

HUMAN SECURITY & *business*

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BEST INTENTIONS CANNOT GO FAR ENOUGH*

Salil Tripathi

The film “Blood Diamond” released this year, raises issues which may seem dated – conflict in Sierra Leone which was the prime focus of the campaign to stop trade in rough diamonds sourced from rebel-held areas in conflict zones. And yet the film raises important issues concerning the role of business, the law, societal expectations, and what companies can do.

Let us stay with Sierra Leone for a moment. That country 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 to the trade, and its strength derives from its being partly mandatory.

Then again, staying in West Africa, let us look at the Niger Delta, which 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 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.

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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 Rights which included four governments (UK, US, Norway and the Netherlands), 16 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 Initiative 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 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 money for other purposes, which has led to the World Bank to stop further lending.

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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.

But let us not assume that this is a uniquely African problem. In Latin America, in Colombia, for years, rebel forces of FARC

and ELN have regularly attacked the oil industry infrastructure in the regions of Caño Limón and Casanare. Communities that live by the oil industry are in constant danger of human rights abuses committed by the state forces or by the armed opposition groups. The war shows no sign of ending, and the communities remain caught in this conundrum.

In Asia, in Indonesia, communities living around mining companies and oil companies, in disparate parts such as Aceh and West Papua have also had to deal with human rights abuses, sometimes committed by the armed opposition groups, and at other times, by state forces. In each case, a company is present; while its presence alone does not constitute complicity, it raises fundamental questions about the role of business in weak governance zones, and responsibilities of companies operating in sub-optimal environments.

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The industry has responded by creating voluntary initiatives meant to ensure that their own conduct within their sphere of influence does not lead to abuses. These initiatives include the Voluntary Principles, the Extractive Industries Transparency Initiative, the Kimberley Process, and the Global Compact. Collectively, these initiatives have helped create a climate in which companies begin addressing their responsibilities and devising operational policies to achieve meaningful change in behaviour. But the reality on the ground is often so violent and complicated, that these best intentions simply cannot go far enough.

Indeed, we cannot always depend on good intentions and individual initiatives for the protection of human rights, or for the elimination of conflict. 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.

In December 2005, 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, the publication divided activities and scenarios into three categories – essential, expected, and desirable.

The Danish Institute for Human Rights 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, the special representative of the UN Secretary-General on business and human rights, has described in his interim report presented to the Human Rights Council, 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. International humanitarian law 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.

There has been considerable discussion around what constitutes complicity: while a broad-ranging, all-encompassing definition is not yet in place, it is sufficient to state, that if a company is in close proximity with a violation, a violator or a victim; if it is assisting, aiding, abetting, encouraging, supporting, or providing means to an entity that commits human rights abuses; if it knows, or should have known that such abuses were taking place; if it derives benefit from the abuses; if the abuses have gone on for some time; and if the company has taken no corrective action, or shown any due diligence to sever its links with the abuses; then it runs an extremely high risk of exposure to charges of complicity.

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The CSBP tool that International Alert (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 to Azerbaijan, 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 website (www.international-alert.org/). 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. It also underscores project level risks, including land use, revenue sharing, security force management, stakeholder consultation, and relationship with the community. Finally, there are flash points, including stakeholder engagement, resettlement, compensation, indigenous peoples, social investments, dealing with armed groups, security arrangements, human rights, and corruption and transparency.

For a company to act properly, it needs more than individual goodwill, or corporate good intentions. It needs a framework. Well-meaning principles and codes of conduct address specific crises, but cannot prevent or end conflict. Tools exist 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?

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It is not possible to think 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? 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.