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It is appropriate that in a session devoted to *Innovative Practices at the Company Level* we draw on the example of companies in South Africa. During the apartheid years, when the international community was campaigning for divestment, foreign companies operating in South Africa faced the choice: to leave the country, or to stay. The challenge for the more progressive companies was clear: how could they operate in a racially-segregated society in a way that did not make them complicit?

A preacher in Philadelphia, Rev Leon Sullivan, provided a solution. The eponymous Sullivan Principles¹ that emerged from his intervention with General Motors and other US companies became controversial. Campaigners who saw no redeeming virtue in a company operating in South Africa criticised the Principles as offering respectability to an unethical decision. But for companies that chose to stay in South Africa, the Principles provided a moral compass, firmly delineating the lines of what they must not do, while setting specific targets of what they ought to do.

As a result of the Sullivan Principles, some companies stayed, up to the point when it was no longer tenable for them to do so. (For example, Polaroid left when it found that its technology was being used to administer the Pass Law.) One consequence of continued corporate presence was the emergence of a black, and non-white, managerial class, from which the South African economy benefited at the end of the apartheid. The presence of the companies that stayed also ensured that South Africa had a certain industrial base in the early 1990s, after the end of the segregated system. When the Truth and Reconciliation Commission dealt with the issue of companies and their responsibilities during apartheid, the report divided companies in three categories; companies that stayed, but did not actively contribute to administering apartheid, nor did they benefit indirectly from apartheid, fell into the third category; the Commission reserved its criticism for the first two categories.

Let us turn to some more examples:

- Just as some forward-thinking companies embraced the Sullivan Principles to do what they thought was morally right in South Africa from the 1970s, other companies are doing likewise at present, taking proactive steps to protect the health of their workforce in the context of the HIV-AIDS crisis, by making access to condoms and retroviral medication easier.

¹ Issued in 1977, the Principles were: (a) Non-segregation of the races in all eating, comfort and work facilities; (b) equal and fair employment practices for all employees; (c) equal pay for all employees doing equal or comparable work for the same period of time; (d) initiation of and development of training programs that will prepare, in substantial numbers, blacks and other nonwhites for supervisory, administrative, clerical and technical jobs; (e) increasing the number of blacks and other nonwhites in management and supervisory positions; and (f) improving the quality of life for blacks and other nonwhites outside the work environment in such areas as housing, transportation, school, recreation, and health facilities. In 1984, a seventh principle was added: (a) working to eliminate laws and customs that impede social, economic and political justice.

- Turning away from South Africa for a moment, there is the case of Arne Rinnan², the Norwegian captain of the ship M.V. Tampa, who in Aug 2001 rescued over 400 refugees, most of them from Afghanistan, who were in a poorly-equipped vessel and could have drowned in the Indian Ocean. He took them to the nearest port as permitted under international law, which was Australia, in an effort to seek assistance for their well-being from Australian authorities, who denied his ship entry. Capt Rinnan refused to budge. For his commitment to international law, Capt Rinnan received several honours.
- Here in Africa, in 2003, during the height of the Warri crisis in the Niger Delta, Chevron-Texaco's officials airlifted some 2,000 internally displaced people to safe areas in the Delta state, protecting them from the violence-prone region. During the Warri crisis, over 1,000 people were killed in intra-ethnic violence.
- And in Venezuela, Statoil, the Norwegian oil company which was at that time fully state-owned, joined hands with UNDP and Amnesty International, to provide human rights law training to the Venezuelan judiciary, in close cooperation with Venezuelan government authorities.

What is common to the five examples cited here is this. First of all, these extraordinary actions were the result of visionary leadership. Someone somewhere in the company thought hard about the issues and decided to do what she or he thought was the right thing to do, and implemented that policy.

What the motives may have been of that individual are beside the point. Some would argue that it is irrelevant to explore that. It may be a personal code of ethic, it could be the pressure of the markets, and it could be driven by a desire to protect the company's reputation. It could also simply be as a result of an individual's initiative.

But we cannot always depend on good intentions and individual initiatives for the protection of human rights, or for the elimination of conflict. To understand why, let us turn again to the recent history in Africa:

- Sierra Leone had one of the most brutal civil wars in the 1990s. That conflict, as we now know, was funded primarily through revenues from natural resources – diamonds, in this case. The Revolutionary United Front was in control of large swathes of territory in Sierra Leone and it sold the rough diamonds extracted from those fields in international markets. The international trading community had no reason to classify diamonds by their origin. But that changed, thanks to sustained pressure from global civil society, UN sanctions, and the active interest of some governments. UN experts' panels established that the revenue the armed group received provided it with resources to continue the conflict, which led to attacks on civilians, widespread human rights abuses and violations of international humanitarian law. Sanctions followed, and a certification scheme – first for Angola and Sierra Leone, and later for all rough diamonds – came into being after more than two years of negotiations involving the industry, governments, and the civil society. That scheme, Kimberley Process Certification Scheme, has brought considerable order in the trade, and its strength derives from its being partly mandatory.
- The Niger Delta has been exceptionally violent since November last year. There have been several instances of mass killings, involving militias and security forces, and abduction of expatriate oil industry workers has increased. The cycle of violence begins with the deprivation experienced by communities in the Niger Delta, which host oil companies, suffer the costs and consequences (of leaking pipelines, gas flaring, and pollution), and see benefits going to the capital. The state is virtually absent in the Niger Delta – you don't easily find schools, primary health care clinics, or post offices. But you do find well-armed security forces, protecting the oil industry's

² <http://www.norway.org/News/henry+bacon+2006.htm>

infrastructure. Driven by a sense of good intentions, philanthropy, corporate social responsibility, the need to enhance reputation, or out of a sense of self-interest, most companies in the Niger Delta have large social investment programmes. But rather than benefiting the communities, many programmes have ended up dividing them, since benefits reach only some communities. Some projects don't work; companies promise more than they can deliver. When expectations are raised and not met, the communities are frustrated, leading to demonstrations and more violence targeting the companies. With widespread unemployment, communities seek jobs from companies, but being a capital-intensive industry requiring skilled labour, the oil industry has few direct jobs to offer the communities. Communities don't like jobs with contractors, who typically offer fewer benefits than the company does. When these frustrations reach boiling point, communities protest against the companies, and security forces respond, often with disproportionate force against the communities. Add to this equation the easy availability of small arms, the peculiarly Nigerian phenomenon of bunkering (in which armed groups steal oil from pipelines and sell it in international markets), and the cycle of violence, violations, conflict, and repression continues. Partly to address these concerns, the international community came up with the Voluntary Principles for Security and Human Rights³ which included four governments (UK, US, Norway and the Netherlands), sixteen companies, and seven international NGOs, including International Alert. These principles call upon companies to analyse the political and human rights risks in their area of operations, and govern the conduct of security forces, to ensure that in protecting the assets and staff of the companies, the forces operate within a framework that protects fundamental freedoms. Another, similar initiative was launched by the UK government, the Extractive Industry Transparency Initiative⁴ which seeks to ensure greater transparency in revenue sharing and management in countries where extractive industries operate.

- To avoid the kind of problems that have beset Nigeria, the international community has increasingly explored the idea of getting things right at the beginning. One such example is the Chad-Cameroon pipeline, where the World Bank has devised an escrow account, in which future oil revenues from the pipeline will be deposited. Money from that account can be drawn down only for legitimate development expenditure, such as health and education. However, the accumulated balances have risen, given the current increase in oil prices, and the government of Chad has drawn down money for other purposes, which has led to the World Bank to stop further lending.
- The conflict in Sudan is another interesting example of how companies can and do assist a government fighting a war. Sudanese officials have been on record saying that their ability to continue the war in southern Sudan was strengthened by the easy availability of resources due to the oil boom. There is a marked correlation between increased oil production, increased revenue to the state, and increased expenditure on defence. In Sudan, the oil industry is closely involved, and in some cases implicated with the conflict.
- In the Democratic Republic of Congo, UN experts' panels have identified ways in which companies are exploiting resources which are contributing to a climate of corruption and conflict. The DRC is a major diamond producing nation, but the Kimberley Process cannot address the issues there because the KPCS is designed to address illicit activities by rebel forces, not state security forces. And in Mbuji Mayi, artisanal miners found stealing diamonds from a ring-fenced mine have been shot. Nobody is condoning theft, but the use of force is clearly disproportionate. However, under Kimberley Process, these rough diamonds are not covered because the violation occurred on a state-owned site, involving state security forces.

³ www.voluntaryprinciples.org

⁴ www.eitransparency.org

So while the Voluntary Principles, the Extractive Industries Transparency Initiative, the Kimberley Process, and even the Global Compact have collectively helped create a climate in which companies begin addressing their responsibilities and devising operational policies to achieve meaningful change in behaviour, the reality on the ground is often so violent and complicated, that these best intentions simply cannot go far enough.

What companies need is guidance at the ground level so that they can develop their procedures. Over the last few years, several tools have become available and I now turn to these tools.

In December last year, at the Shanghai meeting of the Global Compact Learning Forum, the Business Leaders' Initiative on Human Rights presented a publication on management processes that can help a company mainstream human rights concerns in its operational policies. Called the *Guide for Integrating Human Rights into Business Management*,⁵ the publication divided activities and scenarios in three categories – essential, expected, and desirable.

The Danish Institute for Human Rights⁶ has a comprehensive, detailed tool available, which collects international and regional laws, treaties, and appropriate domestic legislation, and provides a methodology to test the company's policies with existing international law to assess the firm's compliance.

The International Finance Corp., together with the International Business Leaders' Forum, the Global Compact, and several leading NGOs, is in the process of putting together a Human Rights Impact Assessment tool which is described as a tool to facilitate a company's ability to anticipate human rights risks and ways of mitigating them so that a company can respond proactively by developing appropriate processes.

Finally, let me turn to the tool we have developed at International Alert. It is called the *Conflict Sensitive Business Practices* (CSBP) tool and the iteration I will talk about is the *Guidelines for Extractive Industries*.

Why extractive industries? For the very reasons John Ruggie described earlier in his speech today in the study he cited in his interim report⁷, which included an analysis of 65 NGO reports compiling credible allegations of human rights implicating companies. His study found that these violations tended to occur preponderantly in low income countries with a high degree of corruption, suffering from weak governance, and where the extractive industry tended to dominate. In such a climate, where resources are available and grievances are not addressed, conflict frequently results, causing deaths and misery, leading to human rights abuses and violations of international humanitarian law. The IHL in this regard is particularly important because, unlike human rights law, it applies to non-state actors at all times, and unlike human rights law, it applies all the time and is therefore non-derogable.

Companies operating in such an environment need a robust tool to ensure that they are not complicit in human rights abuses, do not contribute to violations of international humanitarian law, and operate in a manner that is sensitive to the surroundings. The CSBP tool that IA has developed provides a framework that helps companies raise the right questions, and to operate in a manner that does not contribute to conflict. It should be stressed that when we talk of conflict impact, we mean two-way impact; where companies are affected by conflict as well as where companies, their policies, and conduct, have an impact on conflict.

The CSBP was developed after extensive consultations with companies, academics, governments, and civil society. It was three years in the making, and it was funded by the Swiss Department of Foreign Affairs, the UK Department for International Development, Foreign Affairs Canada, and Swedish SIDA. It was based on field trips in Azerbaijan,

⁵ <http://www.blihr.org/Pdfs/GIHRBM.pdf>

⁶ <http://www.humanrightsbusiness.org/>

⁷ <http://daccessdds.un.org/doc/UNDOC/GEN/G06/110/27/PDF/G0611027.pdf?OpenElement>

Colombia and Indonesia. Many experts were also consulted, and a steering committee, comprising extractive industry companies and consultancies, guided the process. The full text of the report can be downloaded from International Alert's website⁸. It is being piloted at the moment at two projects in Colombia.

The report comprises a screening tool, which includes conflict risk impact assessment at the macro level and at the project level. The parameters analysed at the macro level include political, economic, social, security, international/regional, and governance. At the project level, specific issues like land use, revenue sharing, security force management, stakeholder consultation, and relationship with the community are among the issues analysed. The model on which this process is based is the peacebuilding palette, which includes socio-economic, security, political, and reconciliation and justice dimensions. Another value-added dimension to this approach is the set of nine sections, called flashpoints, where, experience has shown, the greatest likelihood of having a conflict impact. These flashpoints are: stakeholder engagement, resettlement, compensation, indigenous people, social investments, dealing with armed groups, security arrangements, human rights, and corruption and transparency.

I began by talking about how certain individuals, or certain companies, took exceptional steps in particular moments of crises, and acted in ways that contributed to reducing tensions, conflict, and respected human rights. For a company to act in a certain manner all the time, it needs more than individual goodwill, or corporate good intentions. It needs a framework. When we saw recent conflicts in Africa, we noticed that while some well-meaning principles and codes of conduct have been developed in recent years to address specific crises, they have not necessarily been able to prevent, or end conflict, nor are the instruments sufficient by themselves to do so. We finally turned to some of the leading tools available which may help companies to mainstream their values and principles, as well as their moral responsibilities under human rights law and obligations under international humanitarian law, into operational practices. Are they sufficient in ensuring that the company will never abuse human rights or contribute to conflict?

It is not possible to think in terms of such guarantees; a tool is, in the end a tool; it depends on what use the user makes of it. But are such tools necessary? Of course; for as other processes, including engineering, quality control, and manufacturing, and other business practices have shown, the way companies can improve their performance is through a well-designed framework, and that's what the tools set out to do: to provide such a framework. What the companies do with the tools, is, in the end, in their own hands.

⁸ <http://www.international-alert.org/publications/234.php>