations of the frameworks themselves – the self-selecting character of their membership and the lack of sanctions for non-performance – mean that their impact cannot go far beyond what individual members are willing to do.

Of the four frameworks discussed in this paper, two (the Global Compact and the OECD Guidelines) are too vaguely defined and too weakly policed to address the risk that companies may become complicit in human rights abuses through their support to armed groups. The other two, the Global Reporting Initiative (GRI) and the Voluntary Principles, do acknowledge that the risk exists but do not convincingly address it.

The Voluntary Principles deals in most detail with the specific questions that arise from companies' presence in conflict zones. But as it stands, the framework is so untransparent and lacking in external oversight mechanisms that it simply cannot be treated as an objective measure of what companies do, as opposed to what they say.

Some companies that take part in the Voluntary Principles are visibly taking steps to ensure that their security practices do not contribute to human rights abuses, though the meaningfulness of these steps can only be measured by looking at what these companies say, and by independent assessment on the ground. The mere fact of belonging to the Voluntary Principles, or any similar framework, says little in itself.

The participants in the Voluntary Principles have agreed that there needs to be more public reporting and some method for chastising non-performers and, if necessary, expelling them. Having agreed new participation criteria, they may have staved off the complete collapse of the framework's credibility. But the Voluntary Principles still does not ensure that companies' implementation can be convincingly measured by third parties, nor does it ensure that material support by companies to armed groups will only be made in ways which avoid the risk of contributing to human rights abuses.

This is a shame, given the role of the Voluntary Principles to date in sensitising companies to the need to protect human rights and the evidence that some companies have indeed improved their practices. However, it needs to be recognised that a members' club, closed to outside scrutiny and policed by the consensus of its own members, cannot be treated as equivalent to an international standard whose application can be measured by third parties and tested in law. To argue otherwise would be to make a category mistake of a very basic kind.

There is an argument that frameworks like the Voluntary Principles represent "soft law" – that is, a set of rules that are not legally enforceable but gradually change the behaviour of those who subscribe to them, by power of example and reputation, and may, over time, become the basis of regulation.

The advantage of soft law, say its supporters, is that it can move ahead faster because it does not attract the same opposition from affected parties (in this case, corporations) that regulation would. It is also argued that a soft-law approach is more likely to change the thinking of those influenced by it, while hard regulation will simply lead to

box-ticking compliance with the letter of the law, with indifference to its spirit.

The problem with soft law, however, is that it will not automatically evolve into anything harder. As a civil society group that has followed the extractive industries for more than a decade, Global Witness believes that some companies are willing to support regulation on issues that affect the legitimacy of their operations in unstable regions, such as human rights or corruption, as long as the regulation also covers their competitors.

But other companies seem to favour voluntary frameworks *precisely because they are not comprehensive and cannot be enforced*. Such companies seem to want to present an ethical stance to the public while reserving the right to set the limits of their own responsibility in the event that human rights abuses or other crimes do take place. Thus there is no guarantee that soft-law approaches will be allowed to mutate into anything harder and more effective.

In conclusion, there needs to be an enforceable international standard which ensures that a company discloses any material support to state security forces or other armed groups and shows that such support has been provided to meet an explicit legal requirement.

The nature and value of any such support needs to be fully disclosed, as well as its purpose and the identities of the recipients, and there needs to be some form of independent scrutiny to make sure the support is not misused. The company also needs to show that its actions have not encouraged or acquiesced in human rights abuses in a conflict zone, even where no direct material support has been provided to the group committing the abuses.

An enforceable standard would not only benefit vulnerable civilians living in conflict zones, by reducing the risk that corporate activities contribute to human rights abuses against them by armed groups. It would also benefit companies themselves by making clearer what a company in a conflict zone needs to do (or not do) to avoid collusion in human rights abuses, and where its responsibilities begin and end.

The existing collection of voluntary human rights frameworks might feed into the debate that leads to such an international standard. But given their many weaknesses, it would be misleading to suggest that they will automatically evolve into such a standard, or that they are an adequate substitute for it. Voluntarism on human rights has reached its limits.

References

- 1 Interim report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, 22 February 2006, UN doc: E/CN.4/2006/97 paragraphs 24 and 25.
- 2 First Amended Complaint for Equitable Relief and Damages. John Does I-VII and Jane Does I-IV versus ExxonMobil Corporation, ExxonMobil Oil Indonesia Inc., Mobil Corporation and Mobil Oil Corporation. January 2006.
- 3 Email to Global Witness from the International Labor Rights Fund. 12 March 2007.
- 4 Businessweek online. A Milestone for Human Rights. 24th January 2005.
- 5 Total. Myanmar: Total and the Sherpa Association reach agreement for the creation of a solidarity Fund for humanitarian actions. 29 November 2005. http://www.total.com/en/finance/fi_press_releases/fpr_2005/051129_myanmar_agreement_sherpa_8205.htm. Accessed on 25 January 2007
- 6 EarthRights International. Bowoto vs. ChevronTexaco Case History. http://www.earthrights.org/site_blurbs/bowoto_v_chevrontexaco_case_history.html. Accessed on 2nd April 2007.
- 7 Associated Press. Talisman released from genocide case. 12 September 2006.
- 8 <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>. Accessed 4 January 2007
- 9 What is the Global Compact? <http://www.unglobalcompact.org/AboutTheGC/index.html>. Accessed 4 January 2007
- 10 Note on Integrity Measures. <http://www.unglobalcompact.org/AboutTheGC/integrity.html>. Accessed 4 January 2007.
- 11 Global Witness. It's a Gas: Funny Business in the Turkmen-Ukraine Gas Trade. April 2006.
- 12 Financial Times. The problem with warm words. 10 May 2007
- 13 Note on Integrity Measures. <http://www.unglobalcompact.org/AboutTheGC/integrity.html>. Accessed 4 January 2007
- 14 ASADHO/Katanga, Report on human rights violations committed in Kilwa in the month of October 2004, January 2005, and Australian Broadcasting Corporation (ABC), Four Corners, The Kilwa Incident (transcript), broadcast on 6 June 2005.
- 15 United Nations Organisation Mission in the Democratic Republic of Congo (MONUC), Report on the conclusions of the special investigation into allegations of summary executions and other violations of human rights committed by the FARDC in Kilwa on 15 October 2004, September 2005.
- 16 Anvil Mining Limited, Report for Quarter ended December 31, 2004, 28 January 2005.
- 17 MONUC report, paragraph 37.
- 18 Australian Broadcasting Corporation, Four Corners, The Kilwa Incident (transcript), broadcast on 6 June 2005.
- 19 MONUC report and testimony provided by witnesses at the trial before the military court in Katanga, June 2007 (see joint report by Global Witness, RAID, ACIDH and ASADHO/Katanga, "Kilwa trial: a denial of justice. Chronology October 2004-July 2007", 17 July 2007.)
- 20 Ibid.
- 21 Ibid.
- 22 MONUC report, paragraph 36.
- 23 Australian Broadcasting Corporation, Four Corners, The Kilwa Incident, broadcast on 6 June 2005.
- 24 Anvil Mining Limited news release, Anvil Mining Limited response to television report of June 6, 2005, 7 June 2005.
- 25 ABC News, AFP investigates Aust mining company in Congo, 19 August 2005.
- 26 Anvil Mining Limited news release, Anvil confirms that allegations are unfounded, 23 August 2005.
- 27 Décision de renvoi, Colonel Magistrat Eddy Nzabi Mbombo, Auditeur militaire supérieur près la cour militaire du Katanga, 12 October 2006.
- 28 Anvil Mining Limited news release, Anvil Mining Congo receives notification from Congolese military court in relation to the Kilwa incident in October 2004, 18 October 2006.
- 29 Reports from trial observers, June 2007.
- 30 Joint report by Global Witness, RAID, ACIDH and ASADHO/Katanga, "Kilwa trial: a denial of justice. Chronology October 2004-July 2007", 17 July 2007.
- 31 Ibid.
- 32 Transcript of an audio recording by UN-run Radio Okapi of the judgment as read out in court on 28 June 2007 in Lubumbashi. Some of the military defendants were found guilty of the arbitrary detention and murder of two civilians in an unrelated incident in the town of Pweto and were sentenced to various prison terms in relation to these crimes.
- 33 Joint report by Global Witness, RAID, ACIDH and ASADHO/Katanga, "Kilwa trial: a denial of justice. Chronology October 2004-July 2007", 17 July 2007.
- 34 Joint news release by Global Witness, RAID, ACIDH and ASADHO/Katanga, "Victims of Kilwa massacre denied justice by Congolese military court," 17 July 2007.
- 35 "High Commissioner for Human Rights concerned at Kilwa military trial in the Democratic Republic of Congo", Geneva, 4 July 2007.
- 36 Information from sources in Lubumbashi, July 2007.
- 37 OECD Guidelines for Multinational Enterprises. http://www.oecd.org/departement/0,2688,en_2649_34889_1_1_1_1_1_1,00.html
- 38 OECD Guidelines for Multinational Enterprises. http://www.oecd.org/about/0,2337,en_2649_34889_1_1_1_1_1_1,00.html
- 39 Relevant Guidelines are: II.2 on Human Rights, III.1, III.2, III.4f, III.5a, b and c on Disclosure and VI.2 on Combatting Bribery. The full text of the Guidelines can be found at: http://www.oecd.org/document/28/0,2340,en_2649_34889_2397532_1_1_1_1,00.html
- 40 OECD Watch, Five Years On: A Review of the OECD Guidelines and National Contact Points, 22 September 2005 and Christian Aid, Amnesty International and Friends of the Earth, Flagship or Failure? The UK's implementation of the OECD Guidelines and approach to corporate accountability 16 January 2006.
- 41 Decision of the Council on the OECD Guidelines for Multinational Enterprises (adopted by the Council at its 982nd session on 26-27 June 2000 [C/M(2000)17/PROV]) [http://www.oelis.oecd.org/olis/2000doc.nsf/LinkTo/c\(2000\)96-final](http://www.oelis.oecd.org/olis/2000doc.nsf/LinkTo/c(2000)96-final)
- 42 OECD Watch, Five Years On: A Review of the OECD Guidelines and National Contact Points, 22 September 2005 and Christian Aid, Amnesty International and Friends of the Earth, Flagship or Failure? The UK's implementation of the OECD Guidelines and approach to corporate accountability 16 January 2006.
- 43 www.globalreporting.org
- 44 ICMM Company members: Alcoa, Anglo American plc, AngloGold Ashanti, BHP Billiton, Falconbridge Limited, Freeport-McMoRan Copper & Gold Inc, Lonmin Plc, Mitsubishi Materials Corporation, Newmont Mining Corporation, Nippon Mining and Metals, Rio Tinto plc, Sumitomo Metal Mining, Xstrata, and Zinifex Limited.
- 45 http://www.icmm.com/sd_reporting.php
- 46 GRI Mining and Metals Sector Supplement, Pilot Version 1.0, February 2005, p.31.
- 47 For the full text of the Voluntary Principles, see <http://www.voluntaryprinciples.org>
- 48 International Committee of the Red Cross, International Council on Mining & Metals and International Petroleum Industry Environmental Conservation Association.
- 49 See: <http://www.iblf.org/activities/humanrights/volprinciples.jsp>
- 50 Interactions between companies and public security. <http://www.voluntaryprinciples.org/principles/public.php> Accessed 4 January 2006.
- 51 Ibid.
- 52 Participation Criteria. www.voluntaryprinciples.org Accessed 14 May 2007
- 53 BHP Billiton letter to Global Witness. 15 March 2006.
- 54 Ibid
- 55 Ibid
- 56 Ibid
- 57 Global Witness discussions with BP officials in 2005 and BP email to Global Witness. 18 January 2007
- 58 Ibid
- 59 Global Witness telephone interview with Statoil official. 16 August 2006
- 60 Ibid
- 61 Ibid
- 62 ExxonMobil letter to Global Witness. 26 June 2006.
- 63 BBC News (online). Papuan jailed for teacher attack. 7 November 2006. Accessed on 1 May 2007
- 64 New York Times. Below a mountain of wealth, a river of waste. 27 December 2005.
- 65 Rio Tinto. Grasberg (statement at www.riotinto.com/media). 1 December 2004. This statement was on Rio Tinto's website in mid-2005 but, as of early 2007, Global Witness was unable to find it there.
- 66 Ibid
- 67 Global Witness. Paying for Protection: the Freeport Mine and the Indonesian Security Forces. July 2005. Letter from Freeport McMoRan reproduced on page 19.
- 68 Ibid
- 69 Voluntary Principles. Interactions between Companies and Public Security. Deployment and Conduct. www.voluntaryprinciples.org
- 70 Global Witness. Paying for Protection: the Freeport Mine and the Indonesian Security Forces. July 2005. Letter from Rio Tinto reproduced on page 33.
- 71 Hess Corporation letter to Global Witness. 9 May 2006
- 72 Ibid
- 73 NGO Response to the Voluntary Principles Participation Criteria, 16 February 2006, <http://web.amnesty.org/library/index/engior400032006>
- 74 Voluntary Principles. Participation Criteria. www.voluntaryprinciples.org/participants/participation-criteria.php Accessed 23 May 2007.
- 75 Ibid
- 76 Ibid
- 77 Ibid
- 78 International Financial Corporation, Policy on Social and Environmental Sustainability, 30 April 2006, Performance Standard 4, paragraph 14.
- 79 www.voluntaryprinciples.org. Five year overview. Country reports.
- 80 The security Guidelines agreement with the Papua Police for Tangguh. http://www.bp.com/liveassets/bp_internet/indonesia/STAGING/home_assets/downloads/tangguh_summary_field_guidelines_with_police.pdf Accessed on 9 January 2007.
- 81 Tangguh coordination with the police during years 2003-2005. http://www.bp.com/liveassets/bp_internet/indonesia/STAGING/home_assets/downloads/t/tangguh_police_coordination_2005_english.pdf Accessed on 9 January 2007
- 82 Tangguh Independent Advisory Panel. Fourth Report on Tangguh LNG Project. March 2006.
- 83 BP email to Global Witness. 12 February 2007.
- 84 Global Witness conversation with former BP official.



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