



SUSTAINABILITY FOCUS

SEPTEMBER 2013

Extractive industries and the challenges of implementing the Voluntary Principles in Weak Governance Zones

Background

In South Africa during August 2012, Lonmin (Mining Europe) experienced violent clashes between security forces and employees resulting in an estimated 44 deaths (mostly employees) and over a month of disruption to operations. In January 2013, terrorists took over 800 people hostage at a gas facility in Algeria co-owned by BP, Statoil (both Energy Europe) and the Algerian Government. At the end of the four day crisis 39 hostages had been killed. Then, in March 2013, ENI (Energy Europe) declared 'Force Majeure' and ordered the closure of its operations in Nigeria's Swamp Area due to intensive and recurrent 'bunkering'. Finally, in May 2013, citing the company's poor Human Rights record in Papua New Guinea and Tanzania as a factor, New Zealand's Superannuation Fund removed USD 1.8m in investments from Barrick Gold (Mining NAM).

Given the human cost and the publicity gained by these events, Vigeo has produced this Sustainability Focus to draw attention to the specific challenges, risks and opportunities that extractive companies face when seeking to secure their operations and the Human Rights of stakeholders in Weak Governance Zones (WGZ's). This Sustainability Focus will draw attention specifically to challenges of implementing the Voluntary Principles on Security Forces and Human Rights (the VPs).

Introduction

The Voluntary Principles on Security and Human Rights (VPs) were launched in 2000 by a mix of governments, companies and non-governmental organisations². They are the leading set of principles designed for extractive corporations to assist them in maintaining the safety and security of their operations (and the stakeholders impacted by them) through the provision of an operating framework that upholds respect for human rights and fundamental freedoms. The Organisation for Economic Cooperation and Development (OECD) defines Weak Governance Zones (WGZs) as "an environment in which government are unable or unwilling to assume their responsibilities. These "Government failures" lead to broader failures in political, economic and civic institutions that, in turn, create the conditions for endemic violence, crime and corruption and that block economic and social development".



The extractive sector continues to both maintain operations in, and migrate towards WGZ's in search of new opportunities to extract resources. Violence is often a defining feature of such locations and can materialize in a myriad of ways; (terrorists, pirates, drug cartels, civil unrest, oil bunkerers). The Human Rights of all stakeholders (employees and local communities) are more exposed to risk and as such, in order to secure the integrity of their business operations, companies often turn to a mix of private and public security forces for a range of tasks from transporting employees, to securing premises and even dealing with violent conflicts. One impact of the economic downturn has been that both developed and developing nations are struggling to maintain expenditure on large and complex state militaries³. Thus companies are having to turn more and more to private security companies who are less regulated, increasing the exposure of stakeholders to Human Rights risks. At the same time there has been growth in private security business. The industry was valued in 2007 at around USD 139bn and is forecasted to be worth USD 230bn by 2015⁴. Within this context, the VPs aim to provide guidance to companies on how they can manage the complex interactions between security forces and other stakeholders.

Vigeo's findings on the Voluntary Principles

For the Energy and Mining sectors, Vigeo analyses company's commitments and measures relative to the VPs and security forces in the Human Rights domain. This is done specifically in the Sustainability Driver (HRT 1.1) 'Respect for Human Rights Standards and Prevention of Violations'. Due to the activities of the extractive industries, the management of security forces constitutes only one of the Human Rights responsibilities analysed in the sector. Others include issues such as the respect of property rights, resettlement rights, respect of Indigenous Peoples rights, respect of the right to Free Prior and Informed Consent and the prevention of complicity in other Human Rights violations.

Vigeo's analysis of its most recent publications of Energy and Mining sectors revealed that despite being over 10 years old there are still relatively few corporate participants to the VP initiative. Globally, only 21 companies are listed as active participants, with MNCs such as Total only joining in 2012 and Norsk Hydro and Tullow Oil only joining in 2013. There was parity between the European and North American regions with 10 signatories from each geographical area. There was one additional signatory, AngloGold Ashanti which is headquartered in South Africa. There were no participants to the VPs from the Asian Pacific regions, despite indications that these companies had operations in WGZs. Vigeo did note that a number of companies, despite not being

signatories to the VP initiative, had made alternative commitments relative to the issue of security forces and Human Rights. For example, for Mining Europe, whilst only 3 out of 15 companies (20% of the sector) operating in WGZs are signatories to the VPs, an additional 4 companies made formalised commitments to addressing this issue (thus 46.6% of the sector appear to have visibly identified the issue). Likewise, in Mining North America, whilst only 3 out of the 10 companies (30%) operating in WGZs are signatories to the VPs, an additional 2 made commitments to this issue (a total of 50% of the sector).

Globally for the **Mining** sector, 12 out of the 27 companies in Vigeo's universe (44%) that operate in WGZs provided some evidence that they take measures to ensure that security forces uphold basic Human Rights. For the **Energy** sector this figure was 19 out of 41 (46%). There is thus, relative parity between the sectors. In terms of the measures allocated to this task of managing security forces, Vigeo has identified the allocation of similar tools by companies from both sectors, predominantly focused on risk assessments and human rights training as well as simulation exercises for security forces. Given that the VP initiative was spearheaded by the Energy and Mining sectors these similarities are not surprising.



Clearly, Asian Pacific companies from both sectors appear to be lagging behind. Furthermore, clear 'Key Performance Indicators' (KPIs), remain lacking for the initiative although a number of companies have expressed a willingness to work together in order to develop potential metrics further.

Vigeo has issued a number of specific alerts linked to security forces from 2011 to 2013 (for Xstrata Plc, Freeport McMoran, and Lonmin Plc). Moreover, Vigeo's analysis of the European and North American Mining and Energy sectors has recorded multiple security force related controversies further highlighting the importance of this topic⁵. Two **leading practices** were observed within BHP Billiton (Mining Europe) and BP (Energy Europe):

- **BHP Billiton** is a participant to the VPs and has formalized 'Security and Emergency Management' guidelines which require all operations to identify and manage security-related material risks to people and property. Private security providers engaged by BHP Billiton are required to be signatories to, or agree in writing to align with the **International Code of Conduct for Private Security Providers**⁶. In addition to this, written advice is given to security providers outlining BHP's commitment to the VPs and the expectations for private security providers, or requests for public security providers, to operate consistently with these principles. The Company requires **country risk assessments** to be undertaken and in addition, if firearms need to be deployed, then BHP requires that criteria for their use and rules of engagement are set in accordance with **leading industry standards**⁷. In FY2012, the Company outlined new requirements relating to the VPs, including an **annual gap analysis** utilizing the VPs Implementation Guidance Tool and the development of improvement plans to close identified gaps. The Company also has a '**Weapons Management Plan**' in place that calls for verification of peoples involved in the carriage and use of weapons (ensuring they are authorized, trained and licensed).
- **BP** releases an annual report on the Voluntary Principles on Security and Human Rights which details the actions

that it has undertaken in this respect as well as outlining the 'Lessons' that it has learnt in the year⁸. All businesses reportedly conduct annual '**Security risk assessments**'. BP reports that it screens and selects its private security contractors. BP's businesses are asked to ensure that **contracts with security contractors include provisions on ethical conduct in accordance with VPs**. The Company works to promote awareness of the VPs across the Company including employees working in smaller operations who hold a security responsibility. An **e-learning module** is also available on the Company's intranet. Specifically, at its LNG Tangguh operation in Indonesia, the Company undertook 3 days of preparatory training, a one day table top exercise and a one day exercise in the field including a simulation at sea and one on site. BP states that all 305 guards employed at the LNG facilities have received **basic Human Rights training** which is conducted every year. VP training was provided for 105 police officers and 30 members of the Army in 2011. Similar examples of training are found for operations in Georgia and Azerbaijan and Turkey. Finally, BP has **mandatory procedures for reporting and investigating incidents**. Incidents are classified in terms of their actual or potential severity and recorded in a database.



The Business Risks of using Security Forces in Weak Governance Zones

Security forces are used not only to protect sites, but also to secure the most pressing of Human Rights concerns, notably the physical integrity of the person (be they employees or local civilians). How a company manages this task can make the difference between positive community-company relations, and negative ones.

The potential risks of poorly managed community relations can be **operational** in nature and include costly delays in approving and developing projects. Indeed, if not managed adequately, minor grievances can spiral into systematic opposition of the presence of the Company and its operations placing its license to operate at risk. In 2012, Vigeo produced two 'Alerts' highlighting the major operational crises facing the South African mining industry as a result of fatal shootings at the Marikana mine owned by Lonmin⁹. The Grasberg Mine in Indonesia owned by Freeport McMoran¹⁰ was forced into declaring 'Force Majeure' on its operations in 2011 as a result of long term and deadly violence there. The Italian energy Company Eni, declared 'Force majeure' on their operations in the Swamp Area of Nigeria in March 2013. Eni had been present in the country for over 50 years but recent losses due to the illegal bunkering of its pipelines reached peaks of 60%¹¹ reflecting the severity of the difficulties it faced in securing its operations.

Companies that develop a **reputation** for poor Human Rights performances may face **financial consequences** as well. In May 2013, Barrick Gold saw the Superannuation

Fund of New Zealand pull USD 1.8m worth of investment over its poor Human Rights and environmental record¹². Companies should also manage on-site security as efficiently as possible in order to avoid escalating costs for security forces and increasing insurance costs. In 2012 Royal Dutch Shell¹³ was investigated by the Dutch Government over payments to security forces in Nigeria. Shell was reportedly paying Nigerian security forces tens of millions of dollars a year to guard installations and staff in the Niger delta¹⁴. Activists expressed concern that the escalating costs of Shell's security operation in the delta were contributing to further destabilizing the region and fuelling corruption and criminality.

Companies may also face **human capital** risks. In 2008, 62 Shell employees or contractors were reportedly kidnapped and three killed. In addition, many Shell-operated pipelines, well heads and offshore oil platforms were attacked and the Company was forced to halt oil exports for several weeks after attacks by groups including the 'Movement for the emancipation of the Niger delta'. Freeport McMoran recorded an estimated 15 fatalities and 56 injuries from shooting incidents at its Grasberg Mine in Indonesia between July 2009 and February 2012. Most recently in 2013, an operation owned jointly by BP and Statoil (and the Algerian state company Sonatrach) was attacked by terrorists and 39 foreign hostages were killed.

The Challenges of implementing the Voluntary Principles in Weak Governance Zones

– The integration of public (armies and police) and private security forces (sometimes from outside of the host nation) into an operational site with local communities and migrant workers is a complex task. The primary challenge is to nurture a common Human Rights culture amongst different entities, by addressing

the lack of a mature and homogenized human rights culture and infrastructure (courts and judicial processes, grievance mechanisms etc.).



- States are instinctively opposed to the idea that companies should be training and directing national military forces. This question over who 'commands' the public security forces can be difficult to answer. Clearly a challenge for a Company is how to ensure the protection of its people and assets, whilst relying on public security providers over which they have limited control.
- The primary responsibility for the protection of fundamental Human Rights is that of Governments¹⁵. Companies operating in WGZs face the challenge of managing expectations and delivering security to a range of stakeholders without assuming full responsibility for the livelihoods of these actors. Where Government responsibility ends and Corporate Responsibility for managing security begins can be very unclear.
- Typically Multi National Companies (MNCs) will provide security forces with infrastructure, food, housing, fuel, helicopters, vehicle repairs and allowances to cover incidental and administrative costs. Shell paid an estimated USD 1bn between 2007 and 2009¹⁶ alone to security forces. In 2011 Freeport paid USD 14m for its operations in Indonesia¹⁷. Given the level of these payments, there are concerns over their impact on the impartiality of the public security forces and questions are raised over who they are there to protect, property, citizens or employees?

Best Practices for Implementing the Voluntary Principles in Weak Governance Zones

Given the range of security threats a Company may face in a WGZ, there is no 'One size fits all' best practice that can be applied. What does exist are a range of tools that can be considered as best practices. Collectively they may help a Company in establishing a strong foundation on which Human Rights and the use of Security Forces can be supported. For instance:

- Companies face some of their most intense scrutiny from Governments and stakeholders at the stage of gaining permission to extract resources. **Making the support and protection of Human Rights a fundamental component of the Company's license to operate** may help to make Human Rights a fundamental component of the understanding and expectations of the project. Human Rights protection remains the primary responsibility of the state. A Corporate Responsibility to protect does exist, but to be exercised effectively, this should be executed **in partnership** from host governments.
- Companies must **undertake risk assessments**. These are a fundamental part of the VPs. In addition, Companies should screen the private security forces that they hire on Human Rights issues. Companies could for example, commit to only using private security contractors who are signatories to the 'International Code of Conduct for Private Security Providers' (ICoC)¹⁸.
- Companies should work to **engage as broad a base of stakeholders as possible** and **train** them as intensively as possible. The more stakeholders trained and made aware of the Human Rights issues at stake, the greater credibility such programs gain. Trainings should be provided in a range of languages if needed.
- Companies must establish structures to oversee the implementation of the VPs into their everyday operations. This must include **structures that define clear responsibility and accountability**. Structures to allow concerns to be reported and registered must be established. Formalized grievance mechanisms that adequately and transparently address Human Rights violations by security forces are also vital.



Conclusion

Despite a relatively low number of participants to the VPs identified in Vigeo's universe, Vigeo has identified many more companies expressing commitments to tackling this complicated issue. On a **positive note**, clearly many more companies have identified the management of relations between security forces and human rights as an area of concern and are working to manage the associated risks. The **negative side** is that the low number of participants indicates a limited pool for knowledge sharing on best practices. Given that most companies agree that there is no 'One size fits all' approach, sharing knowledge and best practices will be vital for the long term development and improvement of this initiative. In his 2013 report to the Plenary Council of VPs, John Ruggie¹⁹ raised similar concerns over the lack of collaboration between companies facing similar challenges in the same country and the limited engagement of home countries.

The VPs were designed to bring together a range of stakeholders; companies, NGO's (there are 12 members), Organizations with Observer Status (5 members) and Governments. Attention should be drawn to the fact that very few Governments have become signatories to the principles. Currently there are 8 Government members²⁰ with **only one member from what could be defined as a WGZ (Colombia)**. In order to achieve the optimal level of partnership and cooperation on the protection of Human Rights when using security forces in WGZ's, the VPs must expand to bring in a more diverse range of governments, particularly those governments of WGZs whose citizens are most affected by the negative social impacts of extractive industries. This is critically important as corporations alone cannot develop the secure conditions required to responsibly operate a business in WGZs. Implementing the VPs is a complex but necessary undertaking for Companies. Balancing the interests and managing the expectations of multiple stakeholders (Governments, communities, employees etc) whilst defining clear responsibilities for Human Rights protection is not an easy or inexpensive task. However, given the potential business risks as well as the tangible human vulnerability entailed, it remains a mission of increasing importance as extractives continue their migration to WGZs.

Post-script:

This sustainability focus is the first in a two part series focused on the difficulties of implementing critical Human Rights policies in weak governance zones. The next sustainability focus will examine how companies analysed by Vigeo undertake Child Labour Due Diligence in Labour Intensive Industries.

Contacts

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Notes and Sources

- 1) Bunkering is the industry term for the illegal stealing of oil from pipelines.
- 2) Including the ICMM (International Council on Mining and Metals), IFC (International Finance Corporation), IPIECA (Global Oil and Gas Industry Association for Environmental and Social Issues) and the International Red Cross.
- 3) At the start of 2013, the US Government implemented unprecedented 'Sequester Cuts' that will reduce its defence spending from USD 670bn (2012) to USD 627.6bn in 2013, a cut of 6.4% or USD 42.7bn. The US still spends more than the next 10 biggest spenders combined (including China and Russia) http://www.pgpf.org/Chart-Archive/0053_defense-comparison.aspx
- 4) 'What Role for PMC in Today's World' - 11/19/2012- David Isenberg, 'The Huffington Post'.
- 5) Vigeo has noted controversies impacting Rio Tinto, Anglo American, BHP Billiton, Xstrata Plc, Barrick Gold, Newmont Mining, Royal Dutch Shell, Chevron, Exxon Mobil and Occidental Petroleum. Asian Pacific companies from both sectors were not visibly impacted by allegations linked to security forces.
- 6) ICoC Member List:- http://www.icoc-psp.org/uploads/Signatory_Companies_-_October_2012_-_Composite_List_SHORT_VERSION.pdf
- 7) The International Association of Oil and Gas Producers 'Firearms and the Use of Force'. (see BHP SR 2012 pg 31).
- 8) BP- Annual Report on the Voluntary Principles on Security and Human Rights (Jan-Dec 2011), 16/02/2012.
- 9) Lonmin Alert: Jordi Lesaffer 2012/08.
- 10) Freeport Alert: Keeran Beeharee 2011/10.
- 11) 'Eni Declares Force Majeure on the Swamp Area Activities in Nigeria', www.eni.com 23/03/2013.
- 12) The Canada-based mining company, reportedly didn't meet the human rights and environmental standards of the UN Global Compact, according to Anne-Maree O'Connor, the fund's manager for responsible investment who said that "*Barrick's mines in Papua New Guinea and Tanzania have experienced a series of security-related, environmental and community problems over a lengthy time period*".
- 13) 'Royal Dutch Shell paying tens of millions to Nigerian Security Forces', 'The Telegraph', 19/08/2012
'Shell spending million of dollars on security in Nigeria', 'The Guardian', 19/08/2012.
'Dirty Work- Shell's Security Spending in Nigeria and Beyond' - report by Platform London- 2012
www.platformlondon.org
- 14) 'Dutch MP's investigate Shells irresponsible and unacceptable security spending' = report by Platform London 2012. www.platformlondon.org
- 15) This is recognized by the VP's in the preamble.
- 16) See footnote 9 and 10.
- 17) Freeport McMoran Sustainable Development Report 2011 'Connecting the Future' pgs 18-19. A further USD 1m was spent by the Company to support security forces in the Democratic Republic of Congo.
- 18) The International Code of Conduct for Private Security Providers (ICoC) is a multi-stakeholder initiative convened by the Swiss government. It aims to set private security industry principles and standards based on international human rights and humanitarian law.
- 19) The United Nations Special Representative for Business and Human Rights.
- 20) The members are the UK, USA, Canada, Netherlands, Norway, Switzerland, Colombia and Australia.