

Company Management of Security and Human Rights in Sub-Saharan Africa

This case study on best practice for addressing security and human rights challenges in extractives projects was developed by Linklaters LLP for submission to the ICRC online database. Linklaters LLP prepared the case study as part of a joint project with the Cyrus R. Vance Center for International Justice's Business and Human Rights initiative. In developing the case study, Linklaters LLP has been informed by its experience in advising on human rights and security issues in the extractives sector, but it is not based on any actual events or the experiences of any client.

The case study below traces the history of a hypothetical oil and gas company making its first investment into a project in sub-Saharan Africa.

The Project and the Company

The Company, an EU-based oil and gas company, (the "Company") is a member of the UN Global Compact and the Voluntary Principles on Security and Human Rights. The Company has also committed on its website to implementing the UN Guiding Principles on Business and Human Rights.

Several years ago, the Company was alerted to a potential investment opportunity in an oil and gas project in a country in sub-Saharan Africa. The project was entirely owned by a locally-based junior oil and gas company with limited operations outside the jurisdiction. That company had recently received positive results in a feasibility study on the project conducted by an international engineering firm and was seeking investment from more established players in the oil and gas sector. The Company was considering acquiring a controlling stake in the asset.

This was the Company's first investment into the country, although it had interests in other onshore and offshore projects in Africa. Accordingly, it conducted a "new country entry" process before it agreed to enter the jurisdiction. This "new country entry" process involved an assessment of various factors, including environmental, health and social risks. The Company decided to incorporate human rights considerations into its overall impact assessment. Whilst the Company would ordinarily consider conducting a human rights assessment separate to any other impact assessment being carried out when entering a new country, the view was taken that this process should be run in parallel in order to develop a more efficient process, minimise duplication of resource and avoid "stakeholder consultation fatigue". The Company had had considerable success using this integrated approach in the past, not least because it tended to get better results when talking to stakeholders about a range of factors and not just human rights in isolation. Stakeholders engaged more profoundly with human rights factors when they were incorporated within a broader environmental, social and health-related compliance review.

Impact Assessment

When the impact assessment was completed, it presented a number of potential risk areas for the Company:

- The project was located in a remote, arid and relatively poor part of the country. The vast majority of local inhabitants belonged to agrarian communities but to different tribal groups. Skirmishes between the various communities were relatively common and usually driven by concerns over the scarcity of arable land in the area.
- Given the location of the project, transport infrastructure would need to be significantly improved, particularly existing road and rail networks.
- Within the vicinity of the deposit were a number of artisanal or small-scale mining operations – i.e. local miners using basic methods to extract easily accessible mineral and ore deposits, generally for subsistence.
- Although the country does have in place a scheme for consultation with and compensation of land owners whose property may be affected by extractive sector projects, communities affected by projects in the past had expressed dissatisfaction with the amount of compensation paid when their land was acquired. In certain instances, this dissatisfaction had manifested itself in the form of violent protests around the sites of proposed projects, as well as other associated infrastructure.
- Government security forces have often intervened in protests surrounding extractives projects. This had tended to be through confrontational methods, rather than trying to resolve any conflict through engagement and discussions. These actions have had a significant chilling effect on political rallies and protests at or near the sites of extractives projects.
- On paper, the jurisdiction has a relatively robust legal system in place for the resolution of grievances. However, access to remedy in the country remains an issue due to a number of factors: the prohibitively high cost of litigation; an underfunded legal aid system (particularly in rural areas) which relies heavily on pro bono support; and a judicial system which is racked with delay.

Stakeholder Engagement and Project Rollout

Mindful of the challenges that this project posed, the Company engaged in a wide-spread process of stakeholder engagement prior to making any investment in the project. The Company wanted to obtain a “social licence to operate” in the country and avoid any reputational risks which the project might present. The engagement focussed on:

- The identification of, and early engagement with, communities which would be affected by the construction and operationalisation of the project and its associated facilities, particularly those who would need to be resettled (physically or economically) due to the development of the project. The purpose of the engagement would be to work with the government, with whom the responsibility for resettlement ultimately sat, to develop a suitable resettlement program which was sensitive to the need to secure a decent livelihood for those affected.
- The opportunities to share the benefits of the operation with local communities. Through the consultation process, the Company emphasised its commitment to hiring a certain proportion of local employees, thereby creating local jobs in safe working conditions for the local community; and committed to procuring various goods and services locally, thereby stimulating the local economy and ensuring that the economic benefits of the project would flow to small and medium-sized enterprises in the local area.
- The infrastructure development which the Company would be financing. Given the remote location of the oil and gas project, the Company noted during the stakeholder engagement phase that it would be investing heavily in local transport infrastructure, including road and

rail networks, which would ultimately benefit the local community well after closure of the oil and gas facility.

Although the consultation phase was designed to head off a lot of concerns which the Company had identified during the impact assessment phase, on acquisition of a controlling stake in the project, the Company decided to engage with government on the potential for the execution of a memorandum of understanding (“MOU”) relating to the security arrangements at the project site. Eventually, the Company and the government signed the MOU, which required the government to provide enhanced security services at the project. The Company agreed to provide support to the government in order to enable them to provide the services, including appropriate accommodation facilities at the project; meals; computer equipment and other supplies; as well as a stipend to support individual members of the security services working a long way away from their homes.

In exchange, the Company set certain parameters within which they expected the security services to be provided. The Company set out in the agreement that it is a member of the UN Global Compact and the Voluntary Principles on Security and Human Rights and that it expected the government’s security services to provide services in line with these commitments. Under the terms of the MOU, the Company expressly reserved the right to provide training to the security forces about its own security commitments. The Company also developed bespoke training materials. These training materials were customised so that they would have the maximum impact on local teams. The training was to be delivered by local employees of the Company in the local dialect. The trainers were also instructed to talk to these issues in a way which was adapted to the political and cultural sensitivities of the local population.

The Company also established a clear grievance policy for the local community. The Company established a series of field offices near to the local communities with dedicated personnel available to discuss any issues. Whilst they recognised that they would be unable to deal with all issues, the local field officers were trained to “issue spot” and effectively triage problems so that they could direct aggrieved individuals to people who could help them if the company was unable to assist. The field officers were people who had been involved in the initial impact assessment of the project, during which time they had developed strong relationships with local stakeholders, including the local police. They have subsequently come to develop contacts with the local trade unions. These relationships enabled them to direct aggrieved local persons to the relevant local body who would be able to assist them with their query.

The Construction and Operational Phases

After this extensive period of consultation and due diligence, the Company made its final decision to invest in the project. It quickly established a site office in the country and tendered for an Engineering, Procurement and Construction contractor to begin work on a detailed engineering design for the project. The design phase of the project went smoothly and the Company and its contractor settled on a proposed plan for construction of the facility. In the next phase, the contractor began to procure all necessary materials and subcontractors for the construction of the contract, as well as to begin construction of the project in earnest.

The contractor set up a large perimeter fence around the project site and compound and commenced construction work. As well as to protect the contractor’s valuable equipment (which might be the target of theft from the illegal trespassers), the fence was designed to ensure the safety of the local community: during the construction phase, the site was likely to be dangerous to illegal trespassers due to the presence of heavy machinery, hazardous substances and unstable terrain.

The construction of this fence proved controversial amongst the local community, notably because the local people considered the fenced off area to be larger than was necessary. The site had

previously been demarcated but the local people did not really take any notice of the markings as there was nothing which physically prevented them from crossing land which was to be used for the construction of the facility. They considered that they had been misled about the amount of land that the project site would occupy. The situation deteriorated when two local residents scaled the fence one evening, intending to steal anything valuable from within the site grounds for resale. One of the villagers fell from the top of the fence and subsequently died as a result of injuries sustained from the fall.

Tensions in the local community boiled over at this point. Local communities began to protest at the perimeter fence of the project and blocked access to the main gate of the project. The community members demanded extra compensation for the family of the deceased villager and further compensation for the land which they considered had been taken away from them unfairly. The Company notified the security services and asked them to provide additional security, fearing that the local community members might try to break into the project site by force. Construction work on the project stopped. During that day, there were several clashes between the security forces and the protesters as the protesters sought to force entry onto the site. Thankfully, there were no fatalities or serious injuries. After several days, the protests slowed although tensions remained very high. The Company, through one of its local field officers, reached out to a number of respected elders in the community with whom they had developed relationships during the consultation phase. The Company pointed out that the accident occurred because the individual had breached security deliberately. The field officers reiterated the positive financial effects which the project was going to have on the local community when construction work began in earnest. They made sure the deceased villager's family received appropriate respect and that the costs of the funeral were paid. They offered employment to his widow. The Company also undertook to engage with the local community if ever they were required to alter the project perimeter in future. The elders were able to sooth tensions which had been simmering as a result of the incident.

Lessons Learned

The Company's actions in preparation of its investment in the asset had proved to be successful in a number of ways:

- By engaging in an extensive stakeholder engagement process, the Company was able to identify respected elders whose voice carried weight in the local community. The early identification and engagement with these elders was crucial in calming tensions in the wake of the incident.
- The Company's rigorous training of the local security forces was successful. Their professional response to the protests at the perimeter fence prevented unnecessary harm to protesters at the site.

Nevertheless, the Company's experience provides a lesson to companies intending to make investments in the sector going forwards. Notably:

- Through its impact assessment, the Company realised that land rights and access was particularly important to members of the local community. However, it underestimated the reaction from the local community to the construction of the fence. This highlighted the need to engage with community members on an ongoing basis (rather than to focus community engagement efforts on the pre-investment stage of the Company's involvement) and give them as much information about how the project is going to be developed and why.