



International Network for Economic, Social & Cultural Rights  
Red Internacional para los Derechos Económicos, Sociales y Culturales  
Réseau international pour les droits économiques, sociaux et culturels

## ESCR-NET

Corporate Accountability  
Working Group

## JOINT NGO SUBMISSION

## CONSULTATION ON HUMAN RIGHTS AND THE EXTRACTIVE INDUSTRY

Geneva, 10-11 November 2005

Final version dated 9 December 2005

## *In Memoriam*

*Ken Saro-Wiwa, Baribor Bera, Saturday Doobee, Nordu Eawo,  
Daniel Gbokoo, Barinem Kiobel, John Kpuinen, Paul Levura and Felix  
Nuate*

On 10 November 1995, Ken Saro-Wiwa, internationally respected human rights and environmental activist, and eight other Ogoni activists were executed in Port Harcourt, Nigeria, following months of detention without charges and torture. These activists were sentenced to death by a ‘Special Tribunal,’ following their non-violent efforts to protect the indigenous Ogoni people from human rights and environmental abuses associated with the oil industry in the Niger Delta.

## *With Contributions and Participation*

The ESCR-Net Corporate Accountability Working Group thanks the following individuals and organizations for their contributions and input to this Joint NGO Submission: Tricia Feeney (RAID), Hubert Tshiswaka (ACIDH), Alessandra Masci (Amnesty International), Legborsi Pyagbara (MOSOP), Chris Newsom (Stakeholder Democracy), Bill Van Esveld (International Human Rights Clinic, New York University School of Law), Nick Hildyard (The Corner House), Lillian Manzella (EarthRights International), Joji Cariño (Tebtebba Foundation), Ingrid Gorre (LRC-KsK), Mario Melo and Juana Sotomayor (Centro de Derechos Económicos y Sociales), Ute Hausmann (FIAN), Elisabeth Strohscheidt (Miseror), Fraser Reilly-King (Halifax Initiative Coalition), Ravi Rebbapragada and Sreedhar Ramamurthi (mm&P), Roger Moody (Mines and Communities), Gavin Hayman (Global Witness), Daniel Owusu-Koranteng (WACAM), Joris Oldenzil (SOMO/ OECD-Watch), Daria Caliguire and Chris Grove (ESCR-Net Secretariat).

We also express our gratitude to Human Rights Watch for allowing us to include their case study, ‘Sudan, Oil and Human Rights.’ In addition, we recognize that there are many other cases that could have been incorporated and, more importantly, there are dozens of other excellent organizations (some of whom are highlighted in this document) that are researching and advocating on the extractive industries.

## *With Much Appreciation*

We are particularly grateful to Tricia Feeney, co-coordinator of the ESCR-Net Corporate Accountability Working Group and Director of Rights and Accountability In Development (RAID), for her leadership in drafting this Joint NGO Submission.



# Table of Contents

<b>Acronyms &amp; Abbreviations .....</b>	<b>5</b>
<b>Introduction .....</b>	<b>6</b>
<b>A. The Human Rights Responsibilities of Business: Key Concepts .....</b>	<b>7</b>
1. State Responsibility .....	7
2. Companies' Spheres of Influence.....	7
3. Complicity.....	8
4. Standards .....	8
<b>B. The Extractive Industries and Human Rights: Selected Issues and Examples .....</b>	<b>10</b>
1. Violence and Repression.....	10
a. Fuelling Conflict .....	10
b. Response to Protests.....	10
Philippines.....	10
Guatemala .....	11
c. Security Arrangements.....	12
Burma.....	12
Nigeria .....	12
Indonesia.....	13
d. Other Complicity Concerns.....	13
Burma: Forced Labour .....	13
Sudan: Benefiting from Forced Displacement .....	14
DR Congo: Providing Logistical Support to FARDC.....	14
DR Congo: Providing Support to Armed Group in Ituri .....	15
Philippines: Payments to Insurgent Groups .....	16
Trade: Gold and Coltan in the DR Congo.....	16
2. Economic, Social and Cultural Rights .....	17
a. Resource Curse .....	17
b. Indigenous Peoples' Rights: Prior, Informed Consent.....	18
Ecuador .....	18
Philippines.....	19
India .....	19
c. Human Rights Impacts of Environmental Destruction .....	20
Ecuador .....	21
Ghana .....	21
Zambia .....	22
d. Corruption and Denial of Fundamental Rights .....	22
Angola.....	22
Equatorial Guinea .....	23
Burma.....	23
Nigeria .....	24
Chad.....	24
e. Undermining Human Rights in Legal Frameworks .....	24
Chad-Cameroon .....	25
Caucasus .....	25
f. Lack of Information Disclosure .....	25
<b>C. State Response .....</b>	<b>26</b>



1.	<i>Inadequate Response</i> .....	26
2.	<i>Access to Justice and Remedy</i> .....	26
	Ecuador .....	26
	Burma.....	27
	DR Congo .....	27
<b>D.</b>	<b>Conclusion</b> .....	<b>27</b>
<b>E.</b>	<b>Next Steps</b> .....	<b>28</b>
<b>F.</b>	<b>Annexes</b> .....	<b>30</b>
1.	<i>Annex 1: Summary of Cases with Links on the Extractive Industry and Human Rights</i> .....	30
2.	<i>Annex 2: OECD Guidelines Cases Related to the Extractive Industries filed by NGOs</i> .....	34
	<b>Endnotes</b> .....	<b>36</b>



## Acronyms & Abbreviations

ACIDH .....	Action contre l'impunité pour les droits humains
BGL .....	Bogoso Gold Limited
CGC .....	Argentinean Compañia General de Combustibles
DR Congo .....	Democratic Republic of the Congo
FARDC .....	DR Congo Armed Forces
FBI .....	United States Federal Bureau of Investigation
FNI .....	National and Integrationist Front (DR Congo rebel group)
FPIC .....	Free Prior Informed Consent
GNPOC .....	Greater Nile Petroleum Operating Company
HRW .....	Human Rights Watch
ILO .....	International Labour Organization
KCM .....	Konkola Copper Mines
MONUC .....	Mission de l'Organisation des Nations unies en République démocratique du Congo (UN monitoring body in DR Congo)
UN Norms .....	UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights
OECD .....	Organisation for Economic Co-operation and Development
RAID .....	Rights and Accountability in Development
RPA .....	Rwandan Patriotic Army
UN .....	United Nations



## Introduction

The activities of business provide employment for countless millions and constitute the driving force in most national economies today. Companies therefore exercise tremendous influence and power. The internationalisation of the world economy means that businesses often operate with a global reach. Corporate activities have significant effects on the human rights of those they influence. In many countries government regulation and enforcement are inadequate to protect individuals when corporate activities negatively impact on the human rights of their workforce or the communities where they operate. Measures must be taken to minimize the negative effect of corporate activities on human rights, to encourage companies to contribute to the realization of human rights within the spheres of their activity and influence. There must also be adequate and effective remedies when corporate activities abuse human rights. These concerns led to the Sub-Commission on the Promotion and Protection of Human Rights, after a four-year consultative process, to approve the “*Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights*” (hereinafter the Norms).\* The Commission on Human Rights (CHR) at its 61<sup>st</sup> session established a mandate for the Secretary General’s Special Representative on human rights and transnational corporations and other business enterprises.

Professor John Ruggie, was appointed as the Special Representative, and has a specific mandate as follows: “a) To identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights; b) To elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation; c) To research and clarify the implications for transnational corporations and other business enterprises of concepts such as “complicity” and “sphere of influence”; d) To develop materials and methodologies for undertaking human rights impact assessments of the activities of transnational corporations and other business enterprises; and e) To compile a compendium of best practices of States and transnational corporations and other business enterprises”. In carrying out his mandate, the Special Representative is “to consult on an ongoing basis with all stakeholders, including...workers’ organisations, indigenous and other affected communities and non-governmental organisations.”

The ESCR-Net Corporate Accountability Working Group has assembled a set of case studies related to the extract industries as a contribution to the work of the Special Representative. The case studies reveal patterns of violations and gaps in the protection of human rights, including environmental and indigenous peoples’ rights. A list of case studies and associated materials are outlined in Annex 1. Annex 1 also includes a list of non-governmental organisations that contributed to the report.

The Special Representative has expressed his intention of conducting a survey of business policies and practices with regard to human rights, in collaboration with *inter alia* the International Organisation of Employers (IOE) and the International Chamber of Commerce (ICC) to examine how companies themselves conceive of human rights. The ESCR-Net Corporate Accountability Working Group in welcoming the initiatives taken by the Special Representative to fulfil his mandate believes that he should also build on the Norms as they represent the basis for a global framework setting out the human rights standards applicable to companies.

---

\* E/CN.4/Sub.2/2003/12/Rev.2



## **A. The Human Rights Responsibilities of Business: Key Concepts**

An analysis of the case studies in this report illustrate the clear failure of domestic legislation, existing voluntary initiatives, and/or standards to guarantee protection of individuals and communities affected by the activities of the extractive sector.

### **1. State Responsibility**

International human rights law places clear and substantial obligations on states in connection with extractive industries. For example, the United Nations (UN) Human Rights Committee has stated that a country's freedom to encourage economic development is limited by the obligations it has assumed under international human rights law; the Inter-American Commission on Human Rights has observed that state policy and practice concerning resource exploitation cannot take place in a vacuum that ignores the state's human rights obligations, as have the African Commission on Human and Peoples' Rights and other intergovernmental human rights bodies. More generally, it is accepted that:

While governments have the primary responsibility to promote, protect and fulfil human rights, the Universal Declaration of Human Rights (UDHR) calls on every individual and every organ of society to strive to promote and respect the rights and freedoms it contains and to secure their effective recognition and observance. The concept of 'every organ of society' covers private entities such as companies.<sup>1</sup>

### **2. Companies' Spheres of Influence**

A company's commitment to respect and support human rights, including by avoiding direct or indirect complicity in human rights abuses, extends to all those who are within its sphere of influence. The extent of a company's ability to act on its human rights commitments may vary depending on the issues in question, e.g., the size of the company, and the proximity between the company and the (potential) victims and (potential) perpetrators of human rights violations.<sup>2</sup> In the absence of a clear definition of spheres of influence in the extractive industries, however, most companies have or will use a narrow, biased interpretation of their responsibilities.

Without a clear definition of sphere of influence, businesses may seek to limit their responsibility artificially. For instance, the Greater Nile Petroleum Operating Company (GNPOC), an oil consortium operating in Sudan, developed an ethics code in December 2000, in response to strong criticism of its lead partner, which was accused of fuelling civil war and human rights abuses. The code mentioned human rights in the context of a commitment to '[c]onducting business in a way that shall maintain social justice and respect human rights within the sphere of our responsibility and contractual obligations.' Precisely what the consortium's responsibility and contractual obligations might be were left completely undefined, although the code did state that the consortium would observe the principle of "[r]efraining from availing the company resources for political, tribal and armed conflicts". Yet the code bound only the consortium as such, and did not keep its members "from engaging in whatever conduct they wanted, as individual companies."<sup>3</sup>



The sphere of influence for companies in the extractive sector might be seen to encompass *inter alia* 1) employees; 2) communities living near its operations or who are otherwise dependent on the company; 3) business partners, including suppliers, contractors (including transporters) and joint venture and trading partners; 4) host and home governments insofar as the company may be able to exert some influence on public security forces; 5) investment institutions, banks and other financial backers, including international financial institutions; and 6) insurance providers, including export credit agencies.

### **3. Complicity**

According to a report jointly published by the Global Compact and the Office of the United Nations High Commissioner for Human Rights, a company is complicit in human rights abuses if it authorises, tolerates, or knowingly ignores human rights abuses committed by an entity associated with it, or if the company knowingly provides practical assistance or encouragement that has a substantial effect on the perpetration of human rights abuse. The participation of the company need not actually cause the abuse. Rather, the company's assistance or encouragement has to be to a degree that, without such participation, the abuses most probably would not have occurred to the same extent or in the same way.<sup>4</sup>

The OHCHR report lists four contexts in which the charge of corporate complicity has been made: 1) when a company actively assists in human rights violations, directly or indirectly; 2) when it enters into a common design or purpose with a governmental contractual partner who commits abuses; 3) when it benefits from opportunities created by human rights violations; and 4) in extreme cases, when it is silent in face of known human rights abuses. Any effort to examine the level of corporate involvement necessary to sustain a claim of complicity must be rooted in human rights principles. Greater clarity around the concept of complicity in human rights law could help form the basis for clear, universal standards of corporate responsibility and accountability.

### **4. Standards**

Action is urgently needed to address the absence of an accepted, universal human rights set of standards to inform the activities of companies wherever they operate and wherever they are based. The Universal Declaration of Human Rights recognizes that businesses, like any other organ of society, have human rights responsibilities. The Norms were intended to articulate these responsibilities. The Norms, the Organisation for Economic Co-operation and Development's (OECD) *Guidelines for Multinational Enterprises*, and numerous other instruments and initiatives emphasise the crucial importance of the activities of corporations and international investors being conducted in conformity with the protection of human rights.

Members of the Corporate Accountability Working Group of ESCR-Net believe that it is in everyone's interests for the United Nations to draw up a single human rights set of standards which could be a vital tool for companies, governments, and communities. The standards should identify in a unified document matters that are already prohibited by international human rights law, international humanitarian law and ILO Conventions as well as setting out recognized principles and standards of behaviour. Governments have already identified some essential elements of good corporate citizenship through a series of World Summits recommendations. While not an exhaustive list, the standards outlined below could be one reference point for work to develop a more complete set of standards. Notably:





- Transnational corporations and other business enterprises (hereinafter “businesses”), should observe international human rights norms, particularly those set out in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and in the Rome Statute of the International Criminal Court.
- In their security arrangements, businesses that wish to avoid complicity in war crimes, crimes against humanity, genocide, torture, forced disappearance etc, should observe the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and the United Nations Code of Conduct.
- Corporations should abide by the clear prohibitions against aiding and abetting crimes against humanity, genocide, torture, hostage-taking, extrajudicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person, as defined by international law, in particular human rights and humanitarian law.
- Respect for the principle of non-discrimination and the prohibition on forced, compulsory or child labour are also clearly established in a variety of instruments, and should be observed by business.
- Under standards laid out in ILO Conventions, which are to be enforced through host country domestic legislation, businesses are to provide a safe and healthy working environment and to respect core labour standards.
- Businesses should recognise and respect the norms of international law, national law and regulations, as well as the public interest, development objectives and social, economic, and cultural policies, including transparency, accountability, and prohibition of corruption.
- Businesses are called upon to respect economic, social and cultural rights as well as civil and political rights and contribute to their realisation. Businesses should help developing countries attain their Millennium Development Goals.
- Businesses are also expected to carry out their activities in accordance with national laws, regulations and administrative practices and policies relating to the protection of the environment of the countries in which they operate, as well as in accordance with international agreements, principles, objectives, responsibilities and standards with regard to the environment as well as human rights, public health and safety, bioethics and the precautionary principle. In keeping with agreements reached at United Nations Summits – Rio and Johannesburg – they should also conduct their activities in a manner contributing to the wider goal of sustainable development.

Ultimately, this universal statement of human rights standards should strengthen accountability for human rights, so that communities, workers, and consumers are effectively protected while well-intentioned companies are not disadvantaged by their efforts to ensure the protection of human rights within their sphere of influence.



## **B. The Extractive Industries and Human Rights: Selected Issues and Examples**

The problem of human rights abuses associated with the activities of extractive industries is not limited to a few cases; unfortunately examples of such abuses are widespread. The following section identifies some of the patterns and dynamics of these abuses. In doing so, it demonstrates some of the key gaps in the protection of human rights and the need for universally-recognized standards on business and human rights.

### **1. Violence and Repression**

#### **a. Fuelling Conflict**

In many cases, the extractive industries in corrupt and undemocratic countries have caused political instability, fuelled violations of human rights, and seriously jeopardized the security of local communities. In their eyes, powerful oil and mining companies often appear to benefit when police or the security forces violently repress protests by affected communities about the operations of extractive industries. In many cases, companies are accused of colluding or acquiescing in other punitive actions by security forces; in the Niger Delta, for example, some communities accused of harbouring criminals have been razed to the ground.

Lucrative minerals such as oil and diamonds have played a central and well-documented role in many conflicts. Ethnic and other divisions can become politicised in the competition for these resources. Natural resources can also provide a means of funding violent conflicts once they have begun. For example, resource exploitation exacerbated and prolonged the recent war in the Democratic Republic of the Congo (DR Congo), which is now estimated to have cost between three to four million lives. Reports by a UN Panel of Experts and independent studies by human rights NGOs concluded that a number of companies headquartered in OECD countries were complicit in this illegal exploitation, the profits of which became a primary motive for continued conflict. For the most part, OECD governments have failed to investigate these serious allegations. To date, not a single company has been prosecuted.

#### **b. Response to Protests**

##### **Philippines**

Since 1994 the Subanon indigenous population in the Philippines has opposed the entry of a Canadian company, TVI Pacific, to their area at Canatuan, Siocon. In 1999, the company, reinforced with police units, attempted to move drilling equipment onto the site. This was blocked by a picket led by the local Subanon. The picketers were forcefully removed by police using methods including whipping with canes; some were bound. Two picketers, including Subanon leader Onsino Mato, were arrested and held for 30 hours and removed from the site before being released without charges. A baby who was being carried by a protestor was struck on the head during the clashes. In a subsequent inquiry, the government-supported Philippine Human Rights Commission identified the presence of the company as the source of conflict in the community and recommended their withdrawal.

In 2004, when a multi-sectoral group called the “Save Siocon Paradise Watershed Movement” picketed to prevent heavy equipment from moving toward the mining site, they were challenged



by the paramilitary guards of TVI. The security forces fired at the protestors, who included local chieftains. Four protestors were wounded.

Local indigenous communities argue that the mine does not in any way contribute to their well-being, but has instead caused increased inequality and led to the abuse of their basic human rights. They are particularly disturbed by the manipulation of their legal right to ‘free prior informed consent’ (FPIC). Between 1994 and 2001, TVI repeatedly tried to win over indigenous community leaders who consistently opposed the entry of the company. From 2001, however, the company began to recognise an alternative indigenous structure drawn largely from their workforce and including many without traditional rights in the local area. The community has, as a result, suffered serious division and conflict. Repeated protests by the legitimate land title holders have been ignored by State agencies.

### **Guatemala**

In 1996, as an essential element of the adoption of the Peace Accords between the Guatemalan government and the National Revolutionary Union guerrillas, the government agreed to ratify ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries. In so doing, the government guaranteed that it would at last respect the rights of indigenous Mayan communities. However, since ratification, the Guatemalan Ministry of Energy and Mines has issued 128 exploration licences and 217 exploitation licences across 22 departments to various mining companies.<sup>5</sup> A majority of these concessions overlap with indigenous lands, but the government has failed to consult with groups prior to issuing the concessions.

One mine that clearly illustrates the absence of consultation with indigenous groups is Glamis Gold’s Marlin mine in the Western Highlands of Guatemala. Throughout 2003, 2004 and 2005, Mam and Sipakapense Maya from San Marcos, the Consejo Nacional de Pueblos Indígenas, the Achjmol Maya Comprehensive Development Association, the Majawil Q’IJ, and the indigenous authorities of the Western Highlands, among others, have argued that Glamis’ Marlin mine directly violates their rights protected under ILO Convention 169. In May 2005, Guatemala’s Procuraduría de Los Derechos Humanos (human rights ombudsman) issued a report questioning whether Marlin’s license should be revoked due to lack of governmental compliance with ILO Convention 169.<sup>6</sup>

The mine has also been a hotbed of violence. On 11 January 2005, forty days after groups had blockaded the passage of a ball mill to the mine site, the Guatemalan government called in 700 military and 300 police to end the confrontation. Shots were fired and tear gas was used to disperse protesters from the area. Workmen, accompanied by National Police, then dismantled the pedestrian bridge that had initially blocked the mill’s path. When local villagers gathered to oppose the action, the police fired more tear gas canisters. One man, Raúl Castro, was shot and killed and up to ten others, including a number of police, were injured.† Death threats against both project proponents and opponents have ensued throughout 2005.<sup>7</sup>

---

† Accounts vary on the exact number of injured from 10 to 20. Reports in Guatemala’s *La Prensa* cites 20 injured in “Un muerto y 20 heridos en disturbios en Sololá”, 12 Jan 2005 ([www.prensalibre.com/pl/2005/enero/12/105342.html](http://www.prensalibre.com/pl/2005/enero/12/105342.html)). The *Associated Press* cites 12 injured in “One dead in Guatemala Clash”, 11 Jan 2005 ([www.cnn.com/2005/WORLD/americas/01/11/guatemala.violence.ap](http://www.cnn.com/2005/WORLD/americas/01/11/guatemala.violence.ap)). Later accounts from the ground cite 10 injured.



### c. Security Arrangements

It is indisputable that in many countries company security arrangements, whether involving government or private forces, have had a negative human rights impact for which companies should be held to account.

Rodolfo Stavenhagen, the UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, for example, reported after a mission to the Philippines that “some indigenous regions have suffered the impact of insurgency and governmental counter-insurgency measures, so that numerous indigenous representatives of these regions complain of the effects of militarization on their communities and activities”.<sup>8</sup>

#### Burma

In the early 1990s, a terrible drama unfolded in Burma. To exploit natural gas resources, a few Western and Asian oil corporations, along with the Thai Electricity Authority, entered into partnerships with the Burmese military regime to build the Yadana and Yetagun pipelines. Determined to overcome any obstacle, the regime created a highly militarized pipeline corridor. The results were the violent suppression of dissent, environmental destruction, forced labour and portering (i.e. villagers are obliged under a requisition order issued by the military or local authorities to provide portering services), forced relocations, torture, rape, and summary executions.<sup>9</sup>

A U.S. lawsuit filed on behalf of Burmese victims of the pipeline project provides a particularly compelling account of alleged corporate complicity in human rights abuses. According to a U.S. federal court, the plaintiffs in the *Doe v. Unocal* case presented enough evidence to demonstrate that:

...before joining the Project, Unocal knew that the military had a record of committing human rights abuses; that the Project hired the military to provide security for the Project, a military that forced villagers to work and entire villages to relocate for the benefit of the Project; that the military, while forcing villagers to work and relocate, committed numerous acts of violence; and that Unocal knew or should have known that the military did commit, was committing, and would continue to commit these tortuous acts.<sup>10</sup>

#### Nigeria

The Nigerian government has obligations under international law to respect, protect, and fulfil human rights, but it has frequently failed to do so, as documented in a recent report by Amnesty International.<sup>11</sup> Given the importance of oil in Nigeria’s economy, the government has failed to protect communities in oil producing areas, while providing security to the oil industry. Domestic regulation of companies to ensure protection of human rights in Nigeria is clearly inadequate.

The African Commission on Human and Peoples’ Rights found Nigeria in violation of several articles of the African Charter on Human and Peoples’ Rights in respect of human rights abuses associated with oil operations in Ogoniland in the Niger Delta.<sup>12</sup>

On 4 February 2005, soldiers from the Nigerian Joint Task Force fired on protesters from Ugborodo, a small community of the Itsekiri ethnic group, who had entered a high-security facility at Chevron Nigeria’s Escravos oil terminal on the Delta State coast. The demonstrators



reportedly damaged property, including windows and helicopter windscreens. One demonstrator was shot and later died and at least 30 others were injured, some of them seriously, by blows from rifle butts and other weapons. It was several hours before the injured protesters could reach a hospital, a lengthy boat journey away. Neither the security forces nor Chevron Nigeria provided adequate medical care or assistance to transport the injured. Chevron Nigeria said that 11 employees and security officers received minor injuries. The protest was over a Memorandum of Understanding signed by Ugborodo community representatives and Chevron Nigeria in 2002. The protesters said that Chevron Nigeria had not provided the jobs and development projects they were promised. No independent inquiry of the incident has been carried out by the government or by Chevron Nigeria. The company said it could not control the actions of the security forces in any way, and expressed no intention of taking immediate steps to avoid recurrence of its response.<sup>13</sup>

### **Indonesia**

Freeport McMoRan has disclosed payments of \$4 million to \$6 million a year for "government-provided security" by the Indonesian military and police since 2001. Despite repeated questioning by shareholders, the company has declined to explain these payments in detail or make clear their human rights implications. A report by Global Witness revealed that some of this money appears to have gone, not to Indonesian government institutions, but to individual military and police officers. Most seriously, a total of \$247,705 appears to have been paid between 2001 and 2003 to an Indonesian general who had earlier held command responsibility for troops who committed crimes against humanity, including mass murders, in East Timor. Freeport McMoRan has failed to demonstrate that these payments are legal, ethical and do not contribute to the ongoing violent conflict between the Indonesian security forces and the separatist movement in the region of Papua. Global Witness has since called for all security payments to be fully disclosed and properly audited.<sup>14</sup>

#### **d. Other Complicity Concerns**

##### **Burma: Forced Labour**

EarthRights International's report "Destructive Engagement" illustrates the close relationship of oil corporations with human rights abuses in the Yadana and Yetagun pipeline regions. . In particular, the report documents that Total knew about and may have been complicit in forced labour practices. The evidence shows that Total paid people who were forced to work, thereby linking forced labour directly to the Yadana consortium. Despite knowledge that forced labour was being used on the projects and in the region, the Yadana consortium entrusted the military with recruiting local villagers to work on the project, supervising them, and even approving their payment. This delegation of responsibility resulted in widespread forced portering and forced work on pipeline infrastructure, including helipads all along the routes of both pipelines. The reports show that Total and Unocal knew from their own consultants that abuses were occurring surrounding their projects, yet these corporations continued their involvement.

In September of 2002, the US Court of Appeals for the 9<sup>th</sup> Circuit held that Unocal could be liable under the Alien Tort Claims Act, for acting as a de facto state actor in the Myanmar military's subjection of plaintiffs to forced labour, murder and rape. Unocal has since settled this case, agreeing in April 2005 to compensate Burmese villagers who sued the firm for complicity in forced labour, rape, and murder.



### **Sudan: Benefiting from Forced Displacement**

Prior to the finalization of a peace agreement, on 9 January 2005, Sudan endured a twenty-one year war marked by gross human rights violations. During the war, the Sudanese government utilized the “divide and displace” strategy to clear inhabitants off oilfields in southern Sudan. Over several periods following the discovery of oil there, hundreds of thousands of civilians in Western Upper Nile/Unity State were forcibly displaced without notice or compensation. The Sudanese army and government-armed militias attacked civilians to create a “cordon sanitaire” for unimpeded oil activities and to clear the way for oil infrastructure projects.<sup>15</sup>

Human Rights Watch concluded that the Canadian oil company, Talisman Energy, among others, was complicit in human rights violations in Sudan. From August 1998 until the sale of its Sudan interest in 2003, Talisman was the lead partner in the Greater Nile Petroleum Operating Company’s (GNPOC) oil concessions in Sudan.<sup>16</sup> Talisman, which had ample warning of human rights abuses in Sudan, had a responsibility to ensure that its business operations did not depend upon, or benefit from, the gross human rights abuses being committed by the government and its proxy forces. The Sudanese government launched a major offensive in May 1999 to remove people living in key areas of the consortium’s oil concession, including areas where Talisman was active.<sup>17</sup> Yet from the outset, the company resolutely refused to speak out against or to seriously investigate the Sudanese government’s policy of forcibly displacing civilians from areas designated for oil extraction and the human rights abuses that were an essential element of that policy.<sup>18</sup>

According to Human Rights Watch, Talisman’s complicity in human rights abuses went beyond inaction in the face of the government’s displacement campaigns. Government forces used the infrastructure built by Talisman and GNPOC, including an airfield and a road network, to carry out attacks on civilians and civilian infrastructure, and to wage indiscriminate and disproportionate military attacks that harmed civilians and violated the laws of war. After initial denials, Talisman acknowledged that Sudanese forces had used the company’s airstrip for “non-defensive purposes.” According to a Canadian governmental human rights delegation, the airstrip was used repeatedly in helicopter gunship and Antonov bomber attacks. Sudanese forces also made military use of the road system installed by the oil companies to move armoured personnel carriers, facilitating surprise attacks on civilians and the destruction of entire villages.<sup>19</sup> Responding to critics in 2000 and 2001, Talisman said that it intervened privately with the Sudanese government to protest the use of oilfield infrastructure.<sup>20</sup> But when Talisman ultimately sold off its interest in GNPOC in 2003, it acknowledged that it was “unsuccessful in . . . attempts to finalize a protocol [with the Sudanese government] that endeavoured to address the provision of security and the appropriate use of oilfield infrastructure”.<sup>21</sup>

### **DR Congo: Providing Logistical Support to FARDC**

According to UK-NGO Rights and Accountability in Development (RAID) and Congolese NGO Action contre l’impunité pour les droits humains (ACIDH), questions remain about the use made by the Congolese military of Anvil Mining Limited’s logistics and personnel in a counter-offensive to crush insurgents in Kilwa, in October 2004.<sup>22</sup> Approximately 100 people – the majority of them civilians – are believed to have been killed by the Congolese Armed Forces (FARDC). The killings occurred during an operation to suppress a rebellion in Kilwa, a town of 48,000 inhabitants. Kilwa is close to Anvil’s Dikulushi mine and is crucial to the company’s



copper and silver mining operation as Kilwa is the port on Lake Mweru from which ore is shipped to Zambia for processing.‡

The company has stated to MONUC (the UN monitoring body in DRC) that air transport, vehicles and drivers were provided to the army following requests “which could not be refused”.<sup>23</sup> Anvil denies that its vehicles were used to transport bodies and looted goods.<sup>24</sup> Subsequently, the company has stated “that it would vigorously defend any inference or allegation that it had knowledge of, or provided assistance to, the DRC armed forces in the committing of any human rights violations during the suppression of a rebel insurgency in the town of Kilwa, in October 2004”.<sup>25</sup>

Yet it took Anvil Mining Limited eight months to acknowledge publicly that human rights abuses had taken place when the Congolese Armed Forces suppressed the Kilwa rebellion.§

### **DR Congo: Providing Support to Armed Group in Ituri**

South Africa’s AngloGold Ashanti, which is part of the international conglomerate Anglo American, provided various forms of support to a Congolese rebel group, the FNI (National and Integrationist Front) during gold exploration activities in Mongbwalu, north-eastern Congo. In return for FNI assurances of security for its operation and staff, AngloGold Ashanti provided logistical and financial support to the armed group and its leaders. In an environment of ongoing conflict, extreme poverty, and minimal infrastructure, such assistance was important for the activities of the FNI and resulted in political benefits for them.

Throughout late 2003 and into 2004, AngloGold Ashanti provided these benefits to FNI leaders even as FNI combatants were carrying out witch hunts, executions, arbitrary detentions, torture and forced labour. AngloGold Ashanti knew, or should have known, that the FNI committed grave human rights abuses against civilians, including war crimes and crimes against humanity, and that the FNI was not a party to DR Congo’s transitional government.

AngloGold Ashanti failed to uphold its own business principles on human rights considerations and failed to follow international business norms governing the behaviour of companies internationally. During research conducted in the area, Human Rights Watch was unable to identify effective steps taken by the company to ensure that their activities did not negatively impact on human rights.<sup>26</sup>

---

‡ In June 2005, the law firm Slater and Gordon, acting on behalf of RAID, the Human Rights Council of Australia, ASADHO/Katanga and ACIDH called upon the Australian Federal Police to investigate whether there is evidence of complicity in the commission of crimes against humanity or war crimes under Chapter 8 of the Australian Criminal Code Act 1995. Australian law dealing with crimes against humanity mirrors that of the International Criminal Court in The Hague. It is a crime for an Australian national to assist someone to commit crimes such as torture and the systematic killing of civilians under Australian law. In September 2005, the Australian Federal Government’s Department of Foreign Affairs and Trade referred the matter to the Australian Federal Police (AFP) who have already begun their investigation.

§ ‘Although at the time, Anvil had no knowledge of human rights abuses, we are now learning, it was a terrible event. The climate of fear and retribution that exists in this strife-torn part of the world means that it takes a considerable amount of time for any party to obtain all information that relates to such events as occurred at Kilwa.’<sup>8</sup>

### **Philippines: Payments to Insurgent Groups**

The United States Federal Bureau of Investigation (FBI) is investigating a former mine manager's claims that his Canadian-owned company routinely gave money, weapons, medical aid and food to insurgent groups accused of serious human rights violations. Filipino insurgent groups have attacked civilian targets, engaged in piracy, and subjected people they have taken hostage to cruel inhuman and degrading treatment. Some captives have been extra-judicially executed. For two years, Kingking mine officials allegedly secretly funnelled money totalling as much as \$2.4 million to five different armed groups, including Abu Sayyef. According to Allan Laird, "I was told, 'Go with the flow; this is the way you do business in the Philippines'." Laird managed the joint-venture project by Echo Bay Mines Ltd. and Calgary-based TVI Pacific Inc. from August 1996 until it closed in 1997.<sup>27</sup> Laird allegedly informed the board of Kingking mines of these payments. The Sierra Club reports that according to records discovered by Laird in a closet at the mine site, Kingking security met repeatedly with and provided money and supplies to different rebel groups operating in the area.<sup>28</sup>

### **Trade: Gold and Coltan in the DR Congo**

Companies buying raw materials or other products from zones of conflict may also be contributing either directly or indirectly to violations of human rights. The trade in gold and coltan from the DR Congo provide two examples of this dynamic.

Human Rights Watch has reported that warlords in the rich goldfields of north-eastern DR Congo, working together with their local business allies, used the proceeds from the sale of gold to gain access to money, guns, and power. Operating outside of legal channels, they worked together with a network of gold smugglers to funnel gold out of the DR Congo to Uganda, which was destined for global gold markets in Switzerland and elsewhere, where it was bought by multinational companies.

One company that bought Congolese gold from this network was Metalor Technologies, a leading Swiss gold refinery. Metalor knew, or should have known, that this gold came from a conflict zone where human rights are abused on a systematic basis. The company claimed it actively checked its supply chain to verify that acceptable ethical standards were being maintained. Yet during five years of buying gold from the network, no serious questions were raised. Through its purchases of gold from Uganda, Metalor and other such companies may have contributed indirectly to providing a revenue stream for armed groups that carried out widespread human rights abuses.<sup>29</sup>

Coltan (columbo-tantalite) is an ore comprising the rare metals columbium or niobium and tantalum. The former is used in heat resistant alloys and glass, the latter primarily for the manufacture of hi-tech capacitors used in a wide range of electronic products from mobile phones to Playstations. From November 2000 to March 2001, there was a surge in demand for such capacitors from electronics manufacturers and the price for processed coltan ore rose sharply from \$40 per pound to \$300 per pound.<sup>30</sup> The Kivu province in eastern DRC has extensive coltan deposits. During the boom, these reserves were monopolised by the Rwandan Patriotic Army (RPA) and its rebel allies, RCD-Goma. Impoverished Congolese farmers mined the ore, although the RPA also used forced and child labour.<sup>31</sup> The International Peace Information Service estimates that the RPA made \$100 million profit in 2000 and 2001 from the trade.<sup>32</sup> According to Amnesty International:





The international traders and the tantalum-processing companies worldwide that purchased coltan directly from the Rwandese army and RCD-Goma sources or their proxies in eastern DRC or Rwanda are complicit in the human rights abuses by these forces in the region. Their business deals have paid for the “war within a war” in eastern DRC that has claimed hundreds of thousands of civilian lives and subjected millions of others to an associated humanitarian catastrophe.<sup>33</sup>

## **2. Economic, Social and Cultural Rights**

### **a. Resource Curse**

The link between human rights abuses and natural resources, particularly oil and mineral deposits, has become the focus of growing concern. In some cases, competition over resource wealth may spark internal armed conflict and even the formation of rebel groups. Just as important is the link frequently found between government control of resource revenues and “endemic corruption, a culture of impunity, weak rule of law, and inequitable distribution of public resources.” Such unaccountable governments – sometimes called “predatory autocracies” – are more likely to commit human rights abuses, and to prolong armed conflict.\*\* The government of Angola was an example of such a predatory government when, towards the end of the civil war with UNITA, it became increasingly oil-dependent. In a single year (1997), US \$1.1 billion, or 20% of GDP, disappeared from government accounts, much of it likely lost to corruption, even as more and more Angolans fell into poverty.††

The inverse association between equitable growth and oil and mineral abundance has come to be known as the ‘resource curse’. Harvard economists Jeffrey Sachs and Andrew Warner found that from 1970-1989, in a comparative analysis of 97 countries, resource-poor countries “often vastly outperform resource-rich economies in economic growth”.<sup>34</sup> Research has shown that the greater a country’s dependence on oil and mineral resources, the worse the country’s growth performance.<sup>35</sup>

Dependence on oil and minerals is also strongly linked to unusually bad conditions for the poor. According to Oxfam America, overall living standards in oil- and mineral-dependent states are far lower than they should be given their per capita incomes. Higher levels of mineral dependence are also strongly correlated with higher poverty rates and greater income inequality. These countries also tend to suffer from very high rates of child mortality. In addition, oil and mineral dependent states are highly vulnerable to economic shocks.<sup>36</sup>

The issue of the ‘Resource Curse’ has been the subject of extensive study. Dr. Emil Salim, the author of the report for the World Bank’s Extractive Industries Review, identified the association of extractive industries with corruption as a major contributing factor to the problem. The report, *Striking a Better Balance*, called on the World Bank to hold back from investing in extractive industries projects unless explicit core and sectoral governance requirements could be met by host countries.<sup>37</sup>

---

\*\* Arvind Ganesan and Alex Vines, “Engine of War: Resources, Greed, and the Predatory State,” Human Rights Watch, *World Report 2004: Human Rights and Armed Conflict*, pp. 304, 305.

†† Id. at 307.



## **b. Indigenous Peoples' Rights: Prior, Informed Consent**

Threats to indigenous peoples' rights and well-being are particularly acute in relation to extractive projects. These projects and operations have had and continue to have a devastating impact on indigenous peoples by undermining their ability to sustain themselves physically and culturally. As a result, the majority of complaints submitted by indigenous peoples to intergovernmental human rights bodies involve rights violations in connection with natural resource development.<sup>38</sup>

In contemporary international law, indigenous peoples' have the right to participate in decision making and to give or withhold their consent to activities affecting their lands, territories and resources or rights in general. Consent must be freely given, obtained prior to implementation of activities and be founded upon an understanding of the full range of issues implicated by the activity or decision in question; hence the formulation, free, prior and informed consent.<sup>39</sup> Mining, oil, and gas development poses one of the greatest threats facing indigenous peoples and the lands, territories and resources upon which they depend. In the fall of 2000, the then World Bank president, James Wolfensohn, commissioned an independent evaluation of World Bank investments in oil and mining and their contribution to poverty reduction and sustainable development. This evaluation, known as the Extractive Industries Review (EIR), was completed in late 2003. It concluded that fundamental reforms in its lending practices and institutional approaches are necessary if World Bank investments in extractive industries are to benefit the poor and be environmentally sound. The Extractive Industries Review observed that there was a need to accelerate the use of free, prior and informed consent (FPIC) for extractive projects. The review concluded that FPIC should be seen as the principal determinant of whether there is a social license to operate and, hence, as a principal tool in deciding whether to support an operation.<sup>40</sup> If FPIC had been taken fully into consideration then some of the problems that have arisen with the Sarayaku People and CGC in Ecuador and Mayan communities living in proximity to the Marlin Mine in Guatemala (documented above) might have been avoided.

### **Ecuador**

In 1996 the Government of Ecuador awarded a concession for oil exploration and exploitation to Argentinean Compañía General de Combustibles (CGC). The concession included the territory of the Sarayaku Kichwa People, which was granted to the company without any prior consultation with the Sarayaku Kichwa People. From the outset, the Sarayaku Kichwa People have made clear their complete opposition to the entry of the company onto their land and have struggled to defend their constitutional rights to property and prior consultation. The Ecuadorian Government reacted by providing political, police and military support to CGC.

In 2002, the company entered the Sarayaku People's territory without their consent in order to start their seismic exploration, which affected large portions of their lands and access to the natural resources that sustain their culture and ways of living.<sup>41</sup> After various domestic judicial remedies failed to ensure protection for the Sarayaku People, their case was submitted to the Inter-American System of Human Rights. The Government of Ecuador has systematically failed to comply with the rulings of the Inter-American Commission and Court of Human Rights, particularly with precautionary and provisional measures in favour of the Sarayaku People. In July 2004, the Court issued interim measures in favour of the Sarayaku, which were ratified and extended in June 2005.



## **Philippines**

The UN Special Rapporteur on Indigenous Affairs has noted that “the powerful interests of mining, logging and agribusiness enterprises, which acquire control over indigenous lands and resources even against the wishes of the indigenous communities and without their free and prior consent as the law establishes”. Human rights violations frequently occur as “one of the negative effects experienced by Philippine indigenous peoples of various economic development projects, including mining which involves damage to the traditional environment, involuntary displacements, threats to health, disruption of the right to food and shelter, imposed changes in economic activity and livelihoods, and cultural and psychological trauma.”<sup>42</sup>

## **India**

In India, while the Indian Constitution and the judicial processes in theory allow for the interests of tribal peoples and concerns about the environment to be heard, vested economic interests are constantly pushing the indigenous communities to the brink. Mines, minerals and PEOPLE (mm&P) has been supporting the struggle of tribal peoples against the development of bauxite mining and an alumina refinery in Kalahandi and Rayagada Districts of Orissa. According to mm&P, Vedanta Aluminium Limited, the Indian Subsidiary of UK-based Vedanta Resources plc and majority owned by Sterlite Industries through the Agarwal family holding company,<sup>43</sup> is trying to short cut the procedures for obtaining clearance for the project, which will destroy a Reserved Forest area which is the traditional home of the Dongaria Kandha people. The project has obtained environmental clearance and is moving ahead despite the objection of tribal people and in contravention of the Forest Clearance Act. Four villages have already been forcibly cleared and resettled.<sup>44</sup>

The area in the Niyamgiri hills is notable for its pristine forests and is home to about 6000 *adivasis*— the Dongaria Kandha people. Niyamgiri Hill is a sacred site for the Dongaria Kandha people. According to mm&P, “The Dongaria Kandha do not cultivate the hill top out of respect, and the hill is worshipped as Niyam Raja. The entire tribe with its unique custom and practice faces extinction if Niyamgiri hills are taken over for mining.”

Vedanta Aluminum Limited is establishing an integrated Bauxite Mining, Power Plant and Alumina Refinery Complex in Kalahandi and Rayagada Districts of Orissa, where the Niyamgiri hills are located. According to the Executive Summary of the project’s Rapid EIA, this project is predominantly in Reserved Forests. The proposed total lease area is 1073.40 Ha. Of this 600.961 Ha is in Kalahandi and the rest in Rayagada. Of the 600.961 Ha in Kalahandi district, 508.638 is Reserved Forests which is roughly 85% of the land. Despite such a significant proportion being Reserved Forests, it would seem that Forest Clearance has not been sought from the Ministry of Environment and Forests (MoEF).

Under Indian legislation, separate communications of sanction must be issued for projects that require clearance from forest as well as environmental angles, and the project would be deemed to be cleared only after clearance from both angles. It is pertinent to mention that not only are construction and other activities not permissible in forest land till the requisite forest clearance is obtained from the Central Government in accordance with the provisions of the Forest (Conservation) Act, 1980, construction activity is also discouraged in the non-forest portion, if it forms part of the same project.<sup>45</sup>

The Academy for Mountain Environics (AME), a constituent of the mm&P alliance, filed a petition<sup>46</sup> to the Central Empowered Committee (CEC) of the Supreme Court, which was created



by the Court to advise it on cases related to encroachment on forests.<sup>47</sup> Their petition pointed out these specific violations and requested that the Committee:

- a) Issue an order directing an immediate stay on all ongoing activities till Forest clearance is obtained.
- b) Issue an order directing the Company to immediately restore the area and pay for the damages in accordance with the 'polluter pays' principle, which has been recognized as the law of the land.
- c) Issue an order directing that action be initiated against concerned officials and authorities for the inaction in allowing the illegal construction to happen without requisite clearance.

The CEC came to the conclusion that “the use of the forest land in an ecologically sensitive area like the Niyamgiri Hills should not be permitted. The casual approach, the lackadaisical manner and the haste with which the entire issue of forests and environmental clearance for the alumina refinery project has been dealt with smacks of undue favour/leniency and does not inspire confidence with regard to the willingness and resolve of both the State Government and the Ministry of Environment and Forests (MoEF) to deal with such matters keeping in view the ultimate goal of national and public interest. In the instant case had a proper study been conducted before embarking on a project of this nature and magnitude involving massive investment, the objections to the project from environmental/ecological/forest angle would have become known in the beginning itself and in all probability the project would have been abandoned at this site.”<sup>48</sup>

On 21 September 2005, CEC called upon the Supreme Court to consider revoking the environmental clearance dated 22 September 2004, granted by the Ministry of Environment and Forests for setting up of the Alumina Refinery Plant by M/s Vedanta and to direct the company to stop further work on the project.

Despite this indictment, the Company is going ahead with its construction activity. An urgency petition is being filed to seek immediate intervention of the Supreme Court.

### **c. Human Rights Impacts of Environmental Destruction**

Regulators and companies have long recognized the impacts of mining-related contamination on water resources, and companies generally seek to contain contamination within the mine site. Despite this goal, water contamination continues to be a very common environmental impact from mining. Contamination of water sources not only has a serious impact on local communities' basic right to health but it also undermines their fundamental right to water. General Comment No. 15 on the Right to Water was adopted by the UN Committee on Economic, Social and Cultural Rights at its twenty-ninth session in November 2002 (UN Doc. E/C.12/2002/11). The Comment provides guidelines for States Parties on the interpretation of the right to water under two articles of the International Covenant on Economic, Social and Cultural Rights - Article 11 (the right to an adequate standard of living) and Article 12 (the right to health). The General Comment 15 stresses the important role that actors other than states can play in the protection, realisation and promotion of the right to water.

Unfortunately, violations are regularly linked with the extractive industry. For example:



- Chemicals from mining in the Chiquitano Forest region of Bolivia have contaminated the water and land, turning it into a desert. One spokesperson explained: “We can no longer grow anything. We can no longer produce rice, corn or anything we use to live from”.<sup>49</sup>
- “The Indonesian government contends that Newmont, which is based in Denver and is the world’s biggest gold producer, contaminated the equatorial waters of Buyat Bay with mine waste containing arsenic and mercury. It wants to hold the president of Newmont in Indonesia, Richard B. Ness, 55, responsible.”<sup>50</sup>
- “[In October 2005] a Philippine province sued the world’s fifth-largest gold company, Canada-based Placer Dome, charging that it had ruined a river, bay and coral reef by dumping enough waste to fill a convoy of trucks that would circle the globe three times”.<sup>51</sup>

### **Ecuador**

According to a study of the health effects of oil pollution in Ecuador, the activities of oil companies, including Texaco, have exposed local people to toxic chemicals in their food, water, and air.<sup>‡‡</sup> The water used by local residents for drinking, bathing, and washing clothes contains nearly 150 times the amount of substances, such as hydrocarbons, which is considered safe. Some cancer rates in the affected community of San Carlos exceed the standard rates by up to 30 times. Risk of melanoma and cancer of the stomach, liver, and bile duct are 2.3 times higher for those living in San Carlos than elsewhere in the Amazon region. The rates of spontaneous abortion in the affected population are 2.5 times higher than in communities in the area not exposed to contamination.

### **Ghana**

In Ghana, the dumping of mine waste and the creation of mine pits by Bogoso Gold Limited (BGL) has been environmentally destructive and created many problems for local communities. In October 2004, Dumase and other communities were endangered by cyanide spillage from a new BGL tailings containment, which had not received a permit from the Environmental Protection Agency (EPA). BGL refused to provide adequate medical treatment for over 30 persons who fell ill, and the company now subject to a court action by the victims.<sup>52</sup> On 7 June 2005, 5,000 people from Prestea, Himan, and Dumase united to peacefully protest BGL surface mining in Prestea. Security Personnel, associated with the Military and Police, fired on the demonstrators, wounding seven people.<sup>53</sup> In yet another egregious example, a waste dump was set up 30 metres from the Prestea Government Hospital. The hospital provides medical services to thousands of people in Prestea and the surrounding towns and villages. The mine waste has already covered a spring water source, which is used by the Prestea Government Hospital. The medical director, nurses, and staff of the hospital have marched on the company’s offices in Prestea in protest. After an initial suspension ordered by the EPA in September 2005, local communities were shocked to learn that BGL had again resumed operations with EPA approval in late October. The EPA had insisted on the relocation of the Prestea police station and the erection of a fence around the mine pit, but did not include any of the communities’ concerns about the increasing quantity of mine waste and lack of access to clean drinking water.<sup>54</sup>

---

‡‡ In 2000, the Yana Curi report (from the local indigenous expression for oil) was one of the first studies on the effects of oil pollution on people’s health in the northeast region of the Ecuadorean Amazon. The study was conducted in the village of San Carlos, where more than 30 wells were built by Texaco; it was prepared by two medical doctors in collaboration with the Department of Tropical Medicine and Hygiene at the University of London. ([http://www.amazonwatch.org/amazon/EC/toxico/downloads/yanacuri\\_eng.pdf](http://www.amazonwatch.org/amazon/EC/toxico/downloads/yanacuri_eng.pdf))



## **Zambia**

In Zambia, local communities have no legal redress for environmental degradation, because of the terms of governmental contracts with extractive companies. Under the Development Agreement for mine privatisation, the Government of Zambia granted a 15-year stability period for all privatised mines, with the exception of Konkola Copper Mines (KCM), which has been granted an generous 20-year stability period. This means that during the stability period, the new owners, Anglo American Plc, were only required to conduct their operations in accordance within the agreed pollution and emission targets set out in the environmental management plans. In other words, breaches of Zambia's existing environmental standards would be tolerated. For the duration of the stability period, the Government had limited authority to enforce environmental laws: it is not able not impose fines or penalties (unless emissions exceed the licensed higher levels) and it cannot make changes to Zambian mining-environmental legislation.<sup>55</sup> In 2002, after only about two years of operation, Anglo American Plc. withdrew its shareholding in KCM, citing unfavourable copper prices as one reason for the pull-out. In 2004, VEDANTA Resources Plc, an Indian company, bought 51 per cent of KCM for a deferred cash consideration of US \$25 million, which the company reportedly was able to recover within the first three months of its operation.<sup>56</sup>

### **d. Corruption and Denial of Fundamental Rights**

In some cases, corporations enter into contracts with corrupt governments that have the effect of enriching elites without ensuring respect for the fundamental rights of people in affected areas. For instance, according to Transparency International, only three per cent of contracts entered into by the Congolese authorities involve a tendering process. The others were awarded either by restricted allocation or privately. There is currently no planning and no programming of procurement contracts. Many public contracts, particularly those awarded privately, do not comply with legal requirements. Furthermore the plundering of natural resources in the DR Congo that was condemned by a UN Panel of Experts continues to provide the income that perpetuates the conflict.<sup>57</sup> Along with the lack of infrastructure, endemic corruption and illegal exploitation of natural resources undermine the Congolese peoples' chances of their fundamental rights to health, education and an adequate standard of living being fulfilled.

## **Angola**

Human Rights Watch has reported that government mismanagement and corruption have led to staggering losses of oil revenues, which include payments made by companies. From 1997 to 2002, some US\$4.22 billion in funds could not be accounted for. That amount, strikingly, is roughly equal to total spending (public and private, domestic and foreign) in Angola during the same time period to attempt to meet the humanitarian, social, health, and education needs of a severely distressed population. As argued by Human Rights Watch, the misallocation of oil resources that otherwise could have provided for essential social services greatly impeded Angolans' ability to enjoy their economic, social, and cultural rights and thus constituted a violation of the Angolan government's obligations under international human rights law. Oil companies made enormous payments to the Angolan government, including individual payments for access to oil concessions that reportedly were as high as \$500 million. Prior to 1999, much of the US \$970 million in "signature bonus payments" was funnelled to fund arms purchases, perpetuating the brutal civil war. Since the end of the war, the problem of misallocation of revenues and extensive corruption has accounted for a great share of corporate payments,



undermining the economic, social, and cultural rights of Angolans. Oil companies should take steps to ensure that their payments are not funnelled to private accounts, including by publicly disclosing any signature bonus payments at the time they are paid; joining the Extractive Industries Transparency Initiative and complying with its principles; and encouraging the government to publish a full account of revenues, expenditures, and debt.<sup>58</sup>

### **Equatorial Guinea**

In Equatorial Guinea, most of the money generated by the oil companies' presence has been concentrated in the hands of the top government officials while the majority of the population remained poor. An investigation by the United States Senate determined:

...from 1995 until 2004, Riggs Bank administered more than 60 accounts and certificates of deposits for the government of Equatorial Guinea, [Equatorial Guinea] government officials, or their family members. By 2003, the [Equatorial Guinea] accounts represented the largest relationship at Riggs Bank, with aggregate deposits ranging from \$400-\$700 million at a time. The Subcommittee investigation has determined that Riggs Bank serviced the [Equatorial Guinea] accounts with little or no attention to [its] anti-money laundering obligations, turned a blind eye to evidence suggesting the bank was handling the proceeds of foreign corruption, and allowed numerous suspicious transactions to take place without notifying law enforcement.<sup>59</sup>

The Senate investigation into Riggs Bank also uncovered a number of substantial payments that had been made by oil companies doing business in Equatorial Guinea to individual Equato-Guinean officials, their family members, or entities controlled by these officials or family members.

In a few instances, the evidence shows that oil companies entered into business ventures with companies owned in whole or in part by the [Equatorial Guinea] President, other Equato-Guinean officials, or relatives. For example, in 1998, ExxonMobil established an oil distribution business in Equatorial Guinea of which 85 per cent is owned by ExxonMobil and 15 per cent by Abayak S.A., a company controlled by the Equatorial Guinea President.<sup>60</sup>

### **Burma**

The largest industrial projects in Burma, the Yadana and Yetagun pipelines, are instances of foreign investment leading to increased militarization, which in turn leads to human rights and environmental abuses. The pipeline projects benefit the Burmese military rulers and their corporate partners almost exclusively. Indeed, revenue derived from oil corporations is keeping the Burmese military regime afloat. Since 1988, the oil and gas sector has provided by far the largest amount of foreign direct investment for the military regime. In 1995-96, the oil and gas industry invested some US\$200 million, more than the next five largest sectors of the economy combined. Once the projects are up and running, they will provide the military regime with hundreds of millions of dollars each year. The Yadana project alone is conservatively estimated to give US\$150 million annually to the military regime – for almost three decades. Some estimates for Yadana say the regime will receive as much as US\$400 million annually.<sup>61</sup>



## **Nigeria**

Local communities have historically been denied a fair share of the oil revenues generated in the Niger Delta region. Protests under military governments in the early 1990s were suppressed with force, and the execution of Ken Saro-Wiva and eight other activists from the Ogoni ethnic group in 1995 attracted worldwide condemnation both of the violations taking place in the Delta, and of the massive corruption and the role of the oil companies. The subsequent growth in inter-communal rivalry and violence in the area has its roots in competition for access to economic resources.<sup>62</sup>

## **Chad**

Great claims have been made for the World Bank's experiment in revenue management in Chad. But while it is too early to judge if it will be a success, the cost of failure would be enormous. A report by the Bank Information Center and Catholic Relief Agency points out "If Chad's oil money is mismanaged it could mean increased hardship and conflict for the nearly seven million people in Chad living on less than \$1 per day. The coup attempt in May 2004 is a reminder of the fragile political environment. President Derby's ruling party changed the constitution to allow him to run for a third term in 2006. The unprecedented measures put in place to safeguard against misappropriation of oil revenues are now being put to the test. The oil revenue management system contains many weaknesses not least of which is its limited application to revenues from only three oil fields in Chad, rather than the whole petroleum sector".<sup>63</sup>

Chad's experience shows that transparency is but one essential ingredient in a system of oversight, accountability, and sanction. Investigative and judicial arms of the government must be independent and capable of prosecuting wrongdoing. Transparency is only meaningful if information is understood by the government and the public and if the findings of oversight bodies lead to action.

### **e. Undermining Human Rights in Legal Frameworks**

Host Government Agreements have created legal certainty for the companies, but legal mayhem for ordinary citizens. The layer upon layer of agreements, coupled with the hybrid public/private nature of the contracts, have severely muddied the waters of redress for third parties, potentially denying citizens access to justice. Confidential agreements between investors and States often undermine or weaken existing provisions on social and environmental regulations or impose a regulatory chill preventing developing country governments from introducing amendments to domestic law in order to comply with emerging international human rights or environmental standards. There is a need to balance the strengthening of investors' rights in investment liberalisation agreements with the clarification and enforcement of investors' obligations towards individuals and communities in the countries in which they operate. Development agreements, contracts, mining conventions, etc. should ensure a proper return to the host country, through proper channels, to enable them to meet their obligations to fulfil the economic social and cultural rights of their populations.





### **Chad-Cameroon**

According to Amnesty International, key features of project agreements between Chad, Cameroon and the joint-venture companies for the exploration, development of oilfields and the transportation of petroleum place the protection of human rights at risk in both countries. These agreements, known variously as host government agreements, transnational investment agreements and state-investor agreements, aim to ensure that investing companies can operate under stable, predictable conditions. “The agreements aim to protect the oil companies by constraining the ways in which the states can interfere in the project or impose obligations on it, irrespective of how this might affect human rights. Yet, international human rights law requires states to consider the human rights consequences of all their actions, and to regulate the actions of private individuals and organisations, including companies, to ensure that they do not abuse human rights. This obligation must be paramount and should not be minimised by any contractual provision.”<sup>64</sup>

### **Caucasus**

The BP-led consortium of oil companies stands accused of undermining human rights with respect to its Baku-Tbilisi-Ceyhan oil pipeline, which will transport one million barrels of oil a day from the company’s Caspian oil fields through Azerbaijan, Georgia and Turkey to the Mediterranean. The allegations centre not only on the direct human rights impacts of pipeline construction, but also on the structural undermining of human rights through the legal regime that the consortium has negotiated for the project – a legal regime that overrides all local laws other than the respective Constitutions of the three host states and severely constrains their ability to fulfil their obligations to promote and respect human rights.

#### **f. Lack of Information Disclosure**

Lack of transparency about the financing arrangements between corporations and governments undermines the public’s right to freedom of information, which in turn limits the public’s ability to hold government officials and other accountable. Similarly, disclosure of information is a key aspect of corporate citizenship since it renders firms accountable to outside assessment. However, according to the OECD, only a minority of company codes contain text on financial disclosure and these company codes often only address financial accounting and disclosure in general terms. In addition, most companies do not promise to disclose information documenting their implementation of, and performance relative to, the standards and aspirations contained in their codes. If codes do mention a commitment to disclose relevant information, disclosure is usually to a select audience. The majority of company codes mention procedures to inform employees, managers and, at times, the board of directors, but they are more reticent when it comes to transparency towards the general public. The 2001 OECD study of codes concluded that they did not constitute a *de facto* standard of commitments in the areas they cover.<sup>65</sup>



## C. State Response

### 1. *Inadequate Response*

International human rights law requires states to regulate the actions of private individuals and organisations, including companies, to ensure that they do not abuse human rights. But governments seem unable or willing to curb even the most egregious conduct by corporations registered in their countries or operating inside their jurisdictions.

### 2. *Access to Justice and Remedy*

International human rights treaties guarantee individuals the right to a remedy, but in conflict prone countries or weak governance zones host, governments may lack the institutional capacity or political will to protect the human rights of communities affected by the exploitation of oil, gas, and minerals. Few cases reach the courts and even when they do it can take years to reach a settlement or conviction.

A report on the current state of the justice system in the DR Congo by Global Rights is illustrative of the problems individuals and communities living in conflict-prone countries face in seeking redress through domestic courts.<sup>66</sup> The problems identified by Global Rights besetting the Congolese judicial system include:

- A total lack of independence and constant political interference
- Insufficient trained staff in the courts throughout the country; too many judges based in Kinshasa, the capital.
- Lack of transparency in the recruitment and designation of magistrates
- Irregularity of payment of salaries and insufficient levels of remuneration
- Lack of legal training
- Difficult working conditions; dilapidated buildings; dearth of legal text books; geographical distance, security problems, and/or the absence of a functioning road network.
- Endemic corruption

The collapse of the judicial system in the DR Congo has helped impunity flourish in all areas of the law including in criminal cases. In the case of investigations and prosecutions, grave defects have been noted especially in human rights cases where the rights of the victims to a fair hearing and a remedy are not protected. Neither the legal procedures nor the decisions handed down are closely monitored, nor publicised in a systematic manner. Impunity is allowed to prevail openly and publicly and is rarely denounced. §§ The great majority of the population is ignorant about their rights and is unaware that the possibility of bringing a case exists because people live in environments ruled by custom and tradition and where information about the law is not readily available. Ignorance about laws extends even to some sectors of the judicial system itself, as well as to political administrative and customary law officials.

### Ecuador

In November 1993, a lawsuit on behalf of residents of the rain forest area known as Oriente was initiated in a federal court in New York, close to Texaco Inc.'s international headquarters in

---

§§ S.O.S Justice, p. 4



Westchester County. The suit charges that Texaco Inc (which in May 2005 became part of Chevron) dumped millions of gallons of toxic waste into hundreds of unlined open pits and from there into estuaries and rivers, thus exposing residents to disease-causing pollutants. The plaintiffs seek a thorough cleanup of the area, an assessment of the long-term health effects of the contamination and damage compensation that may exceed \$ 1 billion. Despite being sued on its own home turf, ChevronTexaco Corp. (as it was then known) fought fiercely to have the case dismissed. After more than 10 years of litigation on this jurisdictional issue alone, a federal appeals court finally ruled in 2002 that “reasons of convenience” pointed to the jurisdiction of a rural Ecuadorean court.

It remains to be seen whether a case of this magnitude may be tried fairly and expeditiously by poorly equipped judicial machinery in Ecuador. If the Ecuadorean court were to uphold rigorous standards for the protection of health and the environment, US-based multinationals would conduct business abroad under more strict rules and regulations. A fair and relatively prompt outcome to this suit would be not only a victory for the environment, but also for the thousands of indigenous peoples in developing countries whose survival and quality of life continues to be affected by oil drilling without adequate standards.<sup>67</sup>

### **Burma**

Following the settlement of the lawsuit filed by the Burmese victims of the Yadana and Yetagan pipelines (discussed above), the *Doe v. Unocal* Legal Team jointly issued the following statement: “The fifteen individuals who brought these cases suffered horribly at the hands of the Burmese military, with the complicity of Unocal. They risked their lives for the last eight years seeking justice through these suits. These villagers, ethnic minorities from a remote region, living under a brutal dictatorship, took on a major US multinational oil company in court – and won. We are thrilled for our clients and gratified that the settlement will provide funds benefiting other victims of the Yadana pipeline. More generally, this is a historic victory for human rights and for the corporate accountability movement. Corporations can no longer fool themselves into thinking they can get away with human rights violations.”<sup>68</sup> This outcome is highly significant, but the reality is that to date community claims are rarely resolved.

### **DR Congo**

Natural resources have provided a means of exacerbating the wars across Africa, yet no meaningful mechanism exists or has been put in place by governments to monitor and sanction those companies who participate in and provide finance for this destructive cycle. Many of the destructive types of behaviour by companies involved in natural resource exploitation in the DR Congo that were identified by the UN Panel of Experts in its reports continue unchecked.

## **D. Conclusion**

Like all non-state actors in society, business has a duty to operate in a responsible manner, and this includes respecting human rights. This duty can be drawn from the Universal Declaration of Human Rights, as well as from national legislation. While states bear the primary duty to protect human rights, companies too have responsibilities within their spheres of influence. The NGOs still believe that the UN Norms, unlike other codes, offer a model for a truly global standard that



would help companies assess the compatibility of their activities with relevant human rights standards.

Only enforceable rules, applicable to all companies regardless of prominence, can avoid double standards whereby prominent companies are scrutinized and less prominent businesses can escape the glare of public attention. At present there is a patchwork of enforceable rules, but this hardly leaves a competitive environment that is fair and predictable.<sup>69</sup>

A plethora of different voluntary initiatives and guidelines exist today. However, these initiatives have failed to produce an effective mechanism to guide business in how to observe specific guidelines in different countries and political situations. If guidelines or codes are to have any value, those companies who willingly or negligently breach them should be held to account.

Lastly, industry standards are an inappropriate benchmark for states. Human rights law has been developed independently of extraneous interests. The strength of human rights law is that it places respect for the fundamental rights of the individual above economic or political exigencies.

The case histories outlined in this report illustrate the limits of voluntarism. The record clearly shows that the human rights of the affected populations are rarely given due consideration by extractive industry companies when they design, negotiate and implement projects.

## **E. Next Steps**

1. There is a need for a common, international set of standards articulating the human rights responsibilities of business, moving beyond the current fragmented and piecemeal approach. It is in the interests of companies, particularly well-intentioned companies operating in increasingly competitive environments, as well as in the interests of civil society, for the human rights principles and standards that define acceptable corporate behaviour to be clearly and unambiguously established. We believe that the UN Norms represent a valuable step in this direction.
2. Voluntary standards and initiatives have allowed for significant gaps in the protection of human rights. We feel strongly that what is needed is a clear framework setting out the human rights standards that all companies should respect, regardless of where they are incorporated and operate. Ultimately, these legal obligations must become enforceable, in order to close gaps in the protection of human rights.
3. While building the capacity of national governments to provide protection by 'regulating and adjudicating' the role of transnational corporations and other business enterprises is important, the SRSG should recognize that in reality in conflict-prone countries or in countries with a poor human rights record this is not something that is achievable in the short-term. In the interim there is an urgent need for the international community to offer some means to protect the rights of the victims of corporate malpractice.
4. In researching and clarifying concepts such as “complicity” and “sphere of influence,” we encourage the SRSG to consider the cases highlighted in this submission, as well as specific cases in different sectors and regions.
5. We welcome the SRSG’s announcement that there are to be regional consultations. Based on



the SRSG's mandate, we trust that these consultations will involve 'workers' organizations, indigenous and other affected communities and non-governmental organizations.' The ESCR-Net Corporate Accountability Working Group looks forward to working with the SRSG to ensure that the SRSG has the opportunity to meet members of affected communities and NGOs in different regions.



## F. Annexes

### 1. **Annex 1: Summary of Cases with Links on the Extractive Industry and Human Rights**

The ESCR-Net Corporate Accountability Working Group has assembled this set of case studies for the UN Special Representative of the Secretary General on Human Rights and Business, Professor John Ruggie, as a contribution to the Expert Meeting on Human Rights and the Extractive Industry, in Geneva, on 10-11 November 2005. The following case studies and associated materials were contributed by the organizations listed below.

The Joint NGO Submission was drafted by the ESCR-Net Corporate Accountability Working Group, incorporating comments and input from the following individuals and organizations: Tricia Feeney (RAID), Hubert Tshiswaka (ACIDH), Alessandra Masci (Amnesty International), Legborsi Pyagbara (MOSOP), Chris Newsom (Stakeholder Democracy), Bill Van Esveld (International Human Rights Clinic, New York University School of Law), Nick Hildyard (The Corner House), Lillian Manzella (EarthRights International), Joji Cariño (Tebtebba Foundation), Ingrid Gorre (LRC-KsK), Mario Melo and Juana Sotomayor (Centro de Derechos Económicos y Sociales), Ute Hausmann (FIAN), Elisabeth Strohscheidt (Miseror), Fraser Reilly-King (Halifax Initiative Coalition), Ravi Rebbapragada and Sreedhar Ramamurthi (mm&P), Roger Moody (Mines and Communities), Gavin Hayman (Global Witness), Daniel Owusu-Koranteng (WACAM), Joris Oldenzel (SOMO/ OECD-Watch), Daria Caliguire and Chris Grove (ESCR-Net Secretariat). We are particularly grateful to Tricia Feeney, co-coordinator of this Working Group and Director of Rights and Accountability In Development (RAID), for her leadership in drafting this Joint NGO Submission.

We encourage you to read the **Joint NGO Submission and its Next Steps** which are based on the case studies and background materials below. The case studies are listed by place, company, specific industry, and contributing organization, along with links to materials available electronically. For copies of other materials, we encourage you to contact the organizations directly or to send an email to [cgrove@escr-net.org](mailto:cgrove@escr-net.org).

1. **Katanga Province, Democratic Republic of Congo:** Anvil Mining (Australia) – silver and copper mining (*Rights and Accountability In Development-RAID and Action Contre l'Impunité pour les Droits Humains-ACIDH*)
  - [Kilwa – A Year after the Massacre of October 2004](#) ( Revised Joint Report in English) (ACIDH-RAID, 15 October 2005)
  - [Unanswered Questions: companies, conflict and the Democratic Republic of the Congo](#) (RAID, May 2004)
2. **Niger Delta, Nigeria:** Chevron Oil Co. (US) and Shell - petroleum (*Amnesty International and Movement for the Survival of the Ogoni People - MOSOP*)
  - [Nigeria-Ten years on: Injustice and violence haunt the oil Delta](#) (Amnesty International, 3 November 2005)
3. **Sudan:** Talisman Energy Inc. (Canada), China National Petroleum Company, Petronas (Malaysia), Sudapet Limited (Sudan), Lundin Oil AB (Sweden), OMV (Austria), Gulf Petroleum Company (Qatar), TotalFinaElf, and formerly Chevron Oil Co. (US) and Arakis Energy Co. (Canada) - petroleum (*Human Rights Watch*)
  - [Sudan, Oil, and Human Rights](#) (Human Rights Watch, 2003)



4. **BTC Pipeline, Azerbaijan-Georgia-Turkey:** British Petroleum (*The Corner House and Kurdish Human Rights Project*)
  - BP, The Baku-Tblisi-Ceyhan Pipeline and the UN Norms (The Corner House, November 2005)
  
5. **Yadana and Yetagun Pipelines, Burma:** Unocal, TotalFinaElf, Petronas (Malaysia) – natural gas (*EarthRights International*)
  - Overview of Yadana and Yetagun Pipelines Case and Recommendations
  - Total Denial Continues (EarthRights International, 2003)
  - Fueling Abuse: Unocal, Premier, and TotalFinaElf’s Gas Pipelines in Burma (EarthRights International, 2003)
  - Capitalizing on Conflict: How Logging and Mining Contribute to Environmental Destruction in Burma (EarthRights International with Karen Environmental and Social Action Network, 2003)
  - Destructive Engagement: A Decade of Foreign Investment in Burma (Tyler Giannini, EarthRights International, October 1999)
  - Entrenched: An Investigative Report on the Systematic Use of Forced Labor by the Burmese Army in a Rural Village (EarthRights International, 2003)
  - Entrenched Supplement: Interviews for Report on Forced Labor in Burma (EarthRights International, 2003)
  - Halliburton’s Destructive Engagement (EarthRights International, 2000)
  - ILO Submission: Forced Labor Continues in Burma (March-September 2003) (EarthRights International, November 2003)
  - More of the Same: Forced Labor Continues in Burma (October 2000-September 2001) (EarthRights International, October 2001)
  - More of the Same Supplemental Report: Forced Labor Along the Yadana and Yetagun Pipelines (EarthRights International, October 2001)
  - Summary Judgement of the US District Court for the Central District of California, 2000, in *Plaintiffs v. Unocal Corp, et al.*
  - Total Denial (EarthRights International, 1996)
  - US Appellate Court for the Ninth District Decision, 2002, in *Plaintiffs v. Unocal Corp, et al.*
  - We Are Not Free to Work for Ourselves: Forced Labor and Other Human Rights Abuses in Burma (January 2002-May 2002) (EarthRights International, June 2002)
  
6. **Canatuan (a Subanon village), Siocon Municipality, Zamboanga del Norte, Mindanao Island, Philippines:** TVI Mining (Canada) - gold (*Tebtebba Foundation, PIPLinks, Christian Aid, Legal Rights and Natural Resources Center, Inc.-Kasama Sa Kaliksan—LRC-KsK*), including ‘Extracting Promises’ as a separate contribution
  - Breaking Promises, Making Profits: Mining in the Philippines (Christian Aid and PIPLinks, December 2004)
  - Philippines Indigenous Peoples’ Links (PIPLinks) Website has a number of updates on the case at:  
[http://www.piplinks.org/development\\_issues/mines\\_quarries.htm](http://www.piplinks.org/development_issues/mines_quarries.htm).
  - Mining in Developing Countries – Corporate Social Responsibility: The Government’s Response to the Report of the Standing Committee on Foreign Affairs and International Trade (Canadian Ministry of Foreign Affairs, October 2005)



- [Unmasking the Secrets of TVI Resource Development Corporation](#) (Legal Rights and Natural Resources Center-KsK/Friends of the Earth-Philippines, 20 June 2005)
  - [Hear no evil, see no evil, Philippine Government turning a blind eye](#) (Ingrid Gorre, LRC-KsK's Tanawan, Vol. 6, No. 2, July-September 2003)
7. **Kichwa de Sarayaku, Ecuador:** Compañía General de Combustible (Argentina) y Burlington (EEUU) – petroleum (*Centro de Derechos Económicos y Sociales - CDES*)
- Resumen del Caso Sarayaku (CDES, 2005)
  - [Síntesis cronológica de la situación del pueblo Kichwa de Sarayaku en torno a la violación de sus derechos humanos](#) (CDES, Agosto 2004)
  - [El Caso Sarayaku y los Derechos Humanos: ¿Porqué Sarayaku se va constituyendo en un Caso Emblemático de Exigibilidad de Derechos a nivel internacional?](#) (Mario Melo, CDES, Agosto 2004)
  - [Medidas Provisionales Solicitadas por la Comisión Interamericana de Derechos Humanos Respecto de la República del Ecuador: Caso Pueblo Indígena de Sarayaku](#) (Resolución de la Corte Interamericana de Derechos Humanos, 6 de Julio de 2004)
  - [Medidas Provisionales: Caso Pueblo Indígena de Sarayaku](#) (Resolución de la Corte Interamericana de Derechos Humanos, 17 de Junio de 2005)
8. **Marlin Mine, San Marcos, Guatemala:** Glamis Gold (Canada) - gold (*FIAN International/Misereor, Halifax Initiative Coalition*)
- [Open Pit Gold Mining: Human Rights Violations and Environmental Destruction—The Case of the Marlin Gold Mine](#) (FIAN/Misereor, September 2005)
  - [The World Bank and Extractive Industries—The Divisive ‘Demonstration Impact’ of the Marlin Mine](#) (Halifax Initiative Coalition, June 2005) [[French](#)]
  - [2005 Berlin Declaration on Irresponsible Gold Mining](#)
9. **Lanjigarh Mine, Karlapat, Orissa, India:** Vedanta/Sterilite (United Kingdom) – bauxite mine and alumina refinery (*Mines, Minerals and People-mm&P, Mines and Communities*)
- [GLOBAL MNCs AND ENDANGERED ADIVASIS: The Case of Vedanta Alumina Refinery and the Niyamgiri Mines, Orissa, India](#) (mines, minerals and PEOPLE, 2005)
  - [Ravages through India: Vedanta Resources plc Counter Report 2005](#) (Roger Moody, et al, Nostromo Research and India Resource Center, 2005)
10. **Konkola Copper Mines, Zambia:** Anglo American Plc./ VEDANTA Resources Plc. – copper (*Miseror and partners*)
- [Corporate Social Responsibility Practices in the Extractive Industry in Zambia](#) (J. Lungu and C. Mulenga for the Catholic Commisison for Justice Development and Peace-CCJDP, the Development Education Community Project-DECOP, and the Zambia Congress of Trade Unions; 2005)
  - [Limitations of Corporate Social Responsibility on Zambia’s Copper Belt](#) (Tricia Feeney, RAID, November 2001)
  - [Anglo American plc: Adherence to the OECD Guidelines for Multinational Enterprises in respect of its operation in Zambia](#) (Submission to the UK National Contact Point) (RAID and Afronet, November 2001)





**11. Grasberg Mine, Papua, Indonesia:** Freeport McMoRan Copper and Gold Inc. (*Global Witness*)

- [Paying for Protection: The Freeport mine and the Indonesian security forces](#) (Global Witness, 2005)

**12. Prestea, Himan, and Dumase Mines, Ghana:** Bogoso Gold Limited (*Wassa Association of Communities Affected by Mining-WACAM*)

- [Statement by WACAM on the cyanide spillage by Bogoso Gold Ltd.](#) (WACAM, 23 October 2004)
- [WACAM Condemns the Shooting of Peaceful Demonstration by the Military and Police in Prestea](#) (WACAM, 22 June 2005)
- [Press Statement of the Prestea Concerned Citizens Association Presented at a Press Conference Organized by the Association with the Support of WACAM at the International Press Centre](#) (Prestea CCA and WACAM, 25 August 2005)
- [Joint Statement by WACAM and the Concerned Citizens Association of Prestea on the Suspension of Mining Operations by Bogoso Gold Limited](#) (WACAM and Prestea CCA, 3 October 2005)
- [Statement by WACAM on the Commencemnt of Mining Operations by Bogoso Gold Limited](#) (WACAM, 2 November 2005)

Primarily due to the timeframe leading up to the Expert Meeting on the Extractive Industry, we have only highlighted a limited number of cases. However, many other cases related to the extractive industry also deserve attention. As two further sources, we would recommend the cases highlighted during the World Bank Extractive Industries Review, particularly those contained in the report commissioned from Tebtebba Foundation and Forest Peoples Programme, which includes seven case studies looking particularly at Indigenous Peoples' Rights:

- [Extracting Promises: Indigenous Peoples, Extractive Industries, and the World Bank](#) (2003)

Secondly, we would recommend looking at complaints made to OECD National Contact Points from 2001-2005, related to the extractive industry: These complaints are outlined below in Appendix 2: OECD Guidelines Cases Related to the Extractive Industries (Oil, Gas, Mining) filed by NGOs.



**2. Annex 2: OECD Guidelines Cases Related to the Extractive Industries (Oil, Gas, Mining) filed by NGOs**

	<b>Date filed</b>	<b>Company cited (home country)</b>	<b>Country in which violation occurred</b>	<b>Issue(s) concerned</b>	<b>Status of case</b>
1	17/06/05	Anvil Mining (Australia/Canada)	Democratic Republic (DR) of Congo	Improper political involvement; alleged facilitation of human rights violations.	Pending
2	29/05/05	Ascendant Copper (Canada)	Ecuador	Human rights abuses; environmental damage	Pending
3	24/11/04	Nami Gems	DR Congo	Anti-competitive practices; supply chain responsibility; violation of national law; improper political involvement	Filed
4	24/11/04	Cogecom	DR Congo	Anti-competitive practices; supply chain responsibility; violation of national law; improper political involvement	Filed
5	24/11/04	George Forrest	DR Congo	Anti-competitive practices; supply chain responsibility; violation of national law; improper political involvement	Filed
6	04/08/04	OM Group (USA)	DR Congo	Anti-competitive practices; environmental damage	Blocked
7	04/08/04	Trinitech (USA)	DR Congo	Forced labour; human rights violations; improper political involvement; supply chain responsibility	Blocked
8	04/08/04	Cabot Corporation (USA)	DR Congo	supply chain responsibility	Blocked
9	28/06/04	Ridgepoint Overseas Developments (UK)	DR Congo	Improper political involvement	Blocked
10	28/06/04	Alex Stewart (Assayers) Ltd. (UK)	DR Congo	Forced labour; human rights violations; supply chain responsibility	Blocked
11	28/06/04	Tremalt (UK)	DR Congo	Human rights violations; improper political involvement	Blocked
12	28/06/04	Oryx Natural Resources Ltd. (UK)	DR Congo	Improper political involvement	Concluded
13	03/07/03	Chemie Pharmacie Holland (Netherlands)	DR Congo	Tax evasion; human rights violations; supply chain responsibility	Rejected
14	29/04/03	British Petroleum (UK)	Georgia, Turkey, Azerbaijan	Environmental damage, improper political involvement	Pending
15	18/02/03	Atlas Copco (Sweden)	Ghana	Environmental damage; human rights violations; supply chain responsibility; forced evictions	Finalized

16	18/02/03	Sandvik (Sweden)	Ghana	Environmental damage; human rights violations; supply chain responsibility; forced evictions	Finalized
17	5/12/02	First Quantum Minerals (Canada)	DR Congo	Alleged attempt at bribery by an agent	Closed
18	10/04/02	TotalFinaElf (Germany)	Russia	Environmental damage; health dangers; supply chain responsibility	Rejected
19	27/02/02	Anglo American (UK)	Zambia	Anti-competitive practices; human rights violations; resettlement	Pending
20	16/7/01	First Quantum Mining (Canada)	Zambia	Human rights violations; forced evictions	Concluded
21	05/01	Binani (India/UK)	Zambia	Improper political involvement;	Withdrawn



## Endnotes

- <sup>1</sup> “Embedding Human Rights in Business Practices”, joint publication of the UN Global Compact Office and the Office of the UN High Commissioner for Human Rights, 2004: [www.unglobalcompact.org/content/NewsDocs/EHRBP.pdf](http://www.unglobalcompact.org/content/NewsDocs/EHRBP.pdf)
- <sup>2</sup> International Council on Human Rights Policy, “Beyond Voluntarism”.
- <sup>3</sup> Human Rights Watch, “Sudan, Oil and Human Rights”, p. 557.
- <sup>4</sup> “Embedding Human Rights in Business Practices”, joint publication of the UN Global Compact Office and the Office of the UN High Commissioner for Human Rights, 2004: [www.unglobalcompact.org/content/NewsDocs/EHRBP.pdf](http://www.unglobalcompact.org/content/NewsDocs/EHRBP.pdf)
- <sup>5</sup> Ministerio de Energia y Minas, Licencias Mineras por Departamento: [www.mem.gob.gt/Portal/Home.aspx?tabid=226](http://www.mem.gob.gt/Portal/Home.aspx?tabid=226)
- <sup>6</sup> Procuraduria de los Derechos Humanos, Unidad de Estudio Analysis, La Minería y los derechos humanos, “La Actividad Minería en Guatemala, Mayo 2005, p.31.
- <sup>7</sup> Halifax Initiative, “The Divisive ‘Demonstration Impact’ of the Marlin Mine”, June 2005.
- <sup>8</sup> UN Special Rapporteur Mission to the Philippines E/CN.4/2003/90/Add.3.
- <sup>9</sup> EarthRights International, Submission to the Special Representative on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises November 10, 2005
- <sup>10</sup> See “Order Granting Defendants Motion for Summary Judgment”, *Doe v. Unocal*, Case No. CV 96-6959 RSWL (BQRx), Case No. CV 96-6112 RSWL (BQRx), United States District Court for the Central District of California, 2000 U.S. Dist. Lexis 13327 (August 31, 2000), pages 39-40, at [www.earthrights.org/unocal/lew.rtf](http://www.earthrights.org/unocal/lew.rtf).
- <sup>11</sup> <sup>11</sup> Amnesty International, *Ten Years On: Injustice and Violence Haunt the Niger Delta* (AI AFR 44/022/2005) November 2005
- <sup>12</sup> African Commission on Human and Peoples’ Rights, Communication 155/96
- <sup>13</sup> Amnesty International, *Ten Years On: Injustice and Violence Haunt the Niger Delta* (AI AFR 44/022/2005) November 2005
- <sup>14</sup> Global Witness, *Paying for Protection: The Freeport mine and the Indonesian security forces*, July 2005
- <sup>15</sup> Human Rights Watch, “Sudan, Oil and Human Rights”, p. 659, pp. 66, 78.
- <sup>16</sup> Human Rights Watch, “Sudan, Oil and Human Rights”, p. 53.
- <sup>17</sup> Human Rights Watch, “Sudan, Oil and Human Rights”, p. 525.
- <sup>18</sup> Human Rights Watch, “Sudan, Oil and Human Rights”, pp. 81-82.
- <sup>19</sup> Human Rights Watch, “Sudan, Oil and Human Rights”, pp. 87-89, 569-570.
- <sup>20</sup> Human Rights Watch, “Sudan, Oil and Human Rights”, pp. 89-90, 542, 555.
- <sup>21</sup> Human Rights Watch, “Sudan, Oil and Human Rights”, pp. 89-90.
- <sup>22</sup> RAID and ACIDH, “Joint Report on Kilwa: A Year After the Massacre of October 2004”, October 2005.
- <sup>23</sup> MONUC report, paragraph 39.
- <sup>24</sup> MONUC report, paragraph 36.
- <sup>25</sup> Anvil Mining Limited, “Anvil Confirms Denial of Unfounded Allegations”, *News Release*, 21 June 2005.
- <sup>26</sup> Human Rights Watch, “The Curse of Gold”, 2005, p. 2 and pp. 58-83.
- <sup>27</sup> Kelly Patterson, “Open veins: Bloody conflicts are erupting around the world over Canadian mining projects”, *The Price of Paydirt*, Ottawa Citizen, 1 October 2005.
- <sup>28</sup> Marilyn Berlin Snell, “The Cost of Doing Business” *Sierra Magazine*, May/June 2004: [www.sierraclub.org/sierra/200405/terrorism/page1.asp](http://www.sierraclub.org/sierra/200405/terrorism/page1.asp)
- <sup>29</sup> Human Rights Watch, “The Curse of Gold”, 2005, p. 3 and pp. 113 – 117.
- <sup>30</sup> Jeroen Cuvelier and Tim Raeymaekers, *European Companies and the Coltan Trade: An Update*, part 2, International Peace Information Service (IPIS), September 2002, p.19.
- <sup>31</sup> Amnesty International, “Our brothers who help kill us”, op. cit., p.35.
- <sup>32</sup> “European Companies and the Coltan Trade”, part 2, op. cit., p.19.
- <sup>33</sup> Amnesty International, “Our brothers who help kill us”, op. cit., p. 37.
- <sup>34</sup> Jeffrey Sachs and Andrew Warner, “Natural Resource Abundance and Economic Growth”, p. 2: [www.cid.harvard.edu/hiid/517.pdf](http://www.cid.harvard.edu/hiid/517.pdf)
- <sup>35</sup> Richard M. Auty, “Natural Resources, the State and Development Strategy”, *Journal of International Development* 9, 1997, pp. 651-663.
- <sup>36</sup> Michael Ross, “Extractive Sectors and the Poor”, Oxfam America, October 2001.
- <sup>37</sup> “Striking a Better Balance: The Extractive Industries Review”: <http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/EXTOGMC/0,,contentMDK:20306686~menuPK:336936~pagePK:148956~piPK:216618~theSitePK:336930,00.html>
- <sup>38</sup> Tebtebba Indigenous Peoples’ International Centre for Policy Research and Education, “Extracting Promises:



---

Indigenous Peoples, Extractive Industries & the World Bank”, 2003.

<sup>39</sup> Tebtebba op. cit. p. 42

<sup>40</sup> “Striking a Better Balance: The Extractive Industries Review”, Executive Summary, p. xii: “Indigenous peoples and many other communities have felt the negative impacts of extractive industry developments. Their resettlement should only be allowed if the community has given free prior and informed consent, as a result of a consent process, to a proposed project and its expected benefits for them. Indeed, the [World Bank Group] should not support extractive industry projects that affect indigenous peoples without prior recognition of and effective guarantees for their rights to own, control, and manage their lands, territories, and resources”.

<sup>41</sup> Centro de Derechos Economicos y Sociales (CDES), “Sintesis cronologica de la situacion del pueblo Kichwa de Sarayahu en torno a la violacion de sus derechos humanos”, Boletin No XX, August 2004. For more information and detail on this case, please see: [www.cdes.org.ec](http://www.cdes.org.ec); [www.sarayacu.com](http://www.sarayacu.com); [www.corteidh.or.cr/serieepdf/sarayaku\\_se\\_02.pdf](http://www.corteidh.or.cr/serieepdf/sarayaku_se_02.pdf)

<sup>42</sup> UN Special Rapporteur Mission to the Philippines E/CN.4/2003/90/Add.3.

<sup>43</sup> Roger Moody, et al, “Ravages through India: Vedanta Resources plc Counter Report 2005,” Nostromo Research and India Resource Center, 2005. This report captures the various corporate maneuvers of this company, which started as Sterlite Industries and has had problematic history on the Indian Stock Exchange, as well as offering further information on the Orissa case.

<sup>44</sup> Ibid. p. 13.

<sup>45</sup> This provision is mentioned in the explanatory note on the application of the Forest (Conservation) Act, 1980 issued by the Ministry of Environment & Forest. The relevant provision reads as follows: “ **Section 4.4 Projects Involving Forest and Non-Forest Lands.** Some Projects involve use of forest land as well as non-forest lands. State Governments/Project Authorities sometimes start work on non-forest lands in the anticipation of the approval of the Central Government for the release of forest land required for the project. Though the provisions of the act may not be technically violated by starting work on the non-forest lands, expenditure incurred on works in the non-forests may prove to be infructuous if diversion of forest land is not approved. It has therefore been decided that if a project involves forest as well as non-forest land, work should not be started on non-forest land till the approval of the Central Government for the release of forest land under the Act has been given.”

<sup>46</sup> Two other petitioners in the case are Mr Prafulla Samantray, a social activist, and the Orissa Wildlife Protection Society, who have been highlighting the tribal rights and wildlife impact from the project.

<sup>47</sup> The Central Empowered Committee was set up as an outcome of a case in the Supreme Court, which highlighted the severe and numerous encroachments of forests across the country. The Committee is empowered to provide the Court with appropriate advise.

<sup>48</sup> Report of the Central Empowered Committee in IA No. 1324 regarding the Alumina Refinery Plant being set up by M/s Vedanta Alumina Limited at Lanjigarh in Kalahandi District, Orissa.

<sup>49</sup> Chiquitano spokesperson, Causace, speaking at the University of Nevada, Reno. “Indigenous groups demand more say in mining Lenita Powers”, *Reno Gazette-Journal*, 15 October 2005.

<sup>50</sup> Jane Perlez, “Pollution Trial of Mining Company to Begin in Indonesia”, *The New York Times*, 5 August 2005: [www.nytimes.com/2005/08/05/international/asia/05indonesia.html?ex=1131512400&en=8d4e33b70b21ea6e&ei=5070](http://www.nytimes.com/2005/08/05/international/asia/05indonesia.html?ex=1131512400&en=8d4e33b70b21ea6e&ei=5070)

<sup>51</sup> Ibid.

<sup>52</sup> Press Statement by WACAM on the cyanide spillage by Bogoso Gold Ltd. (Daniel Owusu-Koranteng, Executive Director), 23rd October 2004.

<sup>53</sup> “Government urged to investigate Bogoso Gold Limited shooting incident,” 21 June 2005, Ghana Web Regional News, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=84162>. See also “WACAM Condemns the Shooting of Peaceful Demonstration by the Military and Police in Prestea,” WACAM Press Release 22 June 2005.

<sup>54</sup> Press Statement of the PRESTEA CONCERNED CITIZENS ASSOCIATION with the support of Wassa Association of Communities Affected by Mining-WACAM, at the International Press Centre, Accra, August 25, 2005. See also WACAM Press Releases on 3 October 2005 and 2 November 2005, circulated by WACAM and archived by Mines and Communities at: <http://www.minesandcommunities.org/Company/company.htm#B>.

<sup>55</sup> RAID: Limitations of Corporate Social Responsibility

<sup>56</sup> J Lungu and C Mulenga: *Corporate Social Responsibility Practices in the Extractive Industry in Zambia*, A report for the Catholic Commission for Justice Development and Peace (CCJDP), the Development Education Community Project (DECOP) and the Zambia Congress of Trade Unions p. 56

<sup>57</sup> Transparency International, *Global Corruption Report*, 2005

<sup>58</sup> Human Rights Watch, *Some Transparency, No Accountability: The Use of Oil Revenue in Angola and Its Impact on Human Rights*, January 2004, pp. 5, 28, 31.



- 
- <sup>59</sup> United States Senate, “Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act”, Report prepared by the Minority Staff of the Permanent Subcommittee on Investigations, 15 July 2004, p. 7.
- <sup>60</sup> United States Senate, Money Laundering and Foreign Corruption: Enforcement and Effectiveness of the Patriot Act, Report prepared by the Minority Staff of the Permanent Subcommittee on Investigations, 15 July 2004, p. 3.
- <sup>61</sup> EarthRights International, Submission to the Special Representative
- <sup>62</sup> Amnesty International, *Nigeria: Are Human Rights in the Pipeline?* 2004, ASA 44/020/2004 <http://web.amnesty.org/library/index/engaf4400202004>
- <sup>63</sup> Ian Gary and Nikki Reisch *Chad’s Oil: Miracle or Mirage?* CRS and BIC, 2005
- <sup>64</sup> Amnesty International UK, *Contracting out of Human Rights: The Chad-Carmeroon Pipeline Project*, September 2005
- <sup>65</sup> OECD, “Corporate Responsibility: Private Initiatives and Public Goals”, 2001.
- <sup>66</sup> Global Rights, *S.O.S. Justice*, Resume Executif, 2005.
- <sup>67</sup> Cesar Chelala and Alejandro M. Garro, “In Ecuador, taking an oil giant to task”, *International Herald Tribune*, 12 January 2004.
- <sup>68</sup> Earth Rights International, Submission to the Special Representative
- <sup>69</sup> Ken Roth, “Rules on Corporate Ethics Could Help Not Hinder Multinationals”, *Financial Times*, 21 June 2005.

