

Business, Human Rights, and Uganda's Oil

Part III: Respect and Remedy: Implementing
corporate responsibility under the UN
Framework on Business and Human Rights

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Editorial

This paper is Part Three of a four part series on business, human rights and oil in Uganda

Part One: Uganda's oil sector and potential threats to human rights

Part Two: Protect and Remedy: Implementing State duties under the UN Framework on Business and Human Rights

Part Three: Respect and Remedy: Implementing corporate responsibility under the UN Framework on Business and Human Rights

Part Four: Civil Society: Holding the State and businesses to account

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Front Cover image: Due to the oil drilling plans in the area of Lake Albert, the future of these fishermen at the Wanseko fish landing point in Buliisa district is uncertain (Oil in Uganda, 2012).

Antwerp and Kampala, April 2015

ActionAid Uganda is an anti-poverty agency that takes sides with the poor in Uganda to end poverty and injustice together. A human rights based approach defines our way of working, because eradication of poverty and injustice can only happen if the rights of the poor and excluded are protected, promoted and fulfilled.

International Peace Information Service (IPIS) is an independent research institute, providing governmental and non-governmental actors with information and analysis to build sustainable peace and development in Sub-Saharan Africa. Research is centred around four programmes: Natural Resources, Business & Human Rights, Arms Trade & Security, and Conflict Mapping.

Development Law Associates (DLA) is a regional consultancy firm with headquarters in Kampala, Uganda. The firm has undertaken numerous multi-disciplinary research projects in Africa. The firm's core competencies include: International Trade, Oil and Gas regulation, Human Rights and Governance.

Executive Summary

The following is the third in a series of four reports exploring business and human rights issues in Uganda's oil sector. This series is a collaboration between IPIS vzw and ActionAid Uganda.

The 2011 UN Guiding Principles on Business and Human Rights operationalise the 2008 Protect, Respect and Remedy Framework. In accordance herewith, this third report assesses the duty of businesses to respect human rights. A particular focus is maintained upon the three multinational oil companies operating in Uganda's oil sector - CNOOC, Tullow, and Total. Yet, a number of other active companies in Uganda's oil sector are equally assessed for how they are demonstrating their commitment to do no harm, sometimes in reference to industry best practice.

The foundations of the Guiding Principles are introduced – primarily, that businesses have a duty to respect human rights, and what this duty means in practice. This includes analysis of which human rights are relevant, and how different contexts and industry sectors affect a business' sphere of influence, and therefore level of responsibility.

Following this, the practicalities of operationalising the Guiding Principles are discussed. Firstly, businesses are expected to express their commitment to the Guiding Principles through a statement of policy that meets certain benchmarks. Secondly, businesses should carry out human rights due diligence, in order to identify, prevent, mitigate and account for how they address actual and potential adverse human rights impacts. This should start with a human rights impact assessment. The findings of the assessment should then be integrated into relevant internal functions and processes, and the business should take appropriate action. This progress should be tracked. Further, businesses should externally communicate how they are addressing human rights impacts. Lastly, businesses should take concrete steps to enable remediation when wrongs do occur, through adopting their own grievance mechanisms at the operational level, and coordinating with other State and non-State mechanisms.

These expectations are all discussed in the context of the presence of the main players in Uganda's oil industry – Tullow, Total and CNOOC, in addition to other private actors – in order to note where best practice is being fulfilled, and where gaps are present. This is aimed at offering constructive advice to companies on how they can ensure a positive relationship between business and human rights in Uganda's oil sector.

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Acronyms

ACHPR	African Commission on Human and People's Rights
BHRRRC	Business and Human Rights Resource Centre
CNOOC	China National Offshore Oil Corporation
CNPC	China National Petroleum Corporation
CSCO	Civil Society Coalition on Oil in Uganda
CSO	Civil society organisation
CSR	Corporate social responsibility
DRC	Democratic Republic of the Congo
EITI	Extractive Industries Transparency Initiative
ESHIA	Environmental, Social and Health Impact Assessment
EU	European Union
FHRI	Foundation for Human Rights Initiative
GATT	General Agreement on Tariffs and Trade
GPs	United Nations Guiding Principles on Business and Human Rights
HRIA	Human rights impact assessment
IPIECA	Global Oil & Gas Industry Association for Environmental and Social Issues
ILO	International Labour Organisation
MEMD	Ministry of Energy and Mineral Development
MNC	Multi-national corporation
NCP	National Contact Point of the OECD
NEMA	National Environment Management Authority
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
OECD	Organisation for Economic Co-operation and Development
OHCHR	United Nation's Office of the High Commissioner of Human Rights
PMSCs	Private Military and Security Companies
RAFI	Human Rights Reporting and Assurance Frameworks Initiative
SSE	Strategic stakeholder engagement
UGNOC	Uganda's National Oil Company
UGS	Ugandan Shillings
UHRC	Ugandan Human Rights Commission
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights
USD	United States Dollars
VPs	Voluntary Principles on Security and Human Rights
WB	World Bank

Introduction

How to read this report

The following report is the third in a four-part series on oil, business, and human rights in Uganda. Uganda's young, developing oil industry has raised both hopes and concerns, a particular set of which are directly related to the impacts of companies operating in Uganda's oil industry.

Fears regarding the potentially negative impacts of business activity upon human rights are not limited to the oil industry, but rather a reflection of a worldwide recognition that business activities can cause both progress and damage. As a result, the UN has developed a framework entitled *Respect, Protect and Remedy*, designed to address the responsibility of different actors in ensuring that businesses' impact on human rights is enabling and respectful, rather than harmful. The Framework, also known as the *Ruggie Framework* (named after UN Special Representative John Ruggie who was at the helm of the Framework's creation) – and its accompanying *Guiding Principles* – delineate the States' duty to *protect* human rights from the adverse impacts of business activity, the responsibility of businesses to *respect* human rights, and the need for both States and businesses to provide access to effective *remedy* when harm occurs.

This report series endeavours to map the Guiding Principles onto the context of Uganda's oil industry in order to locate key issues and explore solutions. The four reports in this series can be read together, creating a map of how this might look. This paper will explore what is often described as the **second pillar** - the business responsibility to respect human rights – within the context of Uganda's oil industry.

The report takes the structure of the steps that the Guiding Principles set out. Each step is described, accompanied by analyses of how companies operating in Uganda's oil sector are adhering to it. Meanwhile, throughout the paper, "Digging Deeper" sections will take a look at specific themes or topics, including land governance, taxation, or food security, often accompanied by case studies.

This report is a collaboration between IPIS vzw and ActionAid Uganda. Interviews were undertaken in Kampala and from Belgium by IPIS in 2013 and 2014; further research in Uganda by ActionAid, via their Oil in Uganda project, has been ongoing.

The UN Guiding Principles on Business and Human Rights

The United Nations' Guiding Principles on Business and Human Rights (UNGPs or GPs) take a three pillar form: 1) the duty of States to protect people against abuses of their rights by third parties, including businesses; 2) the responsibility of corporations to respect all human rights; and 3) the need to enhance access to remedies by victims of rights abuses by companies.

The Framework highlights that States bear the primary duty in this mix: to protect human rights within their territory, and arguably extraterritorially, from abuse by third parties, including businesses and to provide access to remediation when harms do occur. A heavy responsibility also falls upon businesses, however, which are expected to take proactive steps to ensure that their operations and relationships do no harm.

The Guiding Principles set out how businesses can put their intention to respect into action through a number of steps:

1. Expressing their commitment to the Guiding Principles through a **statement of policy** that meets certain benchmarks.
2. Carrying out a **human rights impact assessment**.
3. **Integrating the findings** of the human rights impact assessments into relevant internal functions and processes.
4. **Tracking the progress** of this integration, and the identified human rights impacts.
5. Externally **communicating** how they are addressing human rights impacts.
6. **Ensuring that remedy is available** for any abuses by setting up a grievance mechanism at the operational level, and taking part in other remediation mechanisms.

This paper will review whether the main oil companies in Uganda have implemented these steps, and provide some insight into best practice, and where more action would be required in order to fully commit to the Guiding Principles. It should be noted, however, that it is hard to understand the exact nature of businesses' respect for human rights in practice. When collected, such data is often kept private, and used as internal business intelligence for risk prevention and mitigation. As such, this paper often poses open questions: is a given business aligning with best practice, and if so how can they *show* this to their stakeholders?

The UNGPs dedicate Principles 11 through 15 to setting out the foundation of the business duty to respect. Principle 11 states the basic facts:

*"[Businesses] should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."*¹

Principle 12 elaborates on this, by explaining that, by human rights, the UNGPs refer to all of those recognised in the International Bill of Human Rights, that is to say, the UN's Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966) with its two Optional Protocols, and the International Covenant on Economic, Social and Cultural Rights (1966). The International Labour Organisation's Declaration on Fundamental Principles and Rights at Work are also explicitly referred to.

Which specific rights are relevant will differ depending on the context, nature and influence of the business. Businesses may need to go further in adopting additional standards to respect the rights of vulnerable groups such as indigenous peoples, women, children, migrant workers etc. In recent years, there has been a particular focus on the way in which businesses' responsibility to respect human rights is of paramount importance in conflict-affected areas.² In the context of Uganda's oil sector, [Paper One](#) of this series outlined certain rights or issues that are, or may in the future be, of specific concern, namely: governance, corruption and transparency; the environment; water rights; health; conflict and violence; land rights, local livelihoods, community dynamics, and employment; and arbitrary detention.

It is also necessary to note that it is not purely businesses' own potential or actual adverse human rights impacts that must be avoided or addressed. Businesses must also seek to prevent or mitigate such adverse impacts that they are linked to at a more distanced level. As the Guiding Principles state, business enterprises should, "*Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.*" This brings into focus the importance of supply chain management. The oil and gas industries, in particular, are ones in which enormous amounts of subcontracting are necessary, due to the broad technical capacities needed to extract and process oil.³ Companies therefore need to consider which other business partners they can responsibly enter into relationships with, and how they can actively seek to prevent or mitigate adverse human rights impacts through those partners.

Many oil companies have expressed public commitment to the UN Guiding Principles on Human Rights. In 2011, Total's Senior Vice President and General Counsel, Peter Herbel, wrote to Professor Ruggie affirming Total's commitment to them.⁴ Yet it remains to be seen whether any oil company has truly translated public commitment to human rights respect into comprehensive pre-emptive action.

Oil companies' proactive respect for human rights is particularly vital. The extractive industry has been linked to many severe human rights abuses, including the involvement of hired security forces in sexual abuse and killings, fatal pollution of water sources, and land-grabbing. Moreover, extraction may be linked to shifts in national economies or issues such as corruption, which may in turn impact on human rights.

1 United Nations, *Guiding Principles on Business and Human Rights*, 2011, HR/PUB/11/04, Principle 11.

2 For example, the United States 2010 Dodd Frank Wall Street Reform and Consumer Protection Act, section 1502, is intended to stop armed groups in the DRC from illegally using profits from the minerals trade to fund conflict. 1502 is a disclosure requirement that calls on companies to carry out supply chain due diligence to determine whether their products contain conflict minerals, and report this to the US Securities and Exchange Commission (SEC).

3 Arabian Oil & Gas, *World's 10 largest oil and gas contractors*, 29 June 2009, (www.arabianoiland-gas.com/article-5773-worlds-10-largest-oil-and-gas-contractors/#.UXpVZCuSCAM).

4 Total, *Respecting Human Rights in our sphere of operations*, accessed on 23 January 2015, (www.total.com/en/society-environment/ethics-and-values/areas-focus/respecting-human-rights-our-sphere-operations?%FFbw=kludge1%FF#sthash.7FOHuhde.dpuf).

Historically, many human rights abuses in which companies have been involved have contained elements of political complicity, gone unprosecuted, or, in some cases, have even been lawful under national law (for example, when there is no domestic recognition of customary land rights). As a result, the Guiding Principles, in addition to pressuring states to protect citizens, also make clear that businesses themselves have a responsibility to meet a basic standard of human rights respect, which is unrelated to the State expectations. As Professor Ruggie, author of the UNGPS, explains, companies “are expected to obey the law, even if it is not enforced, and to respect the principles of relevant international instruments where national law is absent.”⁵

Contention often arises when a company complies with national laws and is welcomed into a partnership with a State, yet breaches international standards in doing so. In 2013, SOCO International plc, a British oil company, came under fire from WWF (World Wide Fund for Nature) and other groups for engaging in the preliminary phases of oil exploration in the Democratic Republic of Congo’s Virunga National Park (including bathymetry and seismic surveys on Lake Edward, and geological studies on land). The Park is a World Heritage and Ramsar site; oil extraction in such sites is prohibited under the World Heritage Convention, to which the Democratic Republic of the Congo (DRC) is a party.

SOCO has now stated that it is no longer conducting operations anywhere in Block V – the Block which had included land in Virunga National Park. However, in 2012, in response to the European Parliament’s Joint Resolution on the DRC, and the Belgian Government’s Resolution to Protect Virunga National Park, SOCO stated publicly that,

*“Our involvement was formalised through a Production Sharing Contract signed in 2006 and ratified by Presidential Decree in 2010... We currently have a contractual commitment with the DRC to continue with our exploration activities in Block V. **If the DRC government decides that our involvement in Block V is no longer legal** then we will, of course, stop all activities.”⁶ [emphasis author’s own]*

The case of SOCO’s exploration in DRC exemplifies the complex layers of power at play regarding businesses’ human rights and environmental obligations. The UNGPs would hold that businesses have a duty to implement the highest relevant standards. However if a business looks to a host State’s standards over international best practice, it is not immediately apparent how it can be held accountable, and there is argument over whether a business, the host State, or its home State is responsible.

With regard to Uganda, this has already become complex in the issue of housing rights. Businesses necessarily depend on Uganda’s re-housing and resettlement policies. Yet these have already been accused of falling short, and companies are being held complicit along with the government.⁷ Companies may argue that they have simply followed national procedure, but in a country with complex land laws and ongoing land issues, it is pertinent for companies to follow the GP’s endorsed steps (explored in the following pages) in order to ensure that they are indeed meeting international best practice.

Although this paper uses them as a framework, it is important to not only focus on the UNGPs when reviewing the business and human rights landscape. For example, there is evolving scholarship on a human rights based approach to natural resources management. The approach has its roots in the need to include human rights in all development activities of the various United Nations agencies.⁸ At a regional level, the African Commission on Human and Peoples’ Rights at its session in the Gambia in 2012, resolved to adopt a human rights approach to the management of natural resources. The resolution, amongst others, calls upon state parties to ensure that extractive industries are accountable for human rights violations in their host countries and in the countries where they are legally domiciled.⁹

5 United Nations Human Rights Council: Promotion and Protection of all Human Rights, Civil, Political, Economic, Social And Cultural Rights, Including The Right To Development: Protect, Respect and Remedy: a Framework for Business and Human Rights, 7 April 2008, A/HRC/8/5, para 23.

6 Reuters, *British government opposes Soco exploration in Congo sanctuary*, 25 September 2012, (uk.reuters.com/article/2012/09/25/uk-congo-democratic-uk-idUKBRE88O18S20120925).

7 Atwijukire D, *Rights of local communities in the oil region should be respected*, New Vision, 22 February 2015 (<http://www.newvision.co.ug/news/665141-rights-of-local-communities-in-the-oil-region-should-be-respected.html>)

8 United Nations Development Group, *The Human Rights Based Approach to Development Co-operation Towards a Common Understanding Among the UN Agencies*, 2003.

9 African Commission on Human and Peoples’ Rights, *Resolution on a Human Rights-Based Approach to Natural Resources Governance* (Resolution 224), 2 May 2012.

Uganda's oil industry

Uganda's oil industry is comprised of a broad array of national and international, small, medium and large businesses. In Part Two of this series, "Protect and Remedy: Implementing State duties under the UN Framework on Business and Human Rights" we explored the responsibility of the Ugandan State and, to a lesser extent, that of the UK, France and China, as home to the three major oil companies present in Uganda: Tullow, Total and CNOOC, respectively. However, from other oil production companies, to those that provide equipment and transportation services, many other companies also fall under the remit of exploring companies who may have an impact on human rights in Uganda's oil industry.

The web platform *Oil in Uganda* hosts a [continually updated list](#) of companies operating in the oil industry, comprised of the following categories:¹⁰

- **International oil companies** (Total SA, The China National Offshore Oil Corporation, and Tullow Oil PLC)
- **Oilfield, engineering and infrastructure services** (Wood Group PSN, Weatherford International, Schlumberger, Saipem, Oil and Gas Exploration Company Cracow PLC, Halliburton, Baker Hughes, and AOS Orwell)
- **Environmental and waste managements services** (Epsilon and Air Water Earth (AWE) Ltd.)
- **Camp management and catering** (Strategic Logistics Ltd (SLL), MSL Logistics, Gulf Catering Company Services, and Equator Catering)
- **Transport and logistics** (Threeways Shipping Services Ltd, Spedag Interfreight, SDV Transami, Quantum Associates Oil & Gas Logistics, and DHL).
- **Inspection services** (Inspecta International, and Lloyds British Testing Uganda).
- **Other** (insurance, distribution, associations, training) (Petroleum Skills Uganda Ltd., Habib Oil, General Machinery Ltd, Association of Uganda Oil and Gas Service providers (AUOGS), and AON Risk).



A fenced oil site in Buliisa District (Oil in Uganda, 2012)

Human rights impacts and responsibilities differ across industries, and the services a company is providing. A financial inspection service has a duty to abide by anti-corruption laws, meanwhile oilfield, engineering and infrastructure services can impact on the environment.

In order to focus on the oil industry, this paper will largely refer to Uganda's three figurehead oil companies whilst including case studies from other influential businesses engaged in the sector. It should also

¹⁰ Oil in Uganda, *Oil Industry*, 12 September 2013 (www.oilinuganda.org/oil-industry).

be noted that the responsibilities of Uganda's National Oil Company (UGNOC) were covered in [Paper Two](#) on the State's duty to protect and remedy: although the UGNOC will function as a business, it will be fully State-owned.¹¹

Currently, Uganda is grappling with the balance between oil production and citizen participation in the industry.¹² It is envisaged that citizen participation in the industry may take the form of private public partnerships, where local competent firms partner with the government and in some cases international oil companies. This appears progressive but is beset by several challenges. The foremost obstacle at least from a human rights perspective, is whether the local firms will have the ability to compensate affected communities or individuals for human rights violations. This has to be taken into account when structuring the envisaged private public partnerships.

A final word: States have primary obligations

It should be emphasised that businesses hold the responsibility to *do no harm*. Businesses are *not* expected to fulfil the internationally agreed role of States (to protect, respect and fulfil human rights). Uganda has signed and ratified the major human rights Treaties, in addition to African Conventions.¹³ Ensuring that Ugandans' human rights are in place is the responsibility of the Ugandan State. Private sector development is an important part of the gradual realisation of human rights, through provision of services, development of the economy, and employment. However businesses are part of a broader social system, rather than the ultimate guarantor of rights. When we talk of businesses' human rights obligations, we refer to this responsibility to do no harm, not to provide human rights.

It is important to be explicit about businesses' responsibility to respect, rather than to fulfil, for a number of reasons.

Firstly, expecting businesses to bear the burden of delivering human rights such as security, water, food, and health takes the onus off the State. Citizens may develop unrealistic expectations of what a business can deliver, potentially resulting in populations who see a large multinational as their vanguard, rather than looking to their government. False expectations can lead to outcomes as troubling as local tensions and conflicts when companies do not deliver desired outcomes.

Secondly, it is important to ensure that philanthropic measures do not obscure basic human rights compliance. This is not to diminish the reality that businesses' contributions to important human rights causes can be welcome and profoundly useful. For example, in 2012, Tullow in Uganda donated 100 million shillings (approx. USD 30,000) of materials to fight an Ebola outbreak in Kibaale district in which 17 people died.¹⁴ However it should be ensured that positive, but optional, human rights measures (for example supporting local hospitals, which help to secure the right to health) are not used as a smokescreen, public relations exercise, or solely to gain social licence. By offering relatively low cost local investments, grievous abuses can receive less focus, for example illegal displacement or pollution.

Unfortunately the term "corporate social responsibility" – CSR – has often been used as a catch-all description for both philanthropy and basic human rights compliance. The amalgamation of activities is misleading.

The UNGPs are very clear. Regardless of how many measures a business may take to ensure that they use profits to have a positive impact on the world around them, including those that support and promote human rights, "this does not offset a failure to respect human rights throughout their operations."¹⁵

11 Uganda Gazette, The Petroleum (Exploration, Development and Production) Act, No. 16, 4 April 2013, (www.eisourcebook.org/cms/June%202013/Uganda%20Petroleum%20%28Exploration,%20Development%20and%20Production%29%20Act.pdf).

12 Gwayaka P, *Local Content In [the] Oil and Gas Sector: An Assessment of Uganda's Legal and Policy Regimes*, Advocates Coalition for Development And Environment (ACODE), 2014, p. 6.

13 See further: Wass G and Musiime C, *Business, Human Rights, and Uganda's Oil. Part I: Uganda's oil sector and potential threats to human rights*, IPIS Research and ActionAid International Uganda, 2014, (http://ipisresearch.be/wp-content/uploads/2013/07/20131008_Oil_Uganda_-4.pdf).

14 New Vision, *Tullow gives sh100m aid*, accessed 12 January 2015, (www.newvision.co.ug/mobile/Detail.aspx?NewsID=633758&CatID=3).

15 *Op. cit.* United Nations, 2011, (n.1), p. 13.

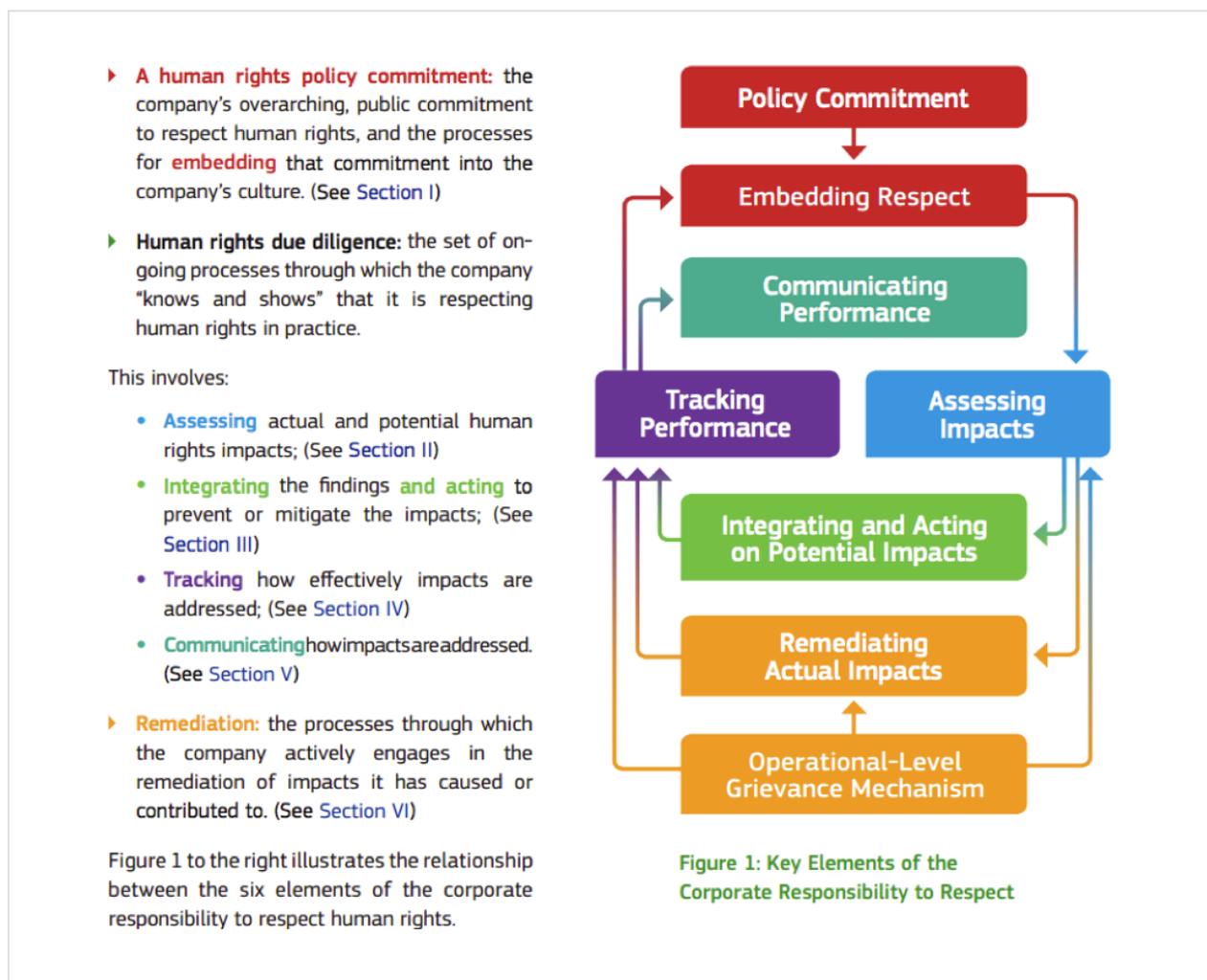
Often businesses make agreements with States and local communities to deliver certain services that they are in position to offer. This may be due to cultural expectations, and is a natural part of the process of setting up operations in a certain area. This can be hugely beneficial to local communities and provide infrastructure with a profoundly tangible impact on human lives. Such steps both make good business sense and provide access to the realisation of human rights, and are to be encouraged. However they should never be an alternative to businesses' basic duty: to do no harm.

Offering philanthropic measures, such as health care facilities or infrastructure, may also come along with training courses for local populations. In turn, this may overlap with promises to employ local populations in operations. The latter constitutes part of a concept called "local content", which is explored below.

Operational Principles: How Businesses Can Translate Intention into Action

In Principles 16 through 24, the Guiding Principles clarify how the expectation upon businesses to respect human rights should be put into action. The process of operationalising the Guiding Principles comprises six steps, which form part of an ongoing process to ensure that procedures remain up to date.

Shift, an independent, non-profit centre for business and human rights practice, has published guidelines for businesses, taking them through the steps of implementing the Guiding Principles. They have clarified these six steps through the following diagram.¹⁶



This paper will walk through these steps, applying them to the companies operating in Uganda's oil industry, assessing best practice and highlighting where the GPs need to be better operationalised in order to ensure respect for human rights.

What is Due Diligence?

The steps listed below, when taken together, form a process understood as "due diligence". In the UNGPs due diligence is described as continuous process through which companies "know and show" that they are respecting human rights.¹⁷

16 Shift, *Putting Respect for Human Rights into Practice*, accessed 12 January 2015 (www.shiftproject.org/sites/default/files/ICT/ECHRSG.ICT.6.pdf) p. 15.

17 *Op. cit.* United Nations, 2011, (n.1), p. 16.

Ultimately, due diligence exists to help companies understand what the risks are to human rights that they may be facing, and make sure they take action where necessary. IPIECA, the Global Oil & Gas Industry Association for Environmental and Social Issues, explains that *“an adverse human rights impact occurs when an action removes or reduces the ability of an individual to enjoy her or his human rights.”*¹⁸ Importantly, this is not the same as a risk to a business, be it reputational, financial or otherwise. Although business risks and risks to human rights may often overlap, they should not be assumed to be equal.

Due diligence is described as a process rather than an act, because it must be ongoing, adapt to changing risks over time, in order to inform an appropriate response, and be iterative. It should start at the earliest stage possible – before oil is taken out of the ground, before prospecting.

It is up to each company to decide how it will incorporate due diligence into its existing operations. It may be that existing health and safety, supply chain management, or other compliance programmes provide a suitable structure to slot into. Alternatively, a stand alone due diligence process may be necessary.

Digging Deeper: Waste Disposal

Tullow Uganda’s Environmental Manager, Philippe Bouzet, has explained that about 300,000 tonnes of drilling waste will be produced when oil production starts.¹⁹

In May 2012, Oil in Uganda reported the following case relating to the disposal of oil waste by Heritage Oil, who later sold its oil concessions to Tullow. This case study has raised substantial questions about oil waste, and the processes companies will adopt to ensure it is dealt with responsibly:

“A farmer [has said] that Heritage Oil dumped dozens of truckloads of waste in a pit dug on his land, a few kilometres north of Murchison Falls National Park. ... Douglas Oluoch, 43, relates that he first came into contact with Heritage in his capacity as a local councillor (LC II) in Purongo sub-county of what is now Nwoya District. In 2008, he says, a Heritage official, who he can identify only as “Albert,” offered to pay him for accepting waste from exploration wells dug within the National Park.

Oluoch told Oil in Uganda that he received 750,000 shillings (USD 300) for accepting the waste, adding that “They said it was not harmful and would act as a fertiliser.”

The company, he went on, sent an excavator to dig a 25 metre by 25 metre pit, 10 metres deep, on part of his 8-acre plot, which is adjacent to a murrum road leading from the Karuma-Pakwach highway to the north gate of the National Park. For a week, two trucks ferried waste to the site, each truck bringing three or four loads a day. Finally, the pit was covered with topsoil.

As far as Oluoch knows, the pit was not lined with concrete or plastic. While the operation was in progress, he says, “They stopped me from accessing the place and said nobody should go there.”

Oluoch described the waste as a kind of greenish clay, oozing liquid. It is not possible to confirm what it actually comprised and whether it was first treated. However, along with spoil from test wells—some of which are sunk more than a kilometre below the surface—exploration waste can include the remains of chemical lubricants and coolants used in the drilling process.

Although claiming that “Albert” told him it would be safe, within a few months, to plant crops on top of the pit, Oluoch became concerned when NEMA [National Environment Management Authority] officials visited the farm where he lives with three wives and ten children. They advised the family, he says, not to eat the cassava they had planted on the site of the pit. He adds that NEMA officials have since visited the site several times, and in 2009 dug a deep hole to carry away samples of the waste for analysis, but that he has not yet been told the results.

18 IPIECA, *Integrating human rights into environmental, social and health impact assessments. A practical guide for the oil and gas industry*, December 2013, (www.ipieca.org/publication/integrating-human-rights-environmental-social-and-health-impact-assessments-practical-gu), p. 3.

19 Oil in Uganda, *Oil waste: Just how much should Uganda expect?*, 4 November 2014, (www.oilinuganda.org/features/environment/oil-waste-just-how-much-should-uganda-expect.html).

Oluoch also says that he has since been “stigmatised” by his neighbours, who were alarmed by the official visits to the site. They fear that it might contaminate ground water in the area.”²⁰

In December 2013, Oil in Uganda reported again on Mr Oluoch’s situation. He had been shunned by the local community, which accused him of putting the entire village at risk by accepting a ‘hazardous substance’ to be buried in his land. His wives had left the village as they had heard reports that the oil waste could cause disease or damage their children in utero.²¹ Local markets also avoided buying Mr Oluoch’s food.

Mr Oluoch reports that he has received contradicting information about the impact of the waste. A number of unidentified people from civil society have tested his crops and told him to leave. However NEMA officials have allegedly visited the site several times to obtain soil samples for testing but have not communicated the results to the locals.

In October 2014 the Acholi Times reported that Total, who has taken responsibility for the issue due to its farm-down from Tullow in February 2012, agreed to remove the waste that was dumped on the land.²²

Policy Commitment

The first step businesses should take to ensure respect for human rights should be to adopt a human rights policy, which should:

- (a) **Be appropriate to the business’ size and circumstance.** A small local trader cannot be expected to have a well-researched, comprehensive human rights policy in place. Large oil companies, with global operations and experience, can.
- (b) **Be approved at the most senior level of the business enterprise.** A policy should not be left to only a businesses’ CSR or public relations team to understand and carry out alone. It should be integrated into the core of business practice by review and familiarisation at the most senior levels.
- (c) **Be informed by relevant internal and/or external expertise.** Businesses should be able to learn from past mistakes and lessons to continually inform their human rights policy. If they do not have in-house human rights specialists, they should hire externally from the growing number of experts in human rights, who can help a company ensure that their policy is comprehensive and effective.
- (d) **Stipulate the enterprise’s human rights expectations** of personnel, business partners and other parties directly linked to its operations, products or services. An effective policy cannot leave room for vague interpretation. It can only achieve its aim if all involved in a business’ activities know exactly what activities and standards are expected of them.
- (e) **Be publicly available and communicated internally and externally** to all personnel, business partners and other relevant parties. Human rights policies both set a standard of practice, and also expose businesses to outside scrutiny of the promises they have made. They must therefore be well communicated within a business, so that members of staff cannot claim ignorance, and openly available, enabling auditors and civil society alike to hold a company to account.
- (f) **Be reflected in operational policies and procedures** necessary to embed it throughout the business enterprise. A policy cannot be a stand-alone document, but rather should be the base point for ensuring that all relevant areas of a business enterprise adopt measures to put the policy into practice.

20 Oil in Uganda, *Heritage Oil malpractice reveals waste management flaws*, 18 May 2012, (www.oilinuganda.org/features/environment/heritage-oil-malpractice-reveals-waste-management-flaws.html).

21 Oil in Uganda, *Nwoya man cursed by oil*, 8 December 2013, (www.oilinuganda.org/features/environment/nwoya-man-cursed-by-oil.html).

22 Acholi Times, *Total agrees to remove waste dumped in Tetangi in Purongo subcounty Nwoya district*, accessed February 2015, (www.acholitimes.com/index.php/acholi-news/2699-total-agrees-to-remove-waste-dumped-in-tetangi-in-purongo-subcounty-nwoya-district).

Embedding human rights into the entirety of a business policy should be an on-going process of moving towards a higher standard, as lessons are learnt, new norms emerge, and fresh opportunities come to light. The UNGPs recommend certain measures, such as setting financial or other performance incentives for personnel, ethical procurement practices, and lobbying activities where human rights are at stake, for companies to actively pursue the goal of complete respect for human rights.

Policy Commitment Case Study: Total

In terms of declaring commitment to human rights principles and assuring stakeholders of its recognition of a responsibility to respect human rights, Total is a leading player. A public position and a track record are two distinctly different matters. However, looking at the former in isolation, Total has covered its policy commitment to human rights extensively.

Total's Global website has a "Society and Environment" Section, within which the environment, industrial safety, health, development, employees, ethics and values and CSR are covered. Within the Ethics and Values division, human rights are an individual area of focus.

"Respect for human rights is one of our fundamental commitments. Aware of our responsibilities and our economic impact, we strive to set the example in this area."²³

Total states that its approach to human rights is based on the following:

1. The expression of our values and principles in various **codes, charters and guides**. These include:
 - (b) A code of conduct
 - (c) An internal human rights guide
2. **Forums for discussion** within Total, such as the Human Rights Coordination Committee, which meets once every quarter, and brings together representatives from the corporate and business departments that are most likely to be affected by human rights issues, such as Legal Affairs, Human Resources, Public Affairs, Security, Purchasing, and Sustainable Development. During these meetings, the Committee mainly discusses:
 - (a) The work of the United Nations and other international organisations
 - (b) The application of tools for measuring human rights impacts
 - (c) Civil society projects
 - (d) The introduction of specific internal policies and procedures
3. **Employee training and awareness initiatives**, for example an ethics intranet.
4. Participating in various **international forums for discussion**. These include:
 - (a) Global Compact and Global Compact Lead
 - (b) Consultations, meetings and working groups organised by the former United Nations' Special Representative for Business and Human Rights and commitment to the Guiding Principles
 - (c) The Global Business Initiative on Human Rights (GBI)
 - (d) Various IPIECA working groups, particularly the Social Responsibility Working Group and the Human Rights Task Force
 - (e) Applying the Voluntary Principles on Security and Human Rights

23 *Op.cit.* Total, 2015 (n.4).

Policy Commitment Case Study: CNOOC

CNOOC state that it commits to “Respecting the rights and interests of stakeholders and pursuing win-win situations,”²⁴ in its Social Responsibility Reports.²⁵ Within the past two years, CNOOC’s public (i.e. online) commitment to social and environmental issues has improved.

CNOOC’s employment policy, for example, states:

“In China, CNOOC Limited acts in strict compliance with the Labor Law of the People’s Republic of China and Law of the People’s Republic of China on Employment Contracts, and safeguards all employees’ rights and interests. In overseas, the Company strictly abides by the relevant laws and regulations, conscientiously implements related international conventions sanctioned by the Chinese government and respects the rights and interests of all employees.”²⁶

CNOOC also states that it adheres to the UN Global Compact and fulfils its responsibilities in the areas of human rights, labour rights, environmental protection and anti-corruption.²⁷

However, despite these public commitments, CNOOC’s standards fall short of those advocated for in the Guiding Principles. The RAFI Reporting framework developed by SHIFT and Mazars, to help companies report against the UNGPs explains,

“The commitment may take the form of a single, stand-alone public policy regarding respect for human rights, or be included in a broader document, such as a code of ethics or business principles.”²⁸

Therefore it is permissible for CNOOC to not have a human rights policy, albeit against the grain of best practice. However it should still publicly express a more comprehensive and detailed approach to human rights than it does at present, with more of a focus on how it intends to respect rights within its sphere of influence, rather than a focus on philanthropy.



A quiet afternoon on the Lake Albert shores in Hoima District. Villagers had high hopes for how oil would bring them prosperity. Yet, for now, little of the promised investments have been delivered. (Oil in Uganda, 2012)

24 CNOOC, Social Responsibility Report 2012- 2013, (www.cnooc.com/upload/Attach/mrfj/2014/04/2397458303.pdf).

25 *Ibid.*

26 *Ibid.* p.30

27 *Ibid.* p.43

28 UN Guiding Principles Reporting Framework, A1: Policy Commitment, accessed April 2015, (www.ungpreporting.org/reporting-framework/governance-of-respect-for-human-rights/policy-commitment/#sthash.kLFVXzIY.dpuf).

Digging Deeper: Action for transparency

The Extractive Industries Transparency Initiative (EITI) is a coalition initiative of governments, companies, civil society groups, investors and international organisations that aims to ensure openness on financial transactions in the extractive industry. Countries implement the EITI Standard to ensure full disclosure of taxes and other payments made by producing oil, gas and mining companies. These payments are disclosed in an annual EITI Report. This report allows citizens to see for themselves how much their government is receiving from their country's natural resources.

Many companies have welcomed the opportunity to take part in such movements towards increased transparency in the extractives sector. Transparency of revenues, in particular, allows companies to prove they have contributed specific amounts in taxes, in order to benefit the population of host countries. This guards against accusations that companies are taking without giving back. This accusation is particularly common when revenues go missing from national budgets due to graft and corruption, leaving citizens with little benefit from oil exploitation. As companies are increasingly forced by national law to disengage from bribery and other corrupt practices,²⁹ businesses often feel it is in their interest to publish the revenues they pay the government.

Another important stage of transparency in the extractive sector is the publication of contracts, particularly those between companies and the State. Contracts express how money is split between business and government, how operations are run, and how these relate to local economic development, the environment, human rights and so on.

States often profess that they keep contracts opaque for reasons of financial security and to protect the commercial interests of businesses; most frequently, they cite that the contract forbids its own publication. Businesses, in turn, may make arguments about commercial sensitivity. However the pioneering book "Oil Contracts – how to read and understand them"³⁰ by Open Oil has firmly argued that there is no reason why oil contracts, with their profound and important impacts on citizens lives, should not be published. Firstly, they highlight how very few contracts forbid their own publication, but rather forbid the publication of specific data linked to operations. Secondly, the book cites a number of contracts that have been made transparent, with no dramatic consequences. Moreover, industry databases that competitors can easily access made contracts public within the industry, therefore commercial sensitivity cannot be reasonably argued.

Businesses therefore take a profound step towards respect for human rights if they promote financial and contract transparency. Fortunately, both Total and Tullow have publicly stated that they are willing for the contracts to be published if the other companies and the Government also agree; moreover, all three companies currently operating in Uganda have told Global Witness that they are in favour of this development.³¹

Regarding financial transparency, both Tullow and Total are members of the EITI. All three companies are required to publish the payments that they make to the Government due to new EU and US legislation.³² However Tullow Oil is the only company that is voluntarily disclosing disaggregated payments to the Ugandan Government.³³ Tullow is seeking to take a leadership position on transparency:

29 The 2010 UK Bribery Act, for example, renders it a criminal offence, prosecutable in the UK, for UK business personal to be involved in bribery anywhere in the world.

30 Open Oil, *Understanding Oil Contracts*, 2012 (available at: <http://openoil.net/understanding-oil-contracts/>).

31 Global Witness, *A Good Deal Better?*, 24 September 2014 (www.globalwitness.org/ugandaoilcontracts/files/Report_A_good_deal_better_low_res.pdf), p. 17.

32 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, *OJ L 330*, 15.11.2014, pp. 1–9; and *op. cit.* *US Dodd-Frank Act* (n. 2).

33 *Op. cit.* Global Witness (n. 31), p.7.

“Transparency of payments to governments is an important first step, but it is just the first step. Linking oil wealth management to national development plans is the real opportunity. Tullow clearly doesn’t have the democratic mandate to influence this, but what we can do is work in partnership with others to ensure that the debate on how best to use oil revenues in the national interest is well informed.”³⁴

It should be noted that Uganda is not yet a member of EITI although it has repeatedly promised to join the standard. Civil society organisations have been campaigning for the country to join EITI and petitioned the President. Notably, with the new EU and US legislation it will be possible to track details of financial transactions between companies operating from those jurisdictions and the Uganda government. An issue of concern may be the rise of new oil companies that will be acquiring licenses in the Albertine Region following a competitive licensing round. The most recent list contains several African companies that may not be listed outside Africa and may therefore successfully conceal their financial information.

Human Rights Due Diligence Part I, II & III: Assessing actual and potential human rights impacts; integrating findings and acting to prevent or mitigate impacts; tracking how effectively impacts are addressed

Operational Principles 17 – 21 outline how companies can undertake human rights due diligence, which is put forth as an ongoing process to identify, prevent, mitigate and account for how a company addresses its impacts on human rights. The UNGPs state that,

“The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed.”³⁵

Put more simply, due diligence enables companies to

“become aware of, prevent and address adverse human rights impacts linked to their activities”³⁶

In the context of Uganda’s oil industry, the process should start with the identification of the actual and potential human rights risks of the oil companies’ activity, and should be specific to the context of the people affected by Ugandan operations, especially noting vulnerable groups. The exact people who are or could be affected should be identified, the specific issues and standards at play should be known and catalogued, and the projections of how future activity may have an adverse impact should be made.

The process should be ongoing: as the UNGPs point out, human rights situations are dynamic, and *“risks may change over time as the business enterprise’s operations and operating context evolve.”³⁷* Companies should therefore undertake assessments at regular intervals and prior to changes such as new activities or alterations in the environment.

The Guiding Principles point out the benefit of human rights due diligence for companies: *“Conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse.”³⁸* Increasingly, it is recognised that human rights risks converge with, or are at least closely connected to, business risks. Companies have both an incentive and a duty to carry out human rights due diligence.

34 Tullow Oil, *CSR report 2013: Creating Shared Prosperity in Partnership*, (www.tulloil.com/Media/docs/default-source/5-sustainability/2013-tullow-cr-report.pdf?sfvrsn=4) p.12.

35 *Op. cit.* United Nations, 2011 (n.1), Principle 17.

36 *Op. cit.* IPIECA, 2013 (n. 18), p. 3.

37 United Nations, 2011 (n.1), Principle 17c.

38 United Nations, 2011 (n.1), p. 19. However the Guiding Principles also note, *“However, business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses”.*

Despite perhaps sounding daunting, the human rights due diligence process need not necessitate the creation of whole new departments and can be streamlined into other, broader risk management systems.³⁹



About half of the projected oil reserves in the Albertine Graben region are situated within Uganda's oldest and largest conservation area, Murchison Falls National Park, with bleak prospects for its rich wildlife (Daryona under Creative Commons License, 2010, please see: <http://creativecommons.org/licenses/by-nc-nd/2.0/legalcode>)

The Human Rights Impact Assessment

In order to translate policy commitment into practice, companies need to identify and assess any negative impact with which they may be involved, both actual and potential. This can be from a company's direct actions, or via business relationships and chains.

Many different methodologies have been adopted in recent years to offer companies guidance in conducting human rights impact assessments. The essence of these impact assessments is their ability to help companies identify risks, and ultimately prevent or mitigate adverse human rights impacts. An HRIA should meet certain standards that go beyond strict legal compliance. Shift explains these as follows:⁴⁰

- An assessment should be broad in its scope;
- It should identify where national law provides lower protection than internationally recognised human rights;
- An assessment should identify pre-existing, endemic human rights challenges within society, for example severe gender discrimination;
- Less obvious stakeholder groups should be considered, for example vulnerable or marginalised communities;
- The HRIA process should be ongoing, rather than a stand-alone process at the start of operations;

A human rights impact assessment (HRIA) differs from environmental and/or social impact assessments, as it takes into account **all internationally recognised human rights** as opposed to environmental standards or social concerns. Yet, both do not have to be stand-alone processes.

39 IPIECA, for example, has published a practical guide to due diligence implementation for oil and gas companies: *Human rights due diligence process: a practical guide to implementation for oil and gas companies*, November 2012 (<http://www.ipieca.org/publication/human-rights-due-diligence-process-practical-guide-implementation-oil-and-gas-companies>).

40 Shift, *Assessing Human Rights Impacts*, accessed March 2015 (<http://www.shiftproject.org/sites/default/files/OG/ECHRSG. OG.8.pdf>), pp. 27-28.

Methodologies for such impact assessments overlap and inform one another, and, as such, social, environmental and human rights impact assessments can appropriately be combined. IPIECA has released a practical guide for the oil and gas industry on “Integrating human rights into environmental, social and health impact assessments” (ESHIA).⁴¹ In the guide, IPIECA explains that,

“ESHIA are already well established in the oil and gas industry. Therefore, integrating human rights into ESHIA presents an opportunity for sector companies to assess and address human rights impacts by building on existing systems. For example, some of the parallels and overlaps between ESHIA and the assessment of human rights include the following:

1. Issue areas typically considered in ESHIA are similar to those that are key to human rights, for example resettlement, community health and livelihoods.
2. *Core human rights principles—participation, accountability and transparency, non-discrimination, empowerment and linkage to the international human rights framework—align in spirit with the social impact assessment (SIA) principles of the SIA community.*
3. *There are significant parallels between the ESHIA and human rights-based approaches, in terms of processes relating to data collection and target stakeholder groups. For this reason, integrating human rights into ESHIA can be an efficient way of avoiding or reducing stakeholder engagement fatigue.”⁴²*

HRIAs can therefore be stand-alone – “dedicated” – or “integrated” into other impact assessment processes. The above IPIECA study outlines the pros and cons of both approaches.

How to: Human Rights Impact Assessment Methodologies

A number of methodologies currently exist to guide businesses through the process of conducting an HRIA. Non-profit, academic, business and political institutions alike have proposed frameworks. Some of these are sector-specific, whereas others have broad application. The following is a list of some of the most broadly used methodologies.

- Conducting an Effective Human Rights Impact Assessment, Business for Social Responsibility, March 2013
- Guide to Human Rights Impact Assessment and Management (HRIAM), The International Business Leaders Forum (IBLF) and the International Finance Corporation (IFC), in association with the UN Global Compact, September 2011
- Human Rights Compliance Assessment (HRCA) Quick Check, The Danish Institute for Human Rights, Human Rights & Business Project, June 2006
- Human Rights Impact Assessment: Human Rights and Business Initiative, A toolkit for practitioners conducting corporate HRIAs, Nomo Gaia, 2012
- Guide to social impact assessment in the oil and gas industry, 2004, and Integrating human rights into environmental, social and health impact assessments. A practical guide for the oil and gas industry, 2013, both IPIECA.

Stakeholder Consultation and Engagement

A number of sources should be consulted regarding what actual and potential human rights are relevant to an HRIA. For example, [Paper One](#) of this series outlines a number of the human rights Uganda’s oil industry may impact upon, and the above-mentioned IPIECA report offers a more general and comprehensive overview. However one of the most important components of the HRIA is stakeholder consultation. Stakeholders are the people, groups, and organisations potentially affected by and/or with an interest in, or influence on, a project.

41 *Op. cit.* IPIECA, 2013 (n. 17).

42 *Ibid.* p. 4.

In 2013, IPIS researcher Anna Bulzomi investigated the stakeholder engagement process of the China National Petroleum Corporation (CNPC) at its Rônier Project in Chad. The investigation looked at **strategic stakeholder engagement (SSE)** as “an ongoing, inclusive and culturally appropriate process of sharing information about the project, seeking to understand concerns of stakeholders, build trust with ‘the others’ (i.e. non-corporate stakeholders) and ensure that their views are properly taken into account throughout the decision-making process.”⁴³

IPIS laid out the successful elements of a strategic stakeholder engagement process as follows:

1. **Timely:** stakeholders should be engaged before decisions are taken, in order to allow sufficient time for meaningful dialogue, consultation and modification to the project’s roadmap.
2. **Transparent:** the company should provide stakeholders with meaningful information on relevant aspects of project activities.
3. **Inclusive:** the widest range of views should be represented; women, minorities, customary authorities, indigenous populations and other vulnerable groups should be encouraged to join the conversation and should be free to voice their concerns.
4. **Two-way:** SSE essentially means opening up to exchanging information and views. A company should be responsive to stakeholders’ needs and reach out internally to make sure that engagement does not become an exercise of pure listening/information gathering. Doing so requires a shift in the corporate mind-set: stakeholders’ issues should no longer be treated as outside concerns, but rather as business intelligence that can inform the company’s decisions. To achieve this goal and properly integrate stakeholders’ feedback into project/program design, companies should invest in ‘translation’ across the many different ‘languages’ spoken in the context of business & SSE.
5. **Appropriate:** all exchanges should happen in a language that is understandable and tailored to the target stakeholder group. An appropriate dialogue should also be culturally sensitive.
6. **Free:** SSE should be free of all manipulation or coercion.

Some of the pitfalls of CNPC’s stakeholder engagement included:

- Lacking a sound stakeholder prioritisation strategy. When CNPC listed stakeholders, it lumped together a very list, ranging from authorities within the central government to NGOs and research institutes to local traditional authorities.
- Not referring to historical stakeholder information. Some stakeholders were engaging with such a process for the first time, whilst others were experiencing consultation fatigue.
- Not making key documents public. IPIS found that some information that was particularly likely to be opposed had not been appropriately or clearly disseminated.
- Feedback loops were left unclosed. Once information had been offered by stakeholders, they were left unaware as to whether it had been integrated into new plans, or simply ignored.

Oil companies can learn a great deal about how to conduct an effective HRIA from one another, via industry associations such as IPIECA, or through learning tools such as IPIS’s above assessment of parallel initiatives.

Digging Deeper: Food Security

Enanga, a Great Lakes trans-boundary observatory, presents the voices of many Ugandans affected by oil extraction and the oil refinery. In footage from June 2014, residents from Nyahaira village described the impact of the refinery and their impending displacement on their food security.⁴⁴

“If you move deep, deep, deep you find that places, homes have been deserted. But this was because of the news that land has been taken and an oil refinery is going to be built here...”

43 Bulzomi A, *Practice What You Preach: Theory and Practice of China National Petroleum Corporation (CNPC)’s Stakeholder Engagement Plan in Chad*, IPIS Research, December 2013, (ipisresearch.be/wp-content/uploads/2013/12/20131231_E_OIL_Chad.pdf) pp. 14-15.

44 Engaga: African Great Lakes Transboundary Observatory, *Video: Uganda’s Road to Oil*, 17 June 2014, (enanga.org/testimonies/ugandas-road-to-oil-2/).

"Last year in June 2012 we had here the exercises of valuation, survey, baseline studies for the Ministry of Energy and Mineral Development. It is from that exercise that people were really stopped from carrying out any constructions and growing of perennial crops."

One community member described the impact of this uncertainty about the future and his resultant reluctance to invest in long-term crops,

"I'm facing a problem of hunger here, because I'm no longer planting perennial crops, the crops that can last for a long time. We're just planting crops that can last for three months, two months, like groundnut and maize only. I did not inter-crop because they told me not to plant perennial crops. Before I used to plant groundnut with cassava and some maize. My children, they are in danger. Some days you could sleep without eating, some of them are not going to school these days. I don't know where to get money."

Even when people who depend on their crops are compensated fairly and adequately relocated, they have expressed concern that new conditions cannot compare to their old ones in terms of the quality of land, or the fact that they will have to start growing crops from new.

"A coffee plant fetches 2500UGS [at the market] that is a lot of money... It has taken a number of years for [this coffee plant] to grow like this. So again to grow this coffee it will take me time... For this sisal to really grow from seedlings it has taken ten years for it to be ready for making ropes.... This is my jackfruit [it would serve me] for the next 20 years...."

"Will I get the same land like this, that is fertile like this? Because I don't know; they haven't told me where they are going to give me the land. I don't know if it will favour all of these crops that I have. That is a worry already"

Integrating and Acting

Once human rights impact assessments have been completed, businesses should integrate findings into their internal operations, through both acting to prevent and mitigate identified impacts, and dedicating process and budget to enabling effective responses.⁴⁵

The Guiding Principles explain that,

"Effective integration requires that:

1. Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
2. Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.

Appropriate action will vary according to:

1. Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;
2. *The extent of its leverage in addressing the adverse impact.*⁴⁶

Integration ensures that the HRIA process is not simply lip service or a stand-alone exercise. Businesses should take necessary steps to prevent adverse impacts they may cause or contribute to as identified in the HRIA. Remaining adverse impacts should be mitigated to the greatest extent possible.⁴⁷ Companies will not only have to engage with their own processes, but also with suppliers and others with whom they have business relationships.

45 *Op. cit.* SHIFT, (n.16), p.42.

46 *Op. cit.* United Nations, 2011 (n.1), Principle 19

47 OHCHR, *The Corporate Responsibility to Respect Human Rights: an Interpretative Guide*, 2012, p. 48.

The EU's Oil and Gas Sector Guide to implementing the UNGPs describes, among other things, this process for integrating and acting.⁴⁸ The Guide is an excellent source for addressing the different steps this involves. Firstly, a systematic approach must address the company's procedures and systems for integrating the respect for human rights throughout its operations, and where priorities lie.

For this purpose, secondly, the Guide offers a methodology for understanding and mapping severity of human rights impacts. This includes:

- **“Scale:** *How grave the impact is - for instance impacts on the right to life or to the health and safety of individual workers;*
- **Scope:** *How many people are or will be affected - for example impacts on the livelihoods of entire communities, or the freedom of association of an entire workforce;*
- **Irremediable nature:** *Whether it will be difficult or impossible to restore the people impacted to a situation that is equivalent to their situation before the impact - for example where religious and cultural heritage of indigenous peoples has been destroyed.”⁴⁹*

The more severe the impact, the more people involved, and the more irremediable the harm that is being done, the more a company should prioritise action and speed up its response.

Thirdly, regarding mitigation and prevention, the Guide distinguishes – in line with the UN Guiding Principles – three different scenarios.⁵⁰ Where the company *causes* or is at risk of causing harm, it should take the necessary steps to cease or prevent the impact. Where the company *contributes* or may contribute to an impact, it should first take steps to cease or avoid its contribution. Moreover, it should use its leverage over possible other contributors to mitigate any remaining risk or impact to the greatest extent possible. Where a negative impact is *directly linked* to a company's operations, products or services by a business relationship with another entity, even without the company itself contributing to the harm, it should use whatever leverage it has to mitigate the risk that the impact occurs. If it has no leverage it should explore ways to increase it. Depending on the severity of the abuse, and the importance of the relationship to its enterprise, it should consider ending the relation, while considering any harm that may result from doing so.

Digging Deeper: How should companies apply “leverage” over a risk of adverse human rights impact linked to their operations and caused by a party with which they have a business relationship

IPIECA explains that “leverage is considered to exist when/where a company has the ability to effect change in the practices of another entity that causes harm. It may be the case that a company has not contributed directly to an adverse human rights situation. However, it may be possible to link that company (and its activities, operations, products or services) to this adverse situation through its business relationships with other entities.”

According to the UNGPs, the factors that enter into the determination of an appropriate action in such situations include:

- i) the enterprise's leverage over the entity/entities concerned;
- ii) how crucial the relationship is to the enterprise;
- iii) the severity of the situation; and
- iv) whether terminating the relationship with the entity itself would have adverse human rights consequences.⁵¹

48 European Commission, *Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights*, 2011, (http://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/oil_and_gas.pdf).

49 Ibid. p. 33.

50 Ibid. p.44.

51 *Op. cit.* United Nations, 2011 (n.1), pp. 22-23.

Two examples illustrate the issue of leverage concretely.

An example of where leverage was arguably high, was an incident in 2013, reported in the *Observer*, regarding **two companies contracted by Total in Uganda**, namely Epsilon and Pearl Engineering Company. According to Okumu Oryem, the Nwoya district chairman, these companies dumped oil waste on people's land with neither the consent of the National Environment Management Authority (NEMA) nor the landowners.⁵² Ahlem Friga-Noy, Total's Corporate Affairs manager, responded to the *Observer's* report at the time. This was reproduced as follows:⁵³

"Ahlem told The Observer that the Total contractor Pearl Engineering dumped an equivalent of five wheel burrows of murrum and not oil waste on someone's land without consent. 'The material that was dumped was not waste but recycled murrum used for construction of our pads, and is, therefore, not toxic,' Ahlem said in an e-mail response. Total, she stressed, has taken corrective measures and the contractor's driver responsible for the incident was dismissed. 'Although there is no suspicion of the murrum being hazardous, Pearl Engineering committed, at the request of the community, to send eight children and three mothers to hospital for a medical checkup in Kampala. Pearl also committed to examine the sample of the soil in order to reassure the community of the absence of toxicity of the material', said Ahlem. However, Okumu says results from the tests are yet to be released. Ahlem explains that in the Epsilon incident, a small quantity of drilling waste was accidentally poured onto the tarmac road while in the process of transportation to the waste consolidation site at Tangi. She stresses that Total has warned all its contractors on the need to ensure that standards are adhered to by its staff, contractors and sub-contractors. The company can't compromise on environmental standards, Ahlem says."

A second example involves McAlester Energy Resources Ltd, a Texas-based oil waste management firm that was thrust at the center of a nasty land wrangle in 2014 when it acquired land in Rwamutonga village, Hoima district, to set up an oil waste management facility. Disputes arose over the true ownership of the land, culminating in the forceful eviction of over 1,200 people by the supposed landlord. The company was fiercely criticised by civil society organisations, local leaders, members of parliament and most importantly the three big oil companies operating in Uganda over the manner in which the residents were evicted. The oil companies distanced themselves from the scandal, maintaining that they would not work with any service provider that violated rights of host communities in oil-producing areas. Consequently, the company was forced to shut down its Uganda operation and relocate to Kenya. "We have totally pulled out of the country. The reason is because our name has been tarnished and reverting our reputation will not be that easy," Leonard Durst, McAlester's Operations Manager told *Oil in Uganda*. Unfortunately, the evicted residents are still living in a temporary camp as they wait for Court to decide their fate.

The above cases exemplify the substantial leverage a powerful company may have in seeking to ensure that subcontractors or partners adhere to best practice and remedy where necessary. In such a case, a large oil company would easily be able to sever a relationship should a subcontractor not take a situation as seriously as they deem necessary. Applying leverage can be much more complex when a company seeks to influence another entity of similar or larger size/power.

52 Ssekika E, Nwoya, Buliisa residents live in fear of oil waste, *The Observer*, 20 February 2014, (www.observer.ug/index.php?option=com_content&view=article&id=30272:-nwoya-buliisa-residents-live-in-fear-of-oil-waste-&catid=57:feature&Itemid=69).

53 Ssekika E, Mixed feelings reign in newest oil frontier, *The Observer*, 11 July 2013 (www.observer.ug/features-sp-2084439083/57-feature/26349-mixed-feelings-reign-in-newest-oil-frontier).

Case Study: Emerging trend – Government Sub-Contractors in Uganda’s road sector

In December 2015, the World Bank cancelled a USD 265m road project amid allegations of sexual abuse of minors by employees working for its contractors. This followed a report released in April 2015 by campaigners from Joy for Children Uganda that revealed repeated cases of contractors sexually abusing children in the area of the road project.⁵⁴ At least nine school-age girls got pregnant. Elana Berger, who worked on the case for the Bank Information Center, a campaign group, reported that,

*“When the bank was first told about the allegations in December last year, staff on the ground in Uganda responded by convening a large community meeting and asking anyone who had been the victim of sexual abuse to raise their hands. When no one raised their hands in the meeting the World Bank staff used that as evidence that the allegations were false . . . That is obviously not how you handle something like that, especially when underage girls are involved”.*⁵⁵

The World Bank later withdrew support to several other road projects over similar allegations including USD 145 million for the Albertine Region Sustainable Development Project that affected the construction of the 100km Kyenjojo-Kabwoya road.

Road Contractors have been linked to human rights abuses in the past in Uganda’s oil region. However, unlike the oil company sub-contractors, they are somewhat independent, only answerable to the Uganda National Roads Authority and Ministry of Works and Transport. With the massive infrastructural developments planned in the oil region as Uganda prepares for oil production, human rights violations involving government contractors are a source of considerable concern.

Tracking Performance

In order for companies to create a clear picture of how effective their human rights actions are, they should track their responses in a systematic manner. OHCHR explains,

*“It is generally recognized that ‘what gets measured gets managed’. Tracking how an enterprise has responded to both potential and actual adverse human rights impact is essential if its personnel are to be able to account for its success in respecting human rights, whether internally to management or externally to shareholders and wider stakeholders.”*⁵⁶

The European Commission’s Guide expands on this by explaining how oil and gas companies might go about tracking human rights impacts by using existing systems, as there are for: health and safety; environmental management; ethics and compliance; reviews of security providers, including adherence to the Voluntary Principles on Security and Human Rights; internal control audits; self-assessments at the business unit level; and reviews by external third parties.⁵⁷

IPIECA, in its Due Diligence Guidance for the Oil and Gas industry, notes the following about tracking/review, and further explains how lessons learnt should be channelled into improvement:⁵⁸

54 Joy for Children Uganda, *The Impact Of The World Bank Funded Kamwenge – Kabarole Road Construction Project On Children*, 2015 (<http://www.bankinformationcenter.org/wp-content/uploads/2015/04/Kamwenge-Road-Final.pdf>).

55 S. Donnan, ‘World Bank cancels USD 265m Uganda road project’, *Financial Times* (<http://www.ft.com/intl/cms/s/0/cfc5faf2-a81a-11e5-9700-2b669a5aeb83.html#axzz41zZSnJvy>).

56 *Op. cit.* OHCHR, 2012, (n.43).

57 *Op. cit.* European Commission, 2011, (n.44).

58 *Op. cit.* IPIECA, 2012, (n.37), p.5.

“Review: A set of indicators for monitoring, tracking and evaluating the [human rights impact assessment and management] plan is built into the implementation process. The indicators inform the effectiveness of the process and support opportunities for continuous improvement. There is no one-size-fits-all approach to the review process; this will vary depending on the company’s existing processes and procedures such as: (i) internal process audits; (ii) internal self-assessments at the business unit level; and (iii) reviews by external third parties. Roles and responsibilities are assigned to the review process, which includes internal controls on the flow of information together with procedures to integrate the findings in order to improve the process.

“Improve: Once the review is completed and the findings properly analysed, any identified opportunities for improvement will serve as the basis for an internal engagement mechanism to enhance the existing process, procedures or programmes, such as internal or process review sessions. The aim of this activity is to improve the process and foster a culture of learning and innovation.”

Case Study: Human Rights Impact Assessment and Mitigation – Tullow

In 2012, Nomo Gaia, an organisation internationally recognised for pioneering human rights impact assessments, conducted an independent human rights risk assessment of Tullow’s operations in Uganda’s Albertine Graben region.⁵⁹ The covered risks included:

- Land management and resettlement,
- Corruption,
- Increasing militarisation of the zone, and
- Non-discrimination.

The assessment was published in 2014, and in the intervening years, Tullow had the opportunity to implement the recommendations and produce documentation for Nomo Gaia, to demonstrate its proactive steps to mitigate the identified human rights risks. Notably, within that time period, Tullow farmed down two thirds of its operations to Total and CNOOC, changing the span of responsibility. Nonetheless, Tullow seemed to take responsibility for its impacts in the meantime, and put in place measures to address these. Although Nomo Gaia was unable to validate all of Tullow’s updates, due to its own internal constraints, it noted that Tullow had implemented a number of mitigation measures. The following covers its mitigation approach to addressing land rights issues (Tullow also implemented mitigation measures to address corruption, militarisation, and non-discrimination):⁶⁰

- Rectifying land-rights compensation issues, hiring a land valuer and aiming to compensate at the highest possible rates. This resulted in an announced payout of USD 3.5 million in compensation to affected farmers.
- Involving Community Liaison Officers (CLOs) in all land access processes (since 2012).
- Developing a grievance mechanism that is focussed on and limited to compensation issues (formalised in July 2012). It comprehensively covers the various complexities in Runyuro land tenure that could give rise to complaints, makes note of the linguistic (though not literacy) needs of affected persons, and commits to produce complaint cards in three local languages (initial versions were drafted in English, which is not locally spoken).
- Establishing a Land Access and Resettlement (LAR) Steering Committee in association with partner companies Total and CNOOC. In late 2014 this Committee was developing Resettlement Action Plans (RAPs) and land tenure studies under IFC guidance.

Nomo Gaia has said it is its intention to continue collaborating with Tullow and its partners in the future to conduct follow-up fieldwork and validate the findings in its 2014 report.

59 Salcito K, Wielga M, and Kanis B, ‘Tullow Oil plc. Human Rights Risk Assessment’, *Nomo Gaia*, March 2012, (nomogaia.org/wp-content/uploads/2014/12/Tullow-Uganda-HRRA-Drafted-2012-Published-2014.pdf).

60 Nomo Gaia, *Human Rights Risk Assessment Update: Tullow Oil Plc. Uganda*, 2014, (nomogaia.org/wp-content/uploads/2014/12/HRRA-Update-2014-Literature-and-Policy-Review.pdf).

Case Study: Human Rights Impact Assessment, Integration and Tracking – British Petroleum in Indonesia

British Petroleum (BP) is a multinational energy company, operating in 80 countries, and producing 3.2 million barrels of oil per day.⁶¹

IPIECA reports that BP generally uses integrated impact assessments.⁶² However in certain circumstances, dedicated impact assessments are deemed necessary. One such example has been their Human Rights Impact Assessment for the commencement in 2003 of the Tangguh LNG Project, a natural gas development project located in the Berau-Bintuni Bay region of Papua Province, Indonesia.

BP commissioned a human rights impact assessment to identify human rights risks and impacts, and to develop appropriate responses. The resulting recommendations, along with BP's response to them, were publicly shared with actors including NGOs and socially responsible investors in Europe and the US.

Case Study: Impact Assessment and Tracking – Total

In 2011, Total E&P Uganda (TEPU) engaged with the Corporate Engagement Project (CEP programme) of CDA Collaborative Learning Projects (a US-based non-profit organisation) to review how the presence of TEPU and the oil industry as a whole was impacting upon and perceived by the Ugandan state and locally affected communities. This engagement was part of a long partnership with CDA which has also spanned Myanmar (2002-2011), Sudan (2005), Mauritania (2006), Bolivia (2013) and Nigeria (2013).⁶³

The CDA's Uganda visit was its first in the country for Total, enabling Total to understand its impact at an early stage. However in other countries where Total has been present for longer, for example Nigeria, CDA has been able to conduct research at separate, distinct stages, in order to track impact. In CDA's 2013 visit to Nigeria, they focussed on assessing the success and challenges of TEPNG (Total E&P Nigeria) in its relationship with its stakeholders and communities, including:⁶⁴

1. Assessing the nature and quality of TEPNG's engagement with its local stakeholders, and
2. Evaluating the opportunities for integrating local communities within the supply chain of the company.

A previous CDA report from a visit to Nigeria conducted in 2004 was used as a baseline to identify the changes that occurred in the relationship between TEPNG and the communities.

CDA's findings in Nigeria contained a number of useful lessons for Total to track its impact and feed back into its human rights and social policies as a whole. Below is a good example of an insightful and very constructive lesson learnt from CDA's research. The extract refers to TEPNG's community engagement and open door policy:

61 BP, *BP at a Glance*, accessed April 2015 (www.bp.com/en/global/corporate/about-bp/bp-at-a-glance.html)

62 *Op. cit.*, IPIECA, 2013, (n.17), p.31.

63 Total, *Assessments by External Organisations*, accessed April 2015, (www.total.com/en/society-environment/ethics-and-values/our-process/assessments-external-organizations#sthash.Yr09x2dc.dpuf).

64 CDA, *Field Visit Report Total E&P Nigeria (TEPNG)*, December 2013, ([www.cdacollaborative.org/publications/corporate-engagement/cep-case-studies/field-visit-report-total-ep-nigeria-\(tepng\)/](http://www.cdacollaborative.org/publications/corporate-engagement/cep-case-studies/field-visit-report-total-ep-nigeria-(tepng)/)).

“Community members also complain of a lack of communication and engagement on the part of TEPNG. While TEPNG holds visitors days twice a week, it is common that the majority of visitors come, often repeatedly, to seek purchase orders and contracts. Community liaison officers spend time in the community, but many feel that their presence does not translate into broad engagement among all community members or greater understanding on the part of communities of what takes place between TEPNG and community leadership. An elderly lady in the community said she had no knowledge of TEPNG’s operational or community development activities – despite the fact that the conversation took place just a few meters from the construction of a TEPNG-supported project to install culverts along the main road through the village. She was, however, very well-informed about the impetus and actions of many youth during the last community unrest many years before. She said that unrest was driven by the need to be obstructionist and threatening in order to get the company’s attention.”⁶⁵

This method of tracking impact, although not specifically geared to human-rights focussed policies and decisions, is an example of best practice: an external party was given unlimited and relatively thorough access to a broad range of stakeholders, moreover findings were made public.

Human Rights Due Diligence Part IV: Communicating how impacts are addressed

It is important that businesses are held accountable for how they address human rights impacts. In order to do so, businesses should be prepared to externally communicate how they have met the above-described steps.

Businesses have a number of groups to which they should communicate regarding their human rights due diligence results, depending on their size and context: the public at large, shareholders, stakeholders, and, in particular, affected communities. For each of these groups different means of communication will be appropriate. Shareholders, for example, have a right to financial information in the language of the stock exchange on which shares are traded. This may be through a dedicated human rights report, through a general CSR or ethics report (including elements of governance, environment, society, etc.) or within their annual report. Affected communities, for their part, should receive detailed information on actions and impacts in their community, in their own language, and in an appropriate, easily accessible format.

For most multinationals, an all-encompassing report, publicly facing human rights, sustainability, or corporate responsibility issues is now considered best practice. In order to create a common standard for this, Shift and Mazars have developed “RAFI” (Human Rights Reporting and Assurance Frameworks Initiative) – a framework for businesses to report against the UNGPs. RAFI sets out questions to which a company should be able to produce answers, thereby “knowing and showing” that it is meeting its responsibility to respect human rights in practice.⁶⁶ The framework (and therefore all the information that companies should report on) is as follows:

- (a) The company’s commitment to and governance of human rights risk management;
- (b) A filter point for the reporting company to narrow the range of human rights issues on which it will focus to those that are salient within its activities and business relationships.
- (c) Six overarching questions, each with one or more supporting questions, which focus on the effective management of each of the salient human rights issues on which the company is reporting.

A number of companies were elected to be “early adopters” of the RAFI reporting framework, however none were oil companies. It is likely a matter of time before more companies start to report in line with the RAFI framework, and at least some of these can be expected to operate in or alongside the oil sector. The benefit of encouraging companies to report against RAFI is that it incentivises a rigorous, risk-based approach to human rights management. Moreover companies are pushed to report more comprehensively rather than pick and choose what information is most convenient for them to convey.

⁶⁵ *Ibid.* p.14.

⁶⁶ UN Guiding Principles Reporting Framework, *About Us*, accessed 12 March 2015, (www.ungpreporting.org/about-us/).

This is not to say, however, that the RAFI framework is the only way for companies to report. Many companies still use the Global Reporting Initiative's framework. CNOOC, Total, and Tullow all, at least to some extent, cite GRI Guidelines.⁶⁷

Case Study: Communication – British Petroleum

BP has established a practice in sensitive operating countries of setting up independent advisory panels to provide external guidance and advice on the company's social performance and impact. Covered countries include Indonesia and Azerbaijan.⁶⁸

Not only do these panels have independent oversight of BP's social and human rights impact management, they are also empowered to publicly report regularly and independently on their findings. BP is then able to provide a public response.

This is an innovative and effective method of holding an oil company's performance to account and promoting transparency. The panel is able to provide an unfiltered review, and in turn, BP can publicly explain how it will address the panel's concerns.

Case Study: Communication – Kuoni

Kuoni is a travel and tour operator providing luxury holidays. It took the step in 2012 of going further than publicly committing to the UNGPs, to pilot a human rights impact assessment methodology in Kenya, which it published. It has since also published an HRIA on India. For both countries Kuoni adopted a public Action Plan on how it will prevent and mitigate negative impacts.⁶⁹

Kuoni's public HRIA includes a description of its methodology for assessing which risks to look into within the HRIA, describes how it assessed impact, details its sphere of influence, and reviews each risk in turn. Kuoni's decision to continually report on its Human Rights Action Plan demonstrates its commitment to ensure that HRIAs are not a one-off exercise, but an ongoing process of understanding impact. For example, in March 2015, it published a one-page summary entitled "Status Human Rights Action Plan India 2014-15" wherein each action it had committed to was colour coded according to whether it was green - on track/implemented, orange - generally on track, with minor issues, or red - off track.

Notably, one of the actions Kuoni committed to was to disseminate the HRIA India report broadly and share the opportunities and challenges with all employees. This is in accordance with the UNGP's assertion that "*Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders.*"⁷⁰

67 *Op. cit.* CNOOC, 2013, (n. 23); Tullow Oil, *Our Reporting*, accessed 15 March 2015 (<http://www.tulloil.com/sustainability/our-reporting>); Total, *Total et les standards internationaux de reporting*, accessed 15 March 2015 (<http://analystes-csr.total.com/>).

68 BP, Azerbaijan Social Review Commission, *2010 Report and Business Response*, (www.bp.com/genericarticle.do?categoryId=9006625&contentId=7037156); BP, *Indonesia: external monitoring* (www.bp.com/sectiongenericarticle.do?categoryId=9004751&contentId=7008791). Both accessed 10 March 2015.

69 The Kuoni Group, *Human Rights Due Diligence*, accessed February 2015, (www.kuoni.com/corp-responsibility/human-and-labour-rights/due-diligence).

70 *Op. cit.* United Nations, 2011 (n.1) p. 24..

Digging Deeper: Private Security Companies

Oil and gas operations are expensive, with high-level equipment and infrastructure to protect. As a result, companies depend on security personnel to protect their property and staff. This may be in the form of local police or the national forces, but usually involves hiring private security companies, who provide staff, often armed, to act as guardians of a company's security.

Private military and security companies (PMSCs) have been linked to many high profile human rights abuses. The Business and Human Rights Resource Centre (BHRRC) even offers a bi-annual PMSC Bulletin: "Private military & security companies and their impacts on human rights: Recent developments."⁷¹ A particular concern stems from the fact that PMSCs may not be subject to the same laws, rules and training as military personnel. Some have accused PMSCs of being a law unto themselves.⁷²

As a result, a number of initiatives have been developed to hold PMSCs to high standards of respect for human rights. The International Code of Conduct for Private Security Services Providers is amongst the most significant of these. The Code was drafted in Montreux, Switzerland, in February 2013 and aims to both clarify international standards for the private security industry operating in complex environments, as well as to improve oversight and accountability of these companies. It has been signed by over 700 companies from 70 countries to date.⁷³

Also noteworthy in this context are the Voluntary Principles on Security and Human Rights. These are a set of principles designed to guide companies in maintaining the safety and security of their operations within an operating framework that encourages respect for human rights.⁷⁴

Companies such as G4S have an established presence in Uganda. In November 2014, G4S held an "Oil & Gas specific security training programme" in Uganda, designed to "educate, train and develop both security supervisors and officers, providing them with specific knowledge on conditions unique to African oil and gas operations."⁷⁵

African Business Magazine reports that,

"G4S, the largest of all private security firms and the world's second biggest employer of any kind, is looking to expand into Africa. It employs approximately 600,000 people worldwide, a sixth of them in Africa, sourced from 29 countries, making it Africa's largest private sector employer. Currently, G4S secures embassies and provides protection for banks, telecoms, transport and also provides expertise in clearing mine fields.

However, the rapidly growing market in natural resources, from oil and gas to mining, in Africa provides just the opportunity the company is looking for. Countries such as Nigeria and Angola are being targeted by the British company as it seeks to diversify from providing manned security to risk assessment of a vital and vulnerable industry.

Speaking to Reuters earlier this year, Martin Fuller, G4S's development director for oil and gas in Africa said, "In Africa we are moving towards delivery of much broader, integrated and sustainable security solutions to meet all the security risks facing major projects."⁷⁶

71 Business and Human Rights Resource Centre, *Private military & security companies (PMSCs) and their impacts on human rights: Recent developments*, accessed 12 February 2015, (business-humanrights.org/en/documents/pmsc-bulletin).

72 African Business Magazine, *Is Private Security Taking Over Africa?*, 22 November 2012, (africanbusinessmagazine.com/sector-reports/security/is-private-security-taking-over-africa/).

73 International Code of Conduct Association, *About*, accessed 12 January 2015 (www.icoc-psp.org/About_ICoC.html).

74 Voluntary Principles on Security and Human Rights, *What are the Voluntary Principles?*, accessed 12 December 2014, (www.voluntaryprinciples.org/what-are-the-voluntary-principles/).

75 G4S, *G4S provides the world's first Oil & Gas specific security training programmes*, 6 November 2014, (www.g4s.com/en/Media%20Centre/News/2014/11/06/Oil%20and%20Gas%20security%20training%20programmes/).

76 *Op. cit.* African Business Magazine, 2012, (n.53).

G4S has developed both a Human Rights Policy and Human Rights Guidelines, which factor in the specific issues facing the work it does, and commits to carrying out and acting upon human rights due diligence.⁷⁷ However, like most companies, although G4S publishes a CSR report⁷⁸, it has not published human rights impact assessments online, and therefore it is not possible to see precisely how it has identified the human rights issues it may impact negatively on in the Ugandan context.

Remediation: how businesses are engaging in the remediation of impacts they have caused or contributed to

Even the most concerted efforts by states and enterprises to protect and respect human rights cannot prevent all harm. Therefore it is crucial to provide effective access to remedy. States bear primary responsibility in this regard, in order to complement appropriate regulation prescribing certain corporate conduct. Yet, also “the corporate responsibility to respect requires a means for those who believe they have been harmed to bring this to the attention of the company and seek remediation, without prejudice to legal channels available.”⁷⁹

Should a company identify that it has caused or contributed to a negative human rights impact, it should provide remediation, or cooperate in legitimate remedial processes. Moreover, companies should establish mechanisms to detect grievances on the ground – ‘operational level grievance mechanisms’ - so that grievances can be detected and acted upon at the earliest possible stage.

Grievances may arise as a result of broken “law, contract, explicit or implicit promises, customary practice, or general notions of fairness of aggrieved communities.”⁸⁰ Remedy should counteract or make good any human rights harms that have occurred and can include apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions, as well as the prevention of future harm.

IPIECA defines such operational grievance mechanisms as,

“Processes for systematically receiving, investigating and responding to community complaints at an operational level. When carefully designed, properly implemented and embedded in an effective community engagement programme, they provide significant benefits to both companies and communities.

[Grievance mechanisms provide] a means by which affected individuals or communities can raise questions or concerns with a company and get them addressed in a prompt and consistent manner. They do not replace state-based judicial or non-judicial forms of remedy. But when applied effectively they offer the prospect of a more efficient, immediate and low cost form of dispute resolution for both companies and communities.”⁸¹

Operational-level grievance mechanisms can be supplied by the enterprise itself, or provided through recourse to an external expert or body. Grievance mechanisms should also be culturally appropriate and specific to the scale of the project.

Operational-level grievance mechanisms form a key part of a company’s stakeholder engagement strategy or collective bargaining process but, as the GPs advice, should not be a substitute for either. Companies should also be careful to ensure that the mechanism does not block access to judicial remedy, nor undermine trade unions or similar. They should also not require that the person seeking remediation for an adverse impact has already sought justice in court or elsewhere.

77 G4S, *Human Rights Policy*, accessed 15 January 2015, (business-humanrights.org/sites/default/files/media/documents/g4s_human_rights_policy_090413.pdf).

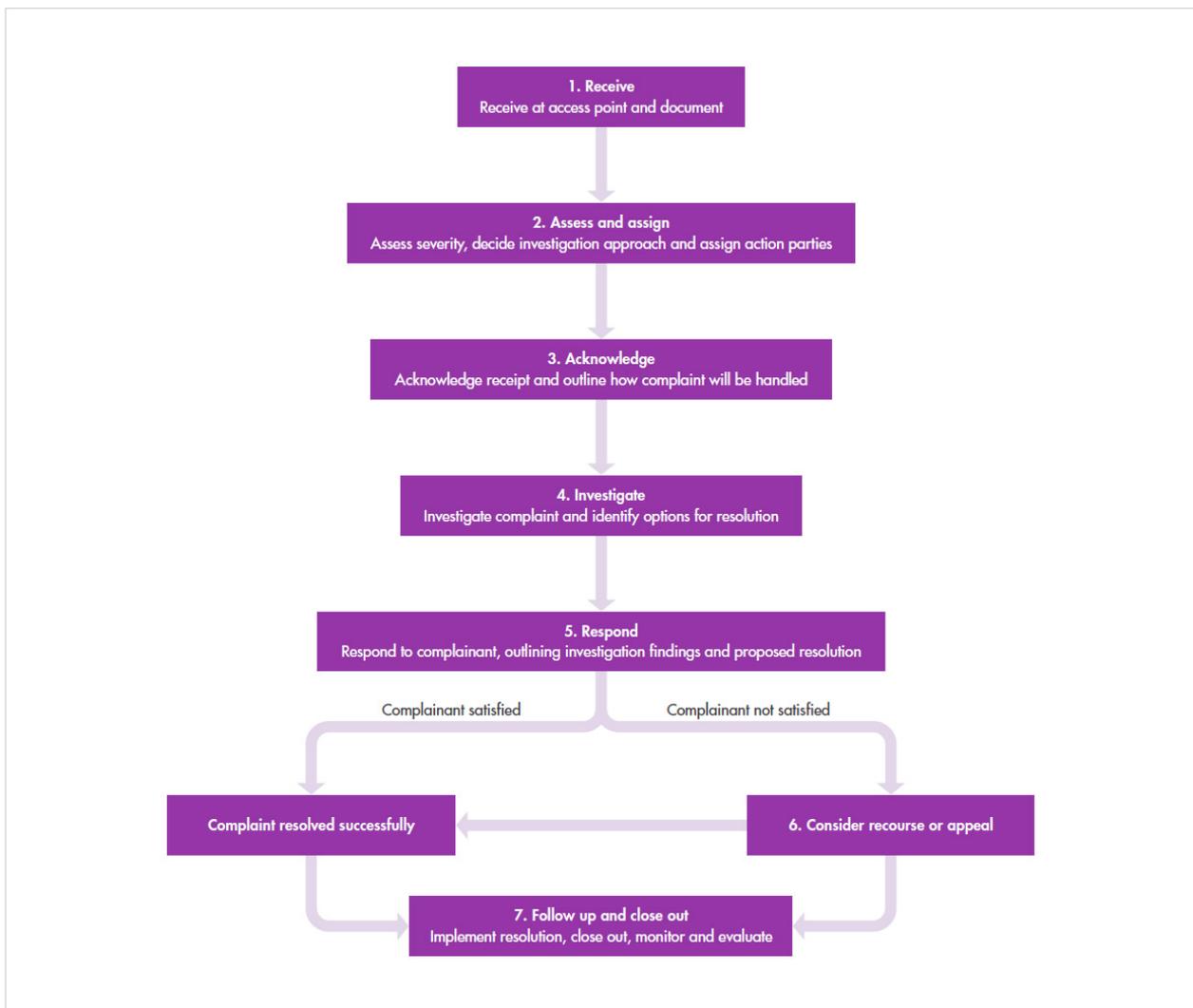
78 G4S, *Corporate Social Responsibility Report 2013, Investing in sustainable, profitable growth*, 2013, (www.g4s.com/~/_media/Files/CSR%20Reports/G4S%20CSR%20Report%202013.pdf).

79 *Op. cit.* United Nations, 2008 (n. 5), para. 82.

80 *Op. cit.* United Nations, 2011 (n.1), p. 27.

81 IPIECA, *Operational level grievance mechanisms: good practice survey*, November 2012, (www.ipieca.org/publication/operational-level-grievance-mechanisms-good-practice-survey), p.5.

There is an increasing weight of literature on how and why companies should set up operational-level grievance mechanisms, so there will be considerable variation. IPIECA's Good Practice survey includes the following steps:⁸²



The Guiding Principles offer a very useful checklist to ensure that non-judicial grievance mechanisms are effective and authentic. For that purpose they should be:⁸³

- (a) **Legitimate:** enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- (b) **Accessible:** being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- (c) **Predictable:** providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
- (d) **Equitable:** seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- (e) **Transparent:** keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- (f) **Rights-compatible:** ensuring that outcomes and remedies accord with internationally recognised human rights;
- (g) **A source of continuous learning:** drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

82 *Ibid.* p.10.

83 *Op. cit.*, United Nations, 2011 (n.1), Principle 31.

(h) **Based on engagement and dialogue:** consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances. A grievance mechanism can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it.

CNOOC, Total and Tullow all told IPIS that they were continually working on comprehensive approaches to grievance mechanisms for affected populations in Uganda and in their operations worldwide. These included booklets, community liaison officers / field officers, collaborating with other multi-national oil companies, and looking to adopt recommendations from organisations such as IPIECA, the Danish Institute for Human Rights (DIHR), and Shift regarding best practices.

The International Labour Organisation (ILO) also recommends in its Tripartite Declaration⁸⁴ that multinational and national enterprises should establish voluntary conciliation machinery to assist in the prevention and settlement of industrial disputes between employers and workers.

Additionally, aggrieved parties may often find themselves seeking the help of organisations such as the Office of the High Commissioner of Human Rights (OHCHR), or non-governmental organisations such as the Ugandan Human Rights Center or the Foundation for Human Rights Initiative (FHRI). The FHRI, for example, offers alternative dispute resolution. Such services are vital for enabling access to legal aid and advice for those who would not otherwise be able to access the justice system.

Finally, ACCESS Facility is an online source focused on non-judicial dispute resolution mechanisms for cases of corporate human rights abuse. It *“supports rights-compatible, interest-based problem solving to prevent and resolve conflicts between companies and communities. ACCESS explores better ways of working together among companies, communities and governments. It is a neutral space in which a broad range of stakeholders can learn, explore, share ideas, forge relationships, and find solutions that work for them.”*⁸⁵

Case Study: Grievance mechanisms and reparations – African Barrick Gold (now Acacia Mining)⁸⁶

Tanzania is amongst Africa’s five largest producers of gold – a mineral whose production around Lake Victoria has been rapidly growing since 2000. The mining of gold, both industrial and artisanal, provides significant employment. However, industrialisation of the sector, including large-scale mining, endangers the artisanal, small-scale mining on which local people often depend for their livelihood. Indeed, when Tanzania’s mineral policy changed in 2009-2010, artisanal miners sought to challenge what were by then well-established large-scale mining activities, protesting against the lack of any tangible benefit that such activities brought in terms of employment or regional wealth.

Four large-scale gold mines dominate the gold mining sector in Tanzania: Resolute’s Golden Pride, Geita Gold Mine, Bulyanhulu and North Mara. The latter is located in the northeast of Tanzania, in the Tarime District of the Mara region, close to the Kenyan Boarder. The North Mara mine is an open pit mine: deposits of minerals or rock are found near the surface, and as such a surface mining technique can be used to extract minerals. According to ABG, the North Mara mine had a production of 256.732 ounces in 2013.

African Barrick Gold Ltd. (ABG) has operated the North Mara mine since 2009. In November 2014, ABG changed its name into Acacia Mining Ltd. (Acacia), of which Banro Gold Corporation (BGC) holds a 63.9% equity interest. Acacia is the largest gold producer in Tanzania.

As mining has grown in North Mara, substantial social, environmental and human rights issues have developed. These have included the displacement of many artisanal mining operations, environmental pollution, violence, corruption, and (sexual) abuse.

84 ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the ILO Governing Body at its 204th Session (Geneva, November 1977) as amended at its 279th (November 2000) and 295th Session (March 2006).

85 Access Facility, *About Access*, accessed April 2015 (<http://www.accessfacility.org/about-access>).

86 Taken from Bulzomi A, Wass G and Van Besouw A, *Business & Human Rights in Tanzania: What’s on the Agenda?*, IPIS Research, March 2015 (<http://ipisresearch.be/publication/business-human-rights-in-tanzania-whats-on-the-agenda/>).

North Mara's mines have reportedly seen frequent violent clashes between local community members and both private security guards contracted to protect the site, as well as public security forces (Tanzanian police). Such confrontations have occasioned both death and injury to local villagers. Civil society groups report that when locals have attempted to gather rocks at the mine in the hope of finding gold, forces protecting the site have reacted with deadly force. For example, an altercation between security forces and villagers on 16 May 2011, escalated into the deadly shooting of nearly half a dozen local villagers, as well as the injury of several others, following their attempts to collect rocks from the site. Whilst Barrick Gold issued a statement claiming that the events unfolded in a context in which the site had been "stormed" by 800 – 1,500 armed villagers intent on stealing gold ore, these claims are heavily contested and the incident has been the subject of litigation in the UK courts.

Unfortunately, the 16 May 2011 deaths are not an isolated incident. Nor are they the last of the fatalities witnessed in North Mara. In mid-2014, NGOs Mining Watch Canada and Rights and Accountability in Development (RAID) investigated human rights allegations regarding the mine and reported that these issues remained ongoing, with at least ten alleged victims of fatal gunshot wounds sustained at the mine over the two month period immediately preceding the NGOs' visit. These organisations further criticised ABG for its invasive investigation procedures and highlighted substantial flaws in the company's grievance mechanism, which they found to be under-publicised, and potentially counterproductive:

"ABG's grievance mechanism for victims of violence by police or mine security does not appear to be rights-compatible, although ABG deny this and claim to have reviewed its grievance mechanism to ensure compliance. ABG's use of legal waivers means that compensation is dependent on the victims signing away their rights to pursue civil legal action against the company. Participants in the programme interviewed by MiningWatch and RAID not only expressed dissatisfaction with the remedy they had been offered, but also confirmed that they had not understood when they signed the compensation agreements that they had lost the right to pursue their claims in legal proceedings against the North Mara mine and Barrick/ABG."⁸⁷

Acting on behalf of twelve Tanzanian villagers, UK law firm, Leigh Day and Co., raised a legal action against ABG and North Mara Gold Mine Limited (NMGML) in the UK High Court in July 2013. The claim sought to assert the companies' liability for fatalities and injuries to local villagers, including alleged complicity in the deaths of at least five locals by police. ABG's subsidiary NMGML attempted to seek an injunction from local courts barring the company's liability for the actions of the police, though this legal action was subsequently the subject of an interdict from the UK courts preventing the defendants from initiating a claim in Tanzania on matters being litigated in the UK.

The case was settled out of court on the 6 February 2015 for an undisclosed amount. ABG has historically maintained that it believes the legal proceedings to be without merit. Viewing the events as a response to a mine site incursion by an "organized and armed mob", the company stated that it was conducting its own investigation whilst fully cooperating with the police. ABG has committed to improved security functions that align with international human rights standards, such as a review of the security perimeter

at North Mara, resulting in the installation of additional perimeter fencing and walls, installing CCTV cameras in sensitive areas, and conducting a safety education programme with the local community to improve understanding of the inherent dangers associated with illegal mining and intrusions on to the mine site.

87 Mining Watch Canada, *Violence Ongoing at Barrick Mine in Tanzania: MiningWatch Canada and RAID (UK) Complete Human Rights Assessment*, 5 August 2015, (www.miningwatch.ca/news/violence-ongoing-barrick-mine-tanzania-mining-watch-canada-and-raid-uk-complete-human-rights-ass).

In addition to the above shootings, ABG security personnel and the police have also been accused of the sexual assault and rape of local women. The issue of sexual assault is particularly sensitive for ABG, as Earth Rights International has accused the company of dealing very poorly with sexual assault allegations in Papua New Guinea. Here, the company's reparations are said to have included business training programmes and grants for victims, alongside requests for assurances that the women would not seek to sue the company.

ABG's own investigations have identified credible evidence of sexual assaults by members of the Tanzanian police and employees of ABG's security unit. The company expressed deep distress at the emergence of this evidence, and have urged the police to conduct its own investigations, in line with the Voluntary Principles on Security and Human Rights.

ABG has committed to a number of actions to strengthen and support the community at North Mara, including:

- Engaging with NGOs and government partners to identify and develop specific initiatives on violence against women in the Mara region, including assessing the viability of establishing a health centre in the Mara region that could provide physical and psychological treatment for victims of sexual violence and raise awareness of gender violence.
- Developing an appropriate remedy programme for victims of sexual assault, aligned with international human rights norms.
- Developing a review programme dealing with violence against women in the Mara region, which would encompass causes and mitigation strategies in order to maximise the effectiveness of company interventions.
- Examining alternatives to existing arrangements with public security providers at North Mara, while ensuring the safety of ABG employees.

For more information on the Acacia Mining and Banro Gold's long-term human rights approach, see Bulzomi, A, Wass, G and Van Besouw, A, Business & Human Rights in Tanzania: What's on the Agenda?, IPIS Research, March 2015 and Barrick's CSR Charter (<http://www.barrick.com/files/responsibility/Barrick-CSR-Charter.pdf>)

Digging Deeper: Local Content

Many African oil-producing countries now insist on local content provisions in their oil legislation and policies. For example, Ghana has put in place a framework to encourage and develop local content in their budding petroleum industry. It defines local content as:

"the quantum/percentage of locally produced materials, personnel, financing, goods and services rendered to the oil industry and which can be measured in monetary terms."⁸⁸

Uganda is yet to develop a comprehensive local content policy, although local content commitments have been included in its petroleum legislation. The National Oil and Gas policy refers to national content, however, this term is not defined. It is only mentioned alongside national participation. The policy appears to lean towards state participation with national content being relegated to a supplementary activity in the broad achievement of state participation.

88 Ministry of Energy, Republic of Ghana, *Local Content and Local Participation in Petroleum Activities: Policy Framework*, 2010, p. 2.

That said, it should be noted that these terms are distinct and in both Uganda and Ghana they are described differently.⁸⁹ In Ghana local participation refers to the level of Ghanaian equity ownership, while in Uganda, it goes beyond that. National participation in the Ugandan context is described as achievable through state participation and promoting the use of indigenous materials, goods and services in oil and gas sector activities, employment of Ugandans in the oil and gas sector and transfer of skills and technology to the country.⁹⁰ 'Local content' and 'national participation' are therefore related.

Generally, local content rules have been described as import substituting initiatives. The World Trade Institute has defined these rules as provisions (usually under a specific law or regulation) that commit foreign investors and companies to a minimum threshold of goods and services that must be purchased or procured locally. From a trade perspective, local content requirements essentially act as import quotas on specific goods and services, where governments seek to create market demand via legislative action.⁹¹

The Ugandan Petroleum (Exploration, Development and Production) Act 2013, section 125, expressly regulates local content and provides that licensees and their contractors and sub-contractors shall give preference to goods made or available in Uganda and supplied by Ugandan citizens and companies. The only exception to this provision is where the goods are not available in Uganda. In such cases, they can be supplied by a foreign firm which has entered into a joint venture with a local firm.

This provision appears to provide opportunities for Ugandan producers but has limitations especially in light of Uganda's international commitments.

Limitations

In 1995, Uganda was one of the signatories to the single undertaking that ushered in a new international trade regulatory framework. This undertaking signed into law a (then) new organisation, the World Trade Organisation (WTO), and also brought into force a number of agreements. The most relevant agreement for purposes of this discussion is the Agreement on Trade Related Investment Measures (TRIMS).⁹²

Article 2 of the Agreement on TRIMS prohibits the institution of trade measures that violate Articles III and XI of the General Agreement on Tariffs and Trade (GATT). Article III of the GATT prohibits the biased treatment of domestic products so as to provide such products a competitive advantage over similar imported products. Article XI, on the other hand, prohibits quantitative restrictions, for example quotas.

It would appear from the above provisions that local content rules are inconsistent with the Agreement on TRIMS and also violate Articles III and XI of the GATT. Local content rules tend to provide an advantage to Ugandan goods and suppliers. Although Article 4 the Agreement on TRIMS permits developing countries such as Uganda to deviate from the Agreement on TRIMS for Balance of Payments purposes, this deviation should be temporary and in line with the rules set under the Understanding on the Balance-of-Payments Provisions of the General Agreement on Tariffs and Trade 1994, among others. There is no evidence to suggest that Uganda's local content rules were made to offset balance of payments challenges. Rather these rules have been crafted as long term policies, intended to reduce competition.

89 *Ibid.* p. 6. In Ghana the term local participation is used, while in Uganda, the term national participation is preferred.

90 Ministry of Energy and Mineral Development, *National Oil and Gas Policy for Uganda*, 2014, p. 15.

91 UNCTAD, *Green Economy and Trade. Ad hoc Expert Group 1: Domestic Requirements and Support Measures in Green Sectors: Economic and Environmental Effectiveness and Implications for Trade*, 12-13 June 2013.

92 See: Columbia Centre on Sustainable Investment, *Local Content: Uganda: Petroleum*, 2014, for a detailed discussion (<http://ccsi.columbia.edu/files/2014/03/Local-Content-Uganda-Petroleum-CCSI-July-2014-2.pdf>).

Also, it is not always the case (especially taking into account the nature of goods (inputs) required by petroleum companies) that such goods are always available in developing countries, including Uganda. This challenge is compounded by the fact that local firms often lack the financial capacity to participate in the provision of quality goods or even to enter into joint ventures with foreign reputable firms. Thus the provisions on local content risk being unenforceable.

That said, there are solutions to the above limitations and restrictions, and sustainable opportunities that may be offered by the current local content requirements.

For example, deliberate long-term policies can be crafted to provide strategic skilling of Ugandans to compete in all aspects of international commerce. Equal attention could be paid to all aspects of the economy as opposed to concentrating on the oil sector and raising domestic expectations, in the form of laws on local content.

Opportunities

In the event that local content requirements are aligned with Uganda's international commitments (they may need to be packaged as temporary measures) many opportunities could arise from these rules.

Firstly, Uganda's agricultural sector could benefit due to suppliers of fresh agricultural produce taking advantage of the market created by licensees and contractors in the oil sector. In the long term, should rules be relaxed, capacity would have been built to compete with established foreign suppliers.

Additionally, local producers and suppliers would benefit from synergies developed in joint ventures with established foreign firms. These synergies have the capacity to transcend borders and expose local firms to new markets.

Finally, Uganda has been grappling with increasing unemployment. Such rules, if applied strategically, can help transform Uganda's unemployed population into entrepreneurs. Priority should be given to the unemployed and government should support them with capacity-building to take advantage of local content rules.

Conclusions and Recommendations

IPIS and ActionAid Uganda have not sought to comprehensively describe the impact of corporate activity engaged in Uganda's oil sector on human rights. Nor have we sought to analyse the behaviour of each actor engaged in the sector. Rather, we have endeavoured to apply the UN Guiding Principles on Business and Human Rights to the oil sector, accompanied by useful case studies. This paper therefore serves as a guide for best practice, rather than a critique of the current state of play.

The fact that this paper takes a top line rather than investigative approach is due to difficulty of assessing so many different topics in one paper. It is also a result of the focus of the UNGPs; the Principles look at *how* businesses manage their human rights risks, rather than what their impact is. However, what is of more importance is that it is difficult to compile a truly accurate report from an outside perspective when companies report so little externally on their human rights due diligence processes or results.

Although many companies have endorsed the UNGPs, in the years since they were published in 2012, very few have truly taken up the mantle of implementing them fully in spirit. Were more to do so, it would be much clearer to the interested public how companies are assessing risk, and what they are doing to put management systems in place to mitigate and prevent human rights harms.

The core recommendation of this paper is therefore that CNOOC, Total, and Tullow, in addition to other companies engaged in the sector, should publish detailed reports on how they are carrying out human rights due diligence and, in reasonable detail, where their core risks lie.

Often, there are glaring discrepancies between what companies commit to and what they apply with regard to human rights. This is often related to inherent weaknesses by the State and State departments to monitor company operations. In some cases, as we have stated earlier, national laws may not stimulate, or may even discourage, companies to respect the human rights of the communities in which they work. However, companies stand to benefit by applying the GPs in their operations because it creates a win-win situation helping them to address concerns voiced by local communities before they get worse..

Ultimately, to create a level playing field, companies need to either be incentivised or pushed to do so, and this is the duty of State legislature. The EU is taking a step forward on this via a non-financial reporting directive for member States. However this will not require companies to produce the kind of detail necessary for a meaningful human rights analysis. It can only be hoped that in coming years, States and companies alike will take an intelligent and brave stance on human rights reporting, raising the bottom line.

In the meantime, companies can take a more ad hoc approach to publishing lessons they have learned through operating in Uganda's oil sector.

The next report in this series will explain how civil society can act to encourage this type of information-sharing, whilst holding companies to account and pushing for the highest possible standards in Uganda.

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International Peace Information Service (IPIS) is an independent research institute with its office in Antwerp, Belgium. Our research provides governmental and non-governmental actors with information and analysis to build sustainable peace and development in Sub-Saharan Africa. The research is centred around four programmes: Natural Resources, Business & Human Rights, Arms Trade & Security, and Conflict Mapping. IPIS is particularly specialised in field research, investigative reporting and policy oriented analysis. In addition, it enhances the capacity of local stakeholders through training and cooperation.

ActionAid Uganda

ActionAid International Uganda (AAIU) has been working in Uganda since 1982 with the socially and economically disadvantaged. We focus on people in poverty, those who face discrimination, and whose voices are ignored. We support them to fight for their rights so that they can have a say in the decisions that shape their lives.

ActionAid has a distinctive Human Rights Based Approach (HRBA) to development that centres on active agency i.e. supporting people living in poverty to become conscious of their rights, organise and claim their rights and hold duty bearers to account.

Our work focuses on the protection of women's rights, improving and sustaining livelihoods through ensuring food security, advocating for good governance as a prerequisite to justice, improving access to education for all Ugandans and helping people affected by emergencies and conflict.

Development Law Associates (DLA)

DLA is a regional consultancy firm with headquarters in Kampala, Uganda. The firm has undertaken numerous multi-disciplinary research projects in Africa. The firm's core competencies include: International Trade, Oil and Gas regulation, Human Rights and Governance.

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