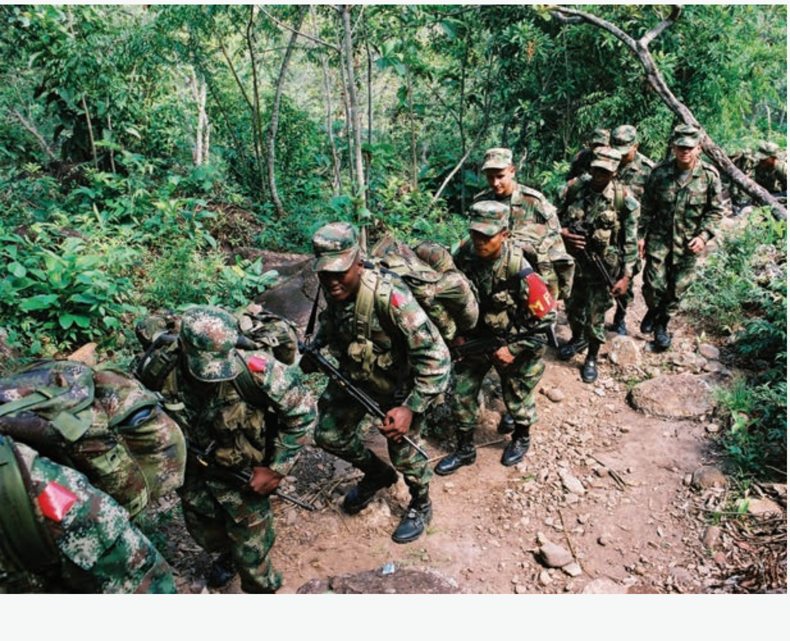
ADDRESSING SECURITY AND HUMAN RIGHTS CHALLENGES IN COMPLEX ENVIRONMENTS

TOOLKIT

Third Edition



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About the ICRC

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent humanitarian organisation whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles.

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Disclaimer

The good practices included in this Toolkit are not meant to be prescriptive. It is up to the user to evaluate whether they could be feasible, useful and appropriate to the local context in a specific situation on the ground. DCAF and the ICRC shall not be liable for any kind of loss or damage whatsoever to the user of this Toolkit or a third party arising from reliance on the information contained in this document.

Content

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About this Toolkit

1. Background and approach

The DCAF-ICRC partnership

The "Addressing Security and Human Rights Challenges in Complex Environments" Toolkit has been developed by the Geneva Centre for the Democratic Control of Armed Forces (DCAF) and the International Committee of the Red Cross (ICRC). The Toolkit is part of a joint DCAF-ICRC project that draws on the experience of the two organisations in order to support companies and other actors facing security and human rights challenges in complex environments. As part of this project, DCAF and the ICRC have also developed a Knowledge Hub (www.securityhumanrightshub.org). While the Toolkit and the Knowledge Hub are intended to have a wide application beyond the extractives sector, they were developed to reflect the commitment of both organisations as official Observers to the Voluntary Principles on Security and Human Rights (VPs). The DCAF-ICRC project is supported by the Human Security Division of the Swiss Federal Department of Foreign Affairs.

The challenge: overload of resources, duplication of information, knowledge gaps

The DCAF-ICRC project began in December 2012 with a scoping study based on in-depth desk research and interviews with extractives companies, governments and civil society organisations (CSOs). The scoping study identified gaps in available resources and set out recommendations for the development of practical guidance and tools to improve security practices on the ground.

Findings from the scoping study demonstrated that existing guidance and tools very often revolve around the same issues, while some challenging aspects of engagement with host governments or with public and private security are under-developed or ignored. Furthermore, resources are found in different locations, are not always publicly accessible or are not available in a user-friendly format that responds to the needs of field and headquarters personnel. Many of those consulted find it time-consuming to identify the information they need. At times the documents consulted provide only limited practical advice on specific issues of concern.

Approach: user needs and field realities

The project is grounded in extensive desk research of existing literature and tools addressing issues related to security and human rights, combined with "headquarters" and field research. Field missions to Colombia, Peru, the Democratic Republic of the Congo (DRC), South Africa, Ghana and Papua New Guinea were conducted between 2013 and 2015. In the same period and as part of the headquarters and field research, the project team held over 200 meetings with representatives from host and home governments, companies, CSOs, local communities and other relevant actors. These exchanges enabled the identification of real-life security and human rights challenges related to corporate operations, as well as good practices, tools and case studies that could help address those challenges.

Our approach:

a) Living products: both the Toolkit and the Knowledge Hub are regularly updated with good practices, tools and resources, and amended based on user feedback.

b) Practicality: these products aim to be implementation-oriented and to reflect user needs and field realities.

c) Complementarity: the project first builds on existing resources and then develops new guidance wherever gaps have been identified.

d) Knowledge sharing: all users are encouraged to share knowledge and materials so that they can be integrated in the Toolkit and/or the Knowledge Hub and made available to the wider public. Any confidentiality constraints can be raised with the project team and will be duly addressed.

e) Non-prescriptive approach: it is up to the user to evaluate whether the proposed good practices are useful and relevant in a specific context.

f) Review process: all products are reviewed by a multi-stakeholder group of experts on security and human rights issues, to ensure that the tools are aligned with realities on the ground and international standards.

Addressing needs: developing user-oriented tools

The main products developed by the DCAF-ICRC project are a **Toolkit** to support companies' engagement with host governments, public security forces, private security providers and local communities (see sections 2-4 of this introduction), and a **Knowledge Hub** to share existing guidance and tools that address security and human rights related issues.

While the Toolkit includes references to just a selection of key resources, the Knowledge Hub aims to bring together on one web platform (www.securityhumanrightshub.org) a much wider selection of resources related to security and human rights issues. These resources are organised in seven sections.

1. General Guidance
2. Stakeholder Engagement (covering engagement with host governments, communities and CSOs)
3. Risk Assessment
4. Public Security Forces
5. Private Security Providers
6. Case Studies
7. Toolkit

The Toolkit section of the Knowledge Hub presents the "Addressing Security and Human Rights Challenges in Complex Environments" Toolkit and provides direct access to the latest version of the document, as well as to the Spanish translation.

All sections of the Knowledge Hub include a "Comment" function at the bottom of each page in order to encourage users to suggest new resources to be uploaded on the site, share good practices and provide feedback on both the Hub and the Toolkit.

The Knowledge Hub also includes a News Feed which focuses on the release of new policies, guidance, tools, projects and mechanisms aiming to improve respect for human rights and international humanitarian law in the management of corporate security in complex environments.

Users of the Knowledge Hub can subscribe to a regular Newsletter that will keep them informed about new uploads, recent updates to the Toolkit, and related news.

Relationship to the Voluntary Principles on Security and Human Rights (VPs)

Through their engagement as official Observers to the VPs, DCAF and the ICRC identified the need for guidance for companies working with public and private security in complex environments. The government of Switzerland has provided support to this project from the start. In this respect, both the Toolkit and the Knowledge Hub are products that DCAF, the ICRC and Switzerland offer as a contribution to supporting implementation of the VPs. However, these are not formal VPs products and are in no way intended to be prescriptive. Moreover the Knowledge Hub and the Toolkit are designed to be of use to stakeholders beyond the VPs initiative.

The VPs and their Implementation Guidance Tools (IGTs) are two of the key resources used as reference documents for the development of the guidance contained in this Toolkit. As a set of principles, the VPs provide one of the most developed sets of standards applicable to the management of security in complex environments. Together with the IGTs, they provide relevant guidance for many companies facing security challenges. References to the VPs in this Toolkit should be understood as the principles contained in the VPs, not as the multi-stakeholder initiative that has been established around these principles

Business, human rights and international humanitarian law

This Toolkit draws on international humanitarian law (IHL) and international human rights law (IHRL). IHL and IHRL are generally complementary bodies of law that apply in times of armed conflict, within their respective spheres of application, and that share certain common goals, such as the protection of life, health, dignity and property. That said, some IHL and IHRL rules produce conflicting results when applied to the same facts because they reflect the different reality that each body of law was primarily developed for. For instance, this is true for the rules governing the use of force, with the different paradigms of the conduct of hostilities associated with IHL on the one hand, and that of law enforcement primarily associated with IHRL. IHL only applies in situations of armed conflict, whether international armed conflicts or non-international armed conflicts. Meanwhile, international human rights law applies, in principle, at all times, i.e. in peacetime and during armed conflict. While IHL norms cannot be derogated from, some human rights treaties permit governments to derogate certain obligations temporarily under strict conditions and circumstances threatening the life of the nation, such as armed conflicts. Nevertheless, there are human rights that can never be derogated from, such as the right to life and the prohibition of torture, inhuman or degrading treatment. In addition, while it is uncontroversial that IHL applies extraterritorially, the exact extent of the extraterritorial applicability of IHRL remains unsettled, despite being widely recognised. IHL binds State and non-State actors as well as individuals – including managers and staff of companies for instance – whose activities have a nexus to the armed conflict. Thus, all entities, States, groups and individuals whose activities involve a direct participation in hostilities in an armed conflict are required to respect IHL.

While through the ratification of human rights treaties, States are legally obliged to protect, respect and fulfil human rights in their territory and/or jurisdiction, companies, according to an increasing tendency in the international community, as reflected in the UN "Protect, Respect and Remedy" Framework, have the responsibility to respect internationally recognised human rights wherever they operate. According to the UN Guiding Principles on Business and Human Rights, which operationalise the Framework and were unanimously endorsed by the UN Human Rights Council in 2011, this means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. Insofar as IHRL is integrated into national law and made applicable to companies, they are also under an obligation to respect human rights. As part of their obligations to protect, respect and fulfil human rights, States have the obligation to prevent, investigate and provide effective remedies for victims of business-related abuses, including by enacting and enforcing legislation requiring businesses to respect human rights, including human rights clauses when they enter in contracts with business entities and creating an enabling environment for businesses to respect human rights. Companies are bound by domestic laws and contractual requirements that can be legally enforced through judicial means.

2. Who is this Toolkit for?

The primary audience for this Toolkit is any kind of company facing security and human rights challenges in complex environments. TThe Toolkit will be useful for company staff working in a wide range of functions, in particular those dealing with security, government relations, business and human rights, corporate social responsibility, community relations, and legal issues.

Despite being mainly targeted at companies, many of the recommendations included in this Toolkit promote collaboration, particularly between companies, governments and CSOs. Different actors may find this Toolkit useful as a means to foster common understanding and to identify practical ways of working with companies to address challenges faced on the ground:

- Host governments: both the chapters on "Working with host governments" and "Working with public security forces" are directly relevant to host governments. It is the host state's duty to protect human rights and to provide security within its territory. Therefore, the commitment and active involvement of host government actors is essential to address security and human rights challenges. That is why many of the good practices in this Toolkit involve companies' engagement with the host government, suggesting ways in which companies and host government actors could work together to address those challenges.

- Home governments: through their network of contacts and influence, home governments can play an important role in promoting good practices on the management of security around corporate operations. Some of the recommendations in this Toolkit suggest that companies seek home government support to improve respect for human rights and international humanitarian law in the management of corporate security. Others identify potential synergies that can be realised through bridging 'business and human rights' and security sector reform actors and approaches. These recommendations provide home governments with some ideas on how they can contribute to such efforts.

- CSOs: through knowledge of local contexts, networks of contacts, field experience and subject matter expertise, CSOs constitute invaluable partners and/or advisers for companies wanting to improve respect for human rights and international humanitarian law while maintaining the security and safety of their operations. Consequently, the good practices included in this Toolkit very often encourage companies to work with CSOs to address some of the security and human rights challenges they face. This Toolkit can also help CSOs identify ways in which they can engage with and promote good practices among companies.

3. What is inside this Toolkit?

The Toolkit has the form of an overall guidance document divided into four chapters.

- Chapter 1, "Working with host governments", provides guidance for companies on ways of engaging with the host government to address security and human rights issues.
- Chapter 2, "Working with public security forces", provides guidance for companies facing challenges related to public security arrangements around their area of operations.
- Chapter 3, "Working with private security providers", provides guidance for companies contracting private security companies in complex environments.
- Chapter 4, "Working with communities", provides guidance for companies on how to manage relations with local communities around their area of operations

The Toolkit[1] is structured around real-life security and human rights challenges identified through consultations with a wide variety of stakeholders. These are included in the list of Challenges. The document has internal links: by clicking on one challenge in the list the user is automatically directed to the page where that challenge with its corresponding guidance is presented. Therefore **users do not need to read the whole document, they just have to read the list of Challenges, identify the challenges they are facing and click to access the relevant pages**.

Each challenge is presented on a separate page with a series of related good practices. These **good practices are not meant to be prescriptive. It is up to the user to evaluate whether they could be feasible, useful and appropriate to the local context in a specific situation**.

Good practices are in many cases followed by a reference to a source where more information or guidance can be found. The main sources used for the development of this Toolkit are mentioned in the list of References, together with the respective abbreviations used throughout the Toolkit.

Practical tools such as checklists and case studies are also key components of the Toolkit. These are geared towards supporting project-level implementation.

This Toolkit is a living document. The four chapters developed will be regularly updated with new good practices, case studies and tools.

4. How to support further development of this Toolkit?

Your feedback will continue to be essential to the development of new guidance and tools. This feedback may take a number forms, such as comments on the guidance developed so far, suggestions for good practices to be added to the Toolkit, or sharing of tools and resources that could be integrated in the Toolkit and/or the Knowledge Hub. This may be done via email by sending a message to PPPs@dcaf.ch or via the Knowledge Hub's "Comment" function found on each section of the site.

The release of updated versions of the Toolkit will be announced on the homepage of the Knowledge Hub, as well as in the Hub's newsletter, which will publish updates on a quarterly basis. You can sign up to the newsletter on the Knowledge Hub website.

[1] This Toolkit does not address issues related to dealing with the presence of armed non-state actors (ANSA) in a company's area of operations. While the potential adverse impacts of corporate activities in conflict contexts are well established, whether direct impacts or via business relationships, there is presently only a limited understanding of how companies can responsibly manage their impacts on conflict dynamics and human security where ANSAs are present. The presence of ANSAs brings a variety of challenges for companies managing their security provision, business relationships, fiduciary transactions, and stakeholder engagement. These challenges warrant the development of more specific guidance. CDA Collaborative Learning Projects is currently working to address the challenges of Business and ANSAs. Initial findings are captured within the article Business and Armed Non-State Actors: Dilemmas, Challenges, and a Way Forward, published in the November 2014 edition of Business, Peace and Sustainable Development. Further information can be found at: http://cdacollaborative.org/cdaproject/business-and-armed-non-state-actors/

References[1]

BP	Voluntary Principles on Security and Human Rights Implementation Guideline (BP, 2008)
CSBP	Conflict-Sensitive Business Practice: Guidance for Extractive Industries (International Alert, 2005)
EISF	Engaging Private Security Providers – A Guideline for Non-Governmental Organisations (European Interagency Security Forum, 2011)
EO100	EO100TM Standard: For Responsible Energy Development (Equitable Origin, 2012)
GIR	Getting It Right: Making Corporate Community Relations Work (Luc Zandvliet and Mary B. Anderson - Greenleaf Publishing, 2009)
GPs	Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (United Nations Human Rights Office of the High Commissioner, 2011)
HRT	Human Rights Translated: A Business Reference Guide (UN Global Compact and Office of the UN High Commissioner for Human Rights, 2012)
IA-ICMM	Learning from Company-Community Conflicts: Understanding Practical Dilemmas (International Alert and ICMM, 2014)
ICMM 2009	Human Rights in the Mining & Metals Sector – Handling and Resolving Local Level Concerns and Grievances (ICMM, 2009)
ICMM 2011	Indigenous Peoples and Mining Good Practice Guide (ICMM, 2011)
ICoC	International Code of Conduct for Private Security Service Providers
IFC	Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets (International Finance Corporation, 2007)
IGTs	VPs Implementation Guidance Tools (2011)
IHRB	From Red to Green Flags: The Corporate Responsibility to Respect Human Rights in High-Risk Countries (IHRB, 2011)
ITGNs	UN Security Sector Reform Integrated Technical Guidance Notes (2012)
MD	Montreux Document on Pertinent International Legal Obligations and Good Practices for States Related to Operations of Private Military and Security Companies during Armed Conflict
MIGA	Multilateral Investment Guarantee Agency VPs Implementation Toolkit for Major Project Sites (World Bank Group Multilateral Investment Guarantee Agency and Anvil Mining, 2008)
OECD	OECD DAC Handbook on Security System Reform (2007)

OECD 2015	OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (Draft for Comment) (2015)
Oxfam	Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment (Oxfam Australia, 2009)
PDAC-CDA	Preventing Conflict in Exploration: A Toolkit for Explorers and Developers (PDAC, CDA Collaborative Learning Projects, and World Vision Canada, 2012)
PSC.1	Management System for Quality of Private Security Company Operations – Requirements with Guidance (ANSI/ASIS PSC.1 Standard, 2012)
SCC	Sarajevo Code of Conduct for Private Security Companies (SEESAC, 2006)
SCG	Sarajevo Client Guidelines for the Procurement of Private Security Companies (SEESAC, 2006)
Shift	Human Rights Due Diligence in High Risk Circumstances: Practical Strategies for Businesses (SHIFT, 2015)
Swisspeace	Manual: Conflict Sensitivity Due Diligence for Timber Companies in the Congo Basin (Swisspeace, 2013)
UNGC	Guidance on Responsible Business in Conflict-Affected and High Risk Areas: A Resource for Companies and Investors (UN Global Compact and Principles for Responsible Investment-PRI-initiative, 2010)
UNGC 2013	A Business Reference Guide: United Nations Declaration on the Rights of Indigenous Peoples (UN Global Compact, 2013)
UNIG	Corporate Responsibility to Respect Human Rights: An Interpretive Guide (United Nations Human Rights Office of the High Commissioner, 2012)
VPs	Voluntary Principles on Security and Human Rights

[1] Except where otherwise indicated, numbers following these reference documents indicate the page.

List of Challenges

Click on the titles below to directly access the relevant section

I. Working with Host Governments

I. Working with Host Governments

1.1. Engagement and coordination

A. The identification of key interlocutors within the host government may be challenging, particularly when there is a change of government or when responsibility for security is devolved to regional or local levels. Furthermore, more than one government agency may work on the same issues.

GOOD PRACTICES*

Initiate stakeholder mapping exercise of key actors working on security and human rights issues in the host state

- Collect information across different corporate functions (e.g. security, community relations, governmental or external affairs, environment, etc.) to develop a global picture of relevant points of contact.
- Consult existing contacts within the host government (e.g. ministry of trade and investment, ministry of interior, ministry of security if any). (IGTs: 21)
- Consult with home state embassy and other companies to identify key stakeholders and their respective roles and responsibilities, in particular to identify 'champions' (i.e. supporters of the VPs) or potential 'spoilers' within host governments. (IGTs: 21)
- Consult with local experts (NGOs, academia, media, etc.)
- Conduct a review of different print and online sources to identify key issues and actors.
- Support and participate in focus groups, roundtables and town hall meetings to discuss security and human rights issues. Attending these events will allow the company to meet relevant actors.
- Repeat the stakeholder mapping exercise regularly to ensure that your network does not become outdated or overly biased in favour of particular groups.

Stakeholder mapping should seek to answer the following questions:

- Who are the national stakeholders with a clear role and/or interest in security and human rights issues?
- What are the economic and social agendas and interests of key actors?
- Who has the necessary influence to foster change?
- Which stakeholders can be "champions of change" in support of good security and human rights practices?
- Which stakeholders represent the interests of particularly vulnerable groups?
- What is the legal/policy framework for security and human rights issues? Which actors have a formal role/responsibility in this area?

Complete stakeholder mapping of key interlocutors within host government and identify the relevant host government actors with whom to establish the first contact.

Engage widely within government. There will always be differing attitudes within the host government; it is likely that there will be some government actors willing to engage with companies to address challenges.

- Consult a wide range of individuals and agencies. Engaging only with a small group makes it difficult to establish lasting relationships. Furthermore, it can mean that other groups feel left out and do not respect agreements. This can have the unintended consequence of reinforcing existing power imbalances. (CSBP, Flashpoint Issue 1: 3)
- Work at the local level. Coordination around safety and security issues as well as a willingness to problem-solve to produce results, can be easier to realise at the local level. Furthermore, working at the local level may help to minimize impacts of changes in the government at the national level. Build a sense of ownership for safety and security at the local level.
- Develop different strategies for different government stakeholders. Consultations can be social (through informal discussions), or more formal and structured (workshops, public hearings, negotiations), or a combination of the two. (CSBP, Flashpoint Issue 1: 5)

Strengthen interpersonal relationships

- Make relationship building a priority. Meet regularly with a range of government actors and agencies, and establish informal links with company representatives. In many contexts, it is important to develop a personal rapport before entering into negotiations or difficult discussions. “Listening with a view to developing mutual confidence and understanding is vital”. (ITGNs: 18) Be aware, however, of any negative impacts your relationships may have on an individual with regard to how s/he is seen within the institution/community and take mitigating actions where necessary.
- If possible, hire personnel with local language skills. This is an important part of building trust, confidence and understanding of the local context. (ITGNs: 18)
- Build partnerships with honesty, openness, mutual respect, trust and empathy. “Patience and an awareness that relationships develop over time are essential” (ITGNs: 18) Networks of personal relationships will often serve to provide access to key host government representatives.

Establish a broad-based security working group at the local level

- Establish a security working group to promote coordinated, bottom up approaches to addressing security and human rights challenges. It can also offset the impact of changes in the government at the national level on progress made at the local level.
- Invite the police chief, the military commander, the local head of government, one or two local leaders and other companies operating in the area to participate in a working group.

- If appropriate, invite representatives of civil society organisations, including representatives of vulnerable groups, such as women, children and indigenous people.
- The first objective in establishing such a working group is to build trust and to promote exchanges among relevant actors. These structures may take time to become action-oriented, but the time taken to build up mutual confidence and a common understanding of the issues is invaluable.
- Ensure that the working group meets regularly and that there is a clear focal point responsible for logistics, agenda and recording of key issues from meetings.
- Consider co-chairing of meetings (e.g. one company and one civil society representative) to highlight the legitimacy of the group.

GO BACK TO LIST OF CHALLENGES

B. The host government may not see any added value in engaging in a VPs in-country process.

GOOD PRACTICES*

Promote the VPs

- Raise the VPs at regular meetings and consultations with government officials. (IGTs: 14)
- Incorporate the VPs into investment agreements, where possible. (IGTs: 15)
- Make the case for the VPs using arguments tailored to the local context. Demonstrate the benefits in terms of security, social and economic development payoffs that support for the VPs can bring.

Foster commitment to the VPs within different levels of government

- Foster top level commitment to the VPs within the host government, since this has a trickle-down effect on behaviour and responsiveness. (MIGA: VI-4)
- Seek support at national, regional and local levels of government. Even if the national government does not want to participate officially in an in-country process, regional or local authorities may be ready to engage in initiatives to improve VPs implementation.
- Identify who needs to be kept informed of the different processes, even if they are not directly involved, and agree on the best means to do so. This should flow from the stakeholder mapping exercise. (see Challenge 1.1.a.).

Be informed on national laws and establish links with the VPs

- Engage with parliamentarians, human rights lawyers, national human rights institutions, civil society organisations or prominent local academic institutions to provide summaries of the relevant legal codes. Develop a short report detailing the relevant legal codes that concern human rights, labour rights, international humanitarian law and protection of the individual (MIGA: II-14). Build a case to show how the VPs enhance respect for national laws.

Promote national ownership of VPs implementation

- Ensure VPs implementation is an inclusive and consultative process, based on the perspectives, priorities and visions of different national stakeholders (i.e., not only government institutions, but also civil society, media, and informal and traditional justice and security actors), (ITGNs: 13-16). Even if host government actors do not want to engage, progress can still be made by engaging with other national actors.
- Develop close working relations with community leaders. Obtaining community support can provide a solid base to promote a VPs in-country process. In conflict-affected areas, local civil society and community leaders may be reluctant to speak publicly about topics such as human rights or the VPs. Companies need to be very aware of this and find ways to engage that do not put communities or individuals at risk.

Work with other stakeholders

- Work with other companies, industry associations, and local partners to raise awareness of the VPs or to jointly engage in dialogue with the host government on the VPs. (IGTs: 21)
- Work with the home government to obtain high-level government support.
- Engage with the embassies of members of the VPs government pillar.
- Strengthen the knowledge and engagement of civil society organisations and the media on security and human rights issues.
- Sponsor 'observatories' that provide a repository for knowledge of national level security and human rights as a means to reach out to concerned stakeholders, ensuring the participation of representatives of vulnerable groups, such as women, children and indigenous people.

Be creative and go beyond VPs text and language

- Develop creative ways of building host government support. Although a VPs in-country process may be the most effective way of promoting VPs implementation, other activities (such as collaboration on human rights programmes or capacity building within the security sector) can also provide alternative opportunities to improve impact on the ground.

Get the right person for the right job

- Ensure that the staff responsible for government engagement are willing to listen, show good understanding of the local context and have a long-term commitment to the role. (CSBP, Flashpoint Issue 1: 6)

CASE STUDY: COLOMBIA MINING AND ENERGY COMMITTEE (CME)[1]

In 2003, an in-country multi-stakeholder process was initiated in Colombia by four companies and one industry association interested in promoting respect for human rights in the context of extractive sector operations. Collectively, they approached three embassies to help facilitate a dialogue with the Office of the Vice-President, the Ministry of Foreign Affairs, and the Ministry of Defence to advocate for the importance of the Voluntary Principles Initiative for Colombia. This dialogue eventually led to the creation, in September 2003, of the "National Committee for the Implementation of the Voluntary Principles", which in 2008 was renamed the Mining and Energy Committee (CME).

The CME is a Colombia-based multi-stakeholder forum that studies, debates, and makes recommendations on best practices concerning security-related human rights issues.[2] It also provides a forum for dialogue between companies, the Colombian Government, embassies and civil society organisations (CSOs) regarding human rights and International Humanitarian Law (IHL)-related issues in the extractive and non-extractive industry. In 2015, participants in the CME include eight Colombian Government agencies,[3] national and international oil companies, four VPs member governments with embassies in Colombia and one civil society organisation. The CME obtains funding through annual fee payments made by company members and grants provided by a few VPs governments.

The CME has established several working groups charged with producing recommendations based on the needs of its members. For example, the CME has a Working Group on Companies and Public Security Forces, which is currently working with the defence sector to institutionalise risk assessment practices. In 2012, this Working Group developed a recommendation on how CME members could contribute to the Ministry of Defence's Human Rights and International Humanitarian Law Public Policy which includes training public security forces on human rights and IHL, operational discipline, defence, attention to vulnerable groups and cooperation, and makes a commitment to the VPs. Similarly, the Contractors Working Group has developed practical tools for companies in managing private security, through the translation of the VPs into concrete on-the-ground actions that are specific to Colombia. This Group is also working to promote understanding of the connections between VPs implementation and related initiatives such as the International Code of Conduct for Private Security Service Providers.

Key factors that have made the CME successful:

1. The willingness of the Colombian Government to acknowledge serious concerns regarding human rights and violations of IHL in the country;
2. No bureaucracy or high budgets, only political will and a focus on joint work;
3. Commitment from companies and the Colombian Government to work together to protect and respect human rights by:
   a. raising awareness of the VPs;
   b. implementing the CME's recommendations; and
   c. identifying best practices on security-related human rights issues;
4. A reasonable level of trust between members;
5. A commitment to continuous improvement (as opposed to perfection); and
6. The presence of a "champion" for the VPs within the Colombian Government.

GO BACK TO LIST OF CHALLENGES

C. The lack of coordination between national and local authorities may undermine agreements reached by companies at the national level when implemented at the local level.

GOOD PRACTICES*

Conduct in-depth situation analysis in order to understand how the host government is organised and the way authority and responsibilities are devolved from the national to the regional and/or local authorities. This in-depth situation analysis can be led in-house and/or can be built through consultations with other knowledgeable stakeholders. It should include an analysis of the host state institutions, legal framework, political structure, formal and informal systems. The PESTLES framework is one useful method for classifying the information gathered.

PESTLES (Political, Economic, Social, Technological, Legal, Environmental and Security) Analysis

A PESTLES analysis is a macro-level assessment tool designed to give a broad contextual understanding of the state or region where security sector reform activities are planned, through the analysis of a multiplicity of specific but interrelated indicators. For further details see: http://issat.dcaf.ch/[4].

Conduct and review a risk assessment to make sure coordination challenges are acknowledged as a risk and their implications are analysed.

Complete company stakeholder mapping within the host government

- Collect information from different corporate departments (e.g. security, community relations, governmental or external affairs, environment, etc.) to develop a global picture of relevant points of contact.
- Consult existing contacts within the host government (e.g. ministry of trade and investment, ministry of interior, ministry of security if any). (IGTs: 21)
- Consult with home state embassy and other companies to identify key stakeholders and their respective roles and responsibilities, in particular to identify ‘champions’ (i.e. supporters of the VPs) or potential ‘spoilers’ within host governments. (IGTs: 21)
- Consult with local experts (NGOs, academia, media, etc.)
- Conduct a review of different print and online sources to identify key issues and actors.

Work with the host government both at the national and at the local level, including security officials

- Meet regularly with government representatives.
- Nuance the message at each level. The company should draw on its own expertise and consult others with experience in the host country culture, laws and social practices to share concerns and develop acceptance for the VPs at local levels.
- Promote coordinated approaches across ministries (defence, interior, mining, etc.) and other host government agencies through organising joint meetings.
- Ensure consistency of agreements with different levels of government. In coordination with government representatives, address challenges surrounding implementation of the decisions from the central level down to the local level.
- Support exchanges between national, regional and local security bodies, and contribute to coordination mechanisms that foster communication and cooperation between different levels of government.
- Promote targeted dialogues on human rights and international humanitarian law concerns surrounding the provision of security to facilitate greater understanding and trust between security forces and local communities. Invite representatives of vulnerable groups (e.g. women, children or indigenous peoples) to participate in these dialogues.

Work with other stakeholders to increase coordination between security actors

- Work with home governments, other companies, NGOs and multilateral organisations in order to promote effective government coordination.
- Engage with actors supporting security sector reform to promote coordination within host government structures.
- Support initiatives to create or reinforce a national coordinating agency for business and human rights issues. This agency would seek to increase cooperation between different stakeholders, increasing their responsiveness and accessibility.

Support the establishment of a VPs in-country process

Such a process should include actors at different government levels. It should promote coordination among relevant national and local stakeholders; follow up on agreements and monitor progress. (see Challenge 1.1.b.).

- Sensitise stakeholders to the importance of greater coordination and promotion of good practices. In-country VPs workshops may be a useful vehicle for these issues.

GO BACK TO LIST OF CHALLENGES

1.2. Governance and transparency

A. Governments may selectively enforce laws and policies, making decisions on corporate operations without consulting with local communities or fully taking into account their social and environmental impacts, potentially resulting in human rights violations. In such situations, companies risk being perceived as benefiting from or being complicit in these practices.

GOOD PRACTICES*

Clearly and widely communicate the company's commitment to respect the rights of local communities

- Ensure the company's human rights policy covers economic, social and cultural rights of communities and is reflected in all corporate procedures. (See Challenge 1.3.a.)
- "Report transparently on implementation of soft law guidelines." (IHRB: 42)
- Publicly condemn violence against civilians in the region where the company operates. (Swisspeace: 33)
- Be aware that silence or inaction in case of government malfeasance can be seen as a demonstration of indifference by the company and hence expose it to dangers and risks. (UNGC: 18)
- Ensure the company's grievance mechanism is known and accessible to communities. (See Challenge 4.1.e.)

Conduct a legal assessment as part of the context analysis (See Challenge 2.1.a.) and, on this basis, identify and assess risks regularly (See Challenge 4.1.a.)

- Assess how and to what extent the legal system is able to address security and human rights issues.
- Evaluate the potential for the company to be "indirectly or directly complicit in human rights abuses, in the illegal use of force and/or in gross human rights violations." (UNGC: 18)
  - Consider the risk of causing or contributing to gross human rights abuses as a legal compliance issue. (GPs: 25)
  - Do not assume that conducting human rights due diligence, by itself, will automatically and fully absolve the company from liability for causing or contributing to human rights abuses. (GPs: 19)

Conduct a human rights impact assessment to ensure that any proposed development does not affect the human rights of local communities (See Challenge 4.1.a.)

Develop a human rights risk prevention and mitigation strategy in consultation with communities and other relevant stakeholders (See Challenge 4.4.a.)

- Develop detailed policies on bribery issues and put in place robust management procedures such as training and whistle-blowing to prevent corruption. (UNGC: 15) (See Challenge 1.2.b.)
- Prioritise the most serious risks and impacts. Where risks or potential impacts are high or extreme, do not start the project or activity until the risks have been reduced or mitigated. (PDAC-CDA: 18) "A company's inability to operate in ways that do not, at a minimum, 'avoid harm' should prompt serious consideration of withdrawal from the context."[5]
- Exceed national legislation on human rights where it falls short of best practice or international law. (IHRB: 42)
- Tailor the risk mitigation strategy to the company's involvement in particular risks or impacts, considering also the seriousness of each of those risks and impacts.
- Ensure that the company does not exacerbate the situation. "Avoid contributing to the criminalisation of human rights defenders or the use of law enforcement agencies to repress peaceful protest or other forms of opposition to the project." (OECD 2015: 54)
- Engage local communities through their own representatives in any decision-making process involving the exploitation of natural resources or construction on land, where stakeholders are likely to be impacted but are not necessarily protected by the government negotiating the agreement. (HRT: 6) (See Challenge 4.1.b. and Challenge 4.1.c.)
- Be aware that" there are no quick fixes for (pre-existing) conflicts, and a company neither can, nor should, try to address them on its own." (PDAC-CDA: 4)

Engage with relevant government agencies to advocate for solid resource governance and compliance with human rights standards

- Set the company's human rights expectations from the start of the engagement with the host government and negotiate contracts and agreements accordingly. (See Challenge 1.3.a.)
- Seek to ensure the government fulfils its responsibility regarding consultations. (See Challenge 4.1.d. and Challenge 4.2.a.)
- Ensure investment agreements do not reinforce weak governance by interfering with national efforts to implement laws, regulations or policies. "Contractual stabilization clauses, if used, should be carefully drafted so that any protections for investors against future changes in law do not interfere with the State's bona fide efforts to implement laws, regulations or policies in a non-discriminatory manner in order to meet its human rights obligations." (UNIG: 39)
- "Ensure that agreements with the host government specify that land acquisition and resettlement be conducted in accordance with international standards." (CSBP, Flashpoint Issue 2: 6)
- When governments are unwilling to include human rights provisions in agreements, try to include these issues through other avenues, such as MoUs with security forces, training programmes, capacity building, and operating procedures.[6] (See Section 2.3. MoU and Section 2.5. Training)

- Coordinate with competent authorities to strengthen their ability to respond to increased risks, ensuring that security measures adopted are appropriate to the risks.
- Advocate for changes in royalty distribution to ensure that portions of private sector royalty are reaching local communities and having a positive impact on local wellbeing and economic diversification.
- Develop plans of action with local authorities in order to foster responsible investment.

Engage with other actors to develop host government capacity and promote good governance and respect for human rights

- Develop a dialogue with international actors playing a role in governance support and state building.
  - Support efforts by international donors to assist host governments with security sector reform, developing national institutions' capacities and strengthening the rule of law. (VPs: 2)
  - Support capacity-building in the legal system to strengthen judicial grievance mechanisms related to human rights.
  - Identify and support programmes to build capacity of national and local authorities on business and human rights that are adapted to the local context.
  - Support efforts to strengthen local government institutions, such as anti-bribery programmes.
- Support efforts to promote fair rules for investment – e.g. rules allowing for a better division of the territory between areas assigned to private companies and areas reserved for the use of the local population (e.g. artisanal miners, farmers, ...).
- "Harness the potential of multi-stakeholder initiatives to lobby host governments on relevant human rights matters." (IHRB: 42)
- Promote the establishment of local, regional and national fora to discuss potential and actual social and environmental impacts of projects in order to prevent, mitigate and remediate them.
- Consider collective corporate action for addressing government policies that have negative impacts on local communities. (GIR: 175)
- Support the efforts of media and civil society, including human rights institutions, to hold the local government accountable.

GO BACK TO LIST OF CHALLENGES

B. Host governments and local authorities may manage legitimate payments by extractive companies in a non-transparent way.

GOOD PRACTICES*

Conduct a risk assessment including questions on governance and transparency, and update it regularly

Make a clear and unequivocal commitment to transparency of all revenue flows to governments (CSBP, Flashpoint Issue 9: 6)

- Develop a detailed company policy on transparency and the non-payment of bribes.
- Highlight international, regional and national (both from host and home country) legislation on bribery and corruption prominently on the company's website.
- Put in place robust management procedures such as training and whistle-blowing to prevent corruption. (UNGC: 15)
- Publish what you pay to governments in a clear and accessible form. (CSBP, Flashpoint Issue 9: 6) Make all payments to governments available in your financial reviews. Guidance on related good practices can be found at www.publishwhatyoupay.org.
- Inform communities about the companies' payments to the host government. Use booklets, video and audio that explain the companies' operational processes and payments in simple language. (CSBP, Flashpoint Issue 1: 6)

Promote international best practice on transparency of payments and financial management in all engagement with the host government

- Include a clause on transparency in the agreement/MoU with the host government. Agree with the host government to make "unclassified" information, regarding payments, transfers or any other support, available to the public (subject to legitimate commercial and security concerns).
- Encourage the host government to distribute a part of the taxes paid by the company to regional and/or local governments, making this commitment known to the local population so that local authorities are held accountable for the use of these revenues.

Engage in efforts to improve government management of revenues from corporate operations

- Support the "development and enforcement of relevant national legislative frameworks to ensure transparency and oversight of the financial process". (ITGNs: 22) Also consider engagement with parliamentary committees to understand their roles and responsibilities with regard to oversight of resource management.
- Identify ways to "support the development of national capacity in financial management-including a reliable corps of accountants, auditors and bookkeepers who can ensure that the financial integrity and probity of the process is guaranteed from a national perspective." (ITGNs: 23)

- Encourage the oversight of public investment decisions by relevant state bodies, such as anti-corruption commissioners and security sector oversight bodies (e.g., parliamentary committees, independent oversight institutions).
- Engage constructively in multi-stakeholder processes that provide fora for business-government engagement on transparency and accountability, such as the Extractive Industries Transparency Initiative, at both national and international levels. (UNGC: 17; CSBP, Flashpoint Issue 9: 6)
- Support the role of civil society organisations in analysing how revenues are utilised to provide additional transparency to the process.
- Promote broad participation and transparency in decisions regarding the use of revenues, as this contributes positively to national ownership by enhancing popular understanding of the dynamics and challenges involved in the national management of revenues from corporate operations. (ITGNs: 23)

GO BACK TO LIST OF CHALLENGES

C. Companies may be perceived as trying to unduly influence public institutions when they get involved in efforts to strengthen them.

GOOD PRACTICES*

Share information on any company involvements in strengthening public institutions

- Ensure clear communications nationally and to local communities on the company's involvements in strengthening public institutions and why. Highlight the fact that the company is not unduly influencing the decisions or practices of public institutions in any way.
- When engaging with local communities, solicit ideas on how to improve support to capacity-building of public institutions. Where possible, integrate these suggestions in ongoing efforts to strengthen public institutions

Support national ownership of host government security sector reform processes

- Ensure that company engagement with host governments is inclusive and consultative, and that company policies are informed by the perspectives, priorities and vision of national stakeholders (i.e. not only the executive, but also civil society, communities, the legislature, the media, ...). (ITGNs: 13-16) If the public is involved in consultations and planning, they will be able to see more clearly and have confidence that the company is operating transparently and not unduly influencing public institutions.
- Where feasible, provide the host government with matching funds rather than grants or donations. This empowers government officials, encourages a national process of prioritisation and contributes to national capacity building. (MIGA: V-3) Ensure adequate oversight of the use of funds provided by the company.
- Support appropriate efforts by the government in its re-organisation of law enforcement around project sites (e.g. some financial support) while leaving decision-making to the relevant institution.

Engage with other actors to develop host government capacity and promote good governance (See Challenge 1.2.a.)

GO BACK TO LIST OF CHALLENGES

D. In contexts of weak governance and poor enforcement capacity, companies may feel they have little option other than to take on some responsibility in the provision of services to local communities, which the host government and local authorities should normally assume.

GOOD PRACTICES*

Conduct a socioeconomic baseline study and a risk assessment and update them regularly (See Challenge 4.1.a.)

- Analyse the government's capacity and deficiencies in providing public services and protecting the population's rights, and consider the risks associated with these. (IHRB: 49)

When engaging with all stakeholders, emphasise the central role of the state in ensuring respect for the rule of law, providing for social services and developing the local economy

Work together with host governments to improve public service provision at the local level

- Provide technical assistance to strengthen the government's capacity to deliver social services efficiently. (IA-ICMM: 20)
- Exercise the company's "convening power to bring government representatives and local communities together to discuss steps towards ensuring government-provided services." (GIR: 145)
- Form a tripartite partnership with government and local communities, where each of the three partners contributes to making the project successful. Ensure there is a good understanding about the roles and responsibilities of each party, in alignment with the UN Guiding Principles on Business and Human Rights. (GIR: 146)

Engage in efforts that enhance governance capacity and support international best practice in resource governance (See Challenge 1.2.a.)

Ensure that social investment programmes are sustainable and developed with local communities

- Use the findings from the socioeconomic baseline study to identify development opportunities, in particular any gaps and deficiencies in areas such as logistics, suppliers, distribution channels, or training.[7] Consider investing in development projects that fill those gaps, drawing on the company's own expertise.
- Prioritise projects in consultation with community members and development partners. Develop, implement and manage social investment programmes in partnership with local communities and with the support of government authorities.[8]

- Work directly with the national, regional and local governments to ensure that the company's social investments are in line with and do not displace regional and local community development plans. (UNGC: 26)
- Design all social investment with a clear and conscientious exit strategy and ensuring that other parties, including local communities and government, can take them over. (UNGC: 26) This means that local stakeholders must have a sense of ownership over the programmes from the beginning.
- Assess the effectiveness of the social investment in terms of impacts rather than outputs. (CSBP, Flashpoint Issue 5: 5)

GO BACK TO LIST OF CHALLENGES

1.3. Human rights concerns

A. Companies may find it difficult to address security and human rights related concerns and at the same time maintain their good relations with host government stakeholders.

GOOD PRACTICES*

Develop a comprehensive human rights policy that is endorsed by senior management

Human rights policies for extractive companies should include as a minimum

"An explicit commitment to respect all human rights which refers to international human rights standards, including the Universal Declaration of Human Rights" (OHCHR and UN Global Compact, 2011)

- "Our commitment to respect human rights includes recognition of all internationally recognised human rights, in particular: those contained in the International Bill of Human Rights (which includes the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights); the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work; and international humanitarian law, where applicable" (Anglo American, Human Rights Policy)

Provisions on labour/workplace rights such as:

- "Barrick does not tolerate the use of child labour, prison labour, forcibly indentured labour, bonded labour, slavery or servitude, and adheres to the International Labour Organization's Declaration on Fundamental Principles and Rights at Work. Barrick does not tolerate discrimination against individuals on the basis of race, colour, gender, religion, political opinion, nationality or social origin, or harassment of individuals freely employed. Barrick recognizes and respects their freedom to join or refrain from joining legally authorized associations or organizations." (Barrick, Human Rights Policy)

Provisions on security procedures such as:

- "We will implement the Voluntary Principles on Security and Human Rights as the foundation for our security arrangements in each country where we have an established and continuing presence. We will seek to understand the underlying context of potential and actual conflict situations and how we may either ease or exacerbate them through our actions, including our security arrangements. We will seek to ensure that personnel engaged in providing security services to our operations have been vetted against prior involvement in human rights abuses; are appropriately trained; use only proportionate force and work within appropriate rules for the use of force; respect human rights; and are respectful in their interactions with people. We will ensure that timely and accurate details of security related incidents are collected and reported both within Kosmos and to the appropriate authorities." (Kosmos Energy, Human Rights Policy)

Provisions on community relations, such as:

- "Repsol commits to respecting all the human rights of the people of the local communities in the areas where it operates and to establish the necessary mechanisms to ensure this, directly consulting them and taking the issue of language into account. If Repsol determines that it has caused or contributed to causing negative consequences for the human rights of local communities, it undertakes to repair them or contribute to their repair by legitimate means. Repsol particularly commits to respecting the human rights of people belonging to groups or populations that may be more vulnerable, such as indigenous people, women, national, ethnic, religious and linguistics minorities, children, disabled people and migrant workers and their families." (Repsol, Respect for Human Rights Policy)
- Commitments to indigenous peoples should further take account of and fully respect the principles of Free, Prior and Informed Consent of Indigenous Peoples.

Policy coherence across operations:

- "We will apply this human rights Policy to our own business and to our relationships, including all Hydro wholly owned companies and our employees worldwide. For legal entities where Hydro holds directly or indirectly less than 100 percent of the voting rights, Hydro representatives in the boards of directors shall act in compliance with this Policy and seek to implement the ambitions of Hydro's Human Rights Policy in the respective legal entity. The Policy also applies in our dealings with our suppliers, contractors and other business partners; and our interactions with governmental and non-governmental actors." (Hydro, Human Rights Policy)

Policy coherence in the supply chain:

- "We are committed to a strong and diverse supplier network which supports our goal of making a positive contribution in the communities where we do business. We expect contractors and suppliers to respect our voluntary commitments, Code of Business Conduct and Ethics, and Environment, Health and Safety, Social Responsibility and related policies." (Hess, Human Rights Policy)

Policy coherence between the company departments:

- "Cerrejón's Human Rights Policy is aligned with the Cerrejón Way, the company's Vision on Sustainable Development and other company policies, in particular Ethics, Social Labor Responsibility, and Health, Safety, Environment, and Communities. It is part of and contributes to the development of the Community Relations Plan, Cerrejón's Mission, and the practice of Responsible Mining to which we are committed." (Cerrejón, Human Rights Policy)

An extensive list of formal company policy statements explicitly referring to human rights can be found here: http://business-humanrights.org/en/company-policy-statements-on-human-rights

Clearly set out the company's human rights expectations from the start of the engagement with the host government

- ▶ Refer to the host country's relevant laws, highlighting the links between national legislation and the VPs, and refer to international human rights standards if the government has committed to those standards.
- ▶ Refer to the company's human rights policy and commitment to the VPs, and explain the need to uphold the group's reputation. Articulate from a company perspective the relationship between the VPs and the need for effective and accountable national security institutions. Highlight links between the company's concerns and areas of interest for the host government (e.g. well trained security forces).
- ▶ Advocate for reform of domestic legislation that conflicts with international human rights standards, (IHRB: 42) appealing to the government's self-interest in making conditions easier for responsible foreign investors.
- ▶ Use language that resonates with host government actors. In certain situations, it may be better not to explicitly mention the VPs or human rights, but to find alternative ways of raising related issues, such as by referring to good policing practices or adherence to professional standards.
- ▶ Acknowledge the government's positive efforts on human rights, before suggesting improvements.

Incorporate clauses on human rights into investment agreements and commercial contracts with the host government

- ▶ Include references to widely recognized standards such as the UN Guiding Principles, the VPs, the core ILO Conventions and the IFC Performance Standards.
- ▶ "Ensure that agreements with the host government specify that land acquisition and resettlement be conducted in accordance with international standards." (CSBP, Flashpoint Issue 2: 6)

Work with other stakeholders to raise security and human rights issues with the host government

- ▶ Use stakeholder mapping to identify key interlocutors on security and human rights issues to work with (See Challenge 1.1.a.):
    - Work with other companies to jointly address issues of common concern with the authorities. At times, collaborative action can be more effective than individual companies approaching the government regarding security and human rights.
    - Work with civil society organisations. Civil society organisations can serve as valuable interlocutors or mediators to communicate with security forces, governments or host communities (IGTs: 18).
    - Work with home governments. Home governments can serve as valuable conduits to communicate expectations and to broach challenges with host governments (IGTs: 18). Contacts should be developed with home government departments and agencies with direct knowledge of and responsibility for security sector reform and governance issues (defence, international development, foreign affairs, etc.).
    - Engage with international financial institutions (e.g. World Bank or International Finance Corporation) that provide funding to host state actors in order to jointly promote sustainable investment, including security and human rights issues.

- Establish or support an existing community security forum to jointly address VPs-related issues. It should include representatives from security stakeholders as well as traditional leaders and representatives from any groups impacted by current or future security arrangements. It could also be an effective venue for raising community security issues.
- "Consider the formulation of an external stakeholder advisory panel." This panel could help monitor and engage in dialogue with the government on security and human rights issues and identify good practice and innovative initiatives from other contexts. "The panel should include stakeholders with legitimacy in the eyes of the host government (e.g. former government leader, international statesperson, etc.)." (IGTs: 21) It should also include people that are familiar with the plight of vulnerable groups, such as women and indigenous peoples, when confronted by large business operations in their region.

Strengthen the role of other stakeholders

- Strengthen the role and capacity of civil society. In particular, focus on strengthening skills that enhance human rights advocacy, data collection, monitoring and evaluation, drafting of policy proposals and reports.
- Support public dissemination campaigns. Events, seminars, radio and printed media dissemination as well as an informative webpage in the local language can help build bridges between companies and concerned stakeholders at the local level on security and human rights issues linked to company operations. It is important to understand the local context to ascertain the best means of public outreach, particularly in fragile and conflict-affected areas. Different groups in a local community may require different and varied outreach strategies - in particular the most vulnerable and the illiterate. (See Challenge 4.1.b.)
- Support efforts by other governments, civil society and international organisations to strengthen state institutions. (VPs: 5)
- Identify ongoing initiatives to support capacity development for oversight mechanisms and independent bodies, including legislatures, judiciaries, ombuds institutions, national human rights institutions, anti-corruption commissions and independent security sector oversight bodies. Seek ways to contribute to these initiatives. (ITGNs: 6)

Marsad Security Sector Observatories

The Marsad security sector observatories are a series of websites that gather and present country specific information about national security sector governance (SSG) dynamics and security sector reform (SSR) initiatives. All websites are available in a national language and English or French and include relevant national and international news items, opinions and analyses, and reports on SSG related issues.

Setting up websites similar to the Marsad observatories can support the coordination of national security actors and could be a good platform to distribute relevant concepts and practices of the VPs. Marsad visitors are able to comment and discuss all published reports and analyses and propose their texts for publication by sending them to the Marsad editorial team.

Established Marsad security sector observatories include:

- Marsad Egypt: http://www.marsad.eg/en/
- Marsad Libya: http://www.marsad.ly/en/
- Marsad Palestine: http://www.marsad.info/en/
- Marsad Tunisia: http://www.observatoire-securite.tn/Fr/accueil/85

GO BACK TO LIST OF CHALLENGES

B. Companies may lose credibility if they are perceived as using their leverage with the host government more on commercial, taxation or security issues than on human rights concerns.

GOOD PRACTICES*

Use existing leverage to address human rights concerns, or seek ways to increase leverage

"'Leverage' over an entity (business, governmental or non-governmental) (...) may reflect one or more factors, such as:

a) Whether there is a degree of direct control by the enterprise over the entity;

b) The terms of contract between the enterprise and the entity;

c) The proportion of business the enterprise represents for the entity;

d) The ability of the enterprise to incentivise the entity to improve human rights performance in terms of future business, reputational advantage, capacity building assistance, etc.;

e) The benefits of working with the enterprise to the entity's reputation and the harm to its reputation if that relationship is withdrawn;

f) The ability of the enterprise to incentivise other enterprises or organisations to improve their own human rights performance, including through business associations and multi-stakeholder initiatives;

g) The ability of the enterprise to engage local or central government in requiring improved human rights performance by the entity through the implementation of regulations, monitoring, sanctions, etc."

(UNIG: 49)

- If the company lacks leverage, consider ways for the company to increase it. Leverage on human rights may be increased by, for example, offering capacity-building or other incentives to the relevant government entity, (GPs: 22) or at the time of reaching a new agreement with the host government.
- Engage with other stakeholders (home governments, other companies, civil society, national human rights institutions and relevant multi-stakeholder initiatives) to raise security and human rights issues with the host government. (See Challenge 1.3.a.)

If it is not possible to effectively use the company's leverage to mitigate the risk that human rights abuses continue, consider ending the relationship with the relevant entity if feasible, taking into account the potential adverse human rights impacts (GPs: 22)

GO BACK TO LIST OF CHALLENGES

1.3. Human rights concerns

* These good practices are not meant to be prescriptive. It is up to the user to evaluate whether they could be feasible, useful and appropriate to the local context in a specific situation on the ground.

[1] Summary of the Colombia VPs Process Report. The full report is available at : http://cmecolombia.co/the-colombia-vps-process-report-2014/

[2] The CME's recommendations are public and are meant to be used by companies in any sector. For more information on CME's recommendations, please go to: http://cmecolombia.co/

[3] (Office of the Vice-President, Ministry of Foreign Affairs, Ministry of Defence of Colombia, National Human Rights and IHL Program, High Command of the Military Forces and Colombian Army, National Police, and Office for the Supervision of Private Security)

[4] http://issat.dcaf.ch/Learn/Resource-Library/Tools/Top-10-Programming-Tools-for-Security-and-Justice-Sector-Reform

[5] Business and Armed Non-State Actors – Dilemmas, Challenges and a Way Forward (Ben Miller, Dost Bardouille and Sarah Cechvala, 2014), p. 21.

[6] Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights (IHRB and Shift, 2013), p. 46.

[7] Creating Shared Value (Michael Porter and Mark Kramer, 2011). Available online at: https://hbr.org/2011/01/the-big-idea-creating-shared-value

[8] Community Development Toolkit (ICMM, 2012), p. 23.

II. Working with Public Security Forces

II. Working With Public Security Forces

2.1. Security arrangements

A. Companies may be "obliged" to work with public security, including inside their sites, without knowing in advance the numbers and operational capabilities, as well as the rules and restrictions governing public security forces assigned to their area of operations.

GOOD PRACTICES*

Discuss security arrangements with the management of public security forces at the national, regional and/or local level

- Raise the VPs and international standards on the conduct of public security forces. Emphasise that the type and number of public security forces deployed should be proportional to the threat. (VPs: 4) If national authorities decide, in compliance with national law, to deploy military forces to areas of extractive operations, highlight the need for adequate training and equipment.
- Identify and set out in formal terms the different roles assigned to public and private security. On this basis, agree with the chain of command of public security forces the rules for their deployment around the company's facilities, in particular try to determine mechanisms and procedures for scaling up or down depending on the changing environment.
- Only request the permanent deployment of public security forces if there is a high level of lawlessness, or if the site is so remote that the response time for public security forces to arrive is too long. (MIGA: III-8)
- Consider requesting that a certain percentage of public security forces deployed are women. "Women may be able to provide different levels of attention to specific vulnerable groups and may also help avoid gender-based violence by their presence."[1]
- Assess whether the security benefit of working with public security forces (e.g. for convoy protection) outweighs the risk that lethal force may be used.

Maintain close contact with representatives of public security forces at different levels

- Seek home government support to access high-level public security officials.
- "Liaise with the appropriate ministry to corroborate ground-level information from security providers". (IGTs: 14)
- Maintain close contact with the police and military forces representatives at each echelon. (MIGA: III-14)
- Raise concerns to authorities at the appropriate level whenever use of force by public security is excessive. (IGTs: 44)

- Establish formal and consistent reporting and communications mechanisms with public security forces and other stakeholders to ascertain ongoing threat levels. (IGTs: 14, 44)
- Always document decision points in meetings with public security forces and distribute them among participants.
- Ensure the company approach to security arrangements (roles and responsibilities, chain of command, use of force, etc.) is mainstreamed through all security personnel on site.
- Sponsor visits by senior public security officials to the company's operational site. "These steps strengthen the company management's access in difficult times." (MIGA III-12)

Establish an agreement or MoU (See Section 2.3. MoUs)

- Develop a joint risk assessment process including representatives of public security forces to agree on security risks and the nature and level of support required from public security forces.
- Use any in-kind support the company provides as an incentive to agree on and enforce clear rules on deployment and conduct of public security forces that comply with the VPs, the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. (MIGA: III-7)
- "Encourage host governments to permit making security arrangements transparent and accessible to the public, subject to any overriding safety and security concerns." (VPs: 4)

Support efforts to provide human rights and international humanitarian law training for public security forces (See Section 2.5. Training)

GO BACK TO LIST OF CHALLENGES

B. In situations of armed violence, the public security forces assigned to areas of corporate operations may be considered as a military objective by one of the parties.

GOOD PRACTICES*

Analyse the context as part of enhanced due diligence and assess risks and impacts regularly

- Conduct a conflict analysis to understand the root causes, the dynamics, the actors and nature of local conflicts. The conflict analysis should also assess the level of adherence to human rights and international humanitarian law standards by the different parties. (VPs: 5)

The **conflict analysis** should offer answers to the following key questions:

- What are the root causes of tensions and potential triggers?
- Who are the main actors in the conflict? What are their motives, capacities, and opportunities to inflict violence?
- "Is conflict likely to re-emerge and/or are certain geographical areas not controlled by the state?" (OECD: 53)
- "What are the roles played by the security sector in the conflict?" (ITGNs: 70)
- "Has the security sector contributed to, or been among the root causes of, the conflict?" (ITGNs: 70)
- Which are the most prevalent conflict dynamics among regional stakeholders? (ITGNs: 72)

- Conduct a human rights/international humanitarian law assessment to identify and map sources of potential conflict. Where feasible, mandate a reputable and experienced local actor to conduct this study. (MIGA: II-16)

2.1. Security arrangements

A **human rights/international humanitarian law assessment** should offer answers to the following questions:

- What are the main human rights and international humanitarian law violations people have faced/ are facing?
- Who are the main perpetrators of the violations?
- Which are the most vulnerable groups?
- What are the scope and dynamics of sexual and gender-based violence?
- “Does a state mechanism exist to monitor, report and respond to violations perpetrated by members of the security sector?” (ITGNs: 71)
- “Are effective steps being taken to hold perpetrators in the security sector accountable?” (ITGNs: 71)
- “What measures have been taken with a view to preventing the recurrence of such violations?” (ITGNs: 71)
- “What capacity does the security sector have to prevent and respond to reports of violations by its own actors or by other actors?” (ITGNs: 71)

- ▶ Identify security risks for the company (e.g. risks for company personnel and families, facilities and assets), as well as risks for local communities. This “allows a company to take measures to minimise risk and to assess whether company actions may heighten risk.” (VPs: 2)

A comprehensive **security and threats analysis**, potentially including a survey drawing on local public perceptions, should offer answers to the following key questions:

- What are the main threats to be addressed?
- “What is known about the nature of those threats: who does what, how, when, where, and to whom?” (ITGNs: 71)
- “Are there tensions between different social groups? What are the triggers that could inflame tensions?” (OECD: 53)
- Who are the “champions” at community level that could help to mitigate security risks?
- “How can the security sector contribute to mitigating these threats?” (ITGNs: 71)
- Is the security situation improving or worsening in the country?

- ▶ Conduct an impact assessment to understand the company’s impact on the local context and identify ways of mitigating potential and actual negative impacts.
- ▶ Engage in community consultations regarding security measures. “Regular discussions with community members can be a good source of security risk information.” (IGTs: 20) Ensure all vulnerable groups are adequately represented in these consultations

Minimise the presence of public security forces at company sites (MIGA: III-1)

- In conflict environments, try to avoid public security forces becoming involved in operations at company sites if private security can legally and practically respond to needs. Although the government also remains responsible for the conduct of public security forces, "once the company invites or requests a public security force detachment onto its facilities, the company inherently accepts responsibility for its conduct at the site." (MIGA III-8)
- Request public forces only when there is an urgent need at a specific location and then clearly define their mandate as well as the time limits for their expected withdrawal. (MIGA: III-1)

Promote respect of international standards and good practices by public security forces deployed on site

- In discussions with representatives of public security forces, underline that forces deployed should be competent and the type, number and means engaged should be appropriate and proportional to the threat. (VPs: 4) Ensure that this requirement is made explicit in an MoU/agreement with the host state. (See Section 2.3. MoUs)
- If national authorities decide, in compliance with national law, to deploy military forces to areas of extractive operations, highlight the need for adequate training and equipment, and ensure that their chain of command is clearly defined in relation to company management.
- Designate public security forces assigned to companies' facilities as "the Security Emergency Reserve, held in readiness as a response force and not routinely used for guard duties." (MIGA: III-8)
- Ensure roles and responsibilities of public and private security are clearly defined and communicated to both public security forces chain of command and company management.

Monitor closely the public security forces assigned to the protection of the company's staff, assets and operations.

Ensure they do not take part in operations related to conflict/armed violence.

Publish policy on human rights

- Companies should openly communicate the circumstances in which public security forces are likely to be associated with their operations, as well as how they address the risk of human rights violations by public security forces in these situations. This could help to make the public differentiate between the company and the security forces that are guarding them and may reduce the risk of being too closely associated with public security operations.

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C. Public security forces may suffer from insufficient human resources, low salaries, inadequate training and poor equipment. This may increase the risk that they engage in criminal activity or human rights violations.

GOOD PRACTICES*

Conduct/regularly update risk assessment

- Estimate public security resource needs as part of the risk assessment.
- Assess potential conflict risks as a result of imbalances within public security forces due to additional resources provided to units dedicated to company security.

Consider alternatives to the provision of financial and material support

(See Challenge 2.6.a.)

Engage with the appropriate government agencies and emphasise the need for the host government to provide adequate resources

- Include a provision in the agreement/MoU with the host government that part of the taxes paid by companies be used to provide resources to public security forces. (MIGA: II-17)

Support efforts by governments, civil society and multilateral organisations to strengthen state institutions (VPs: 5)

- Identify synergies with security sector reform programmes. Programmes to strengthen the management and oversight roles of security institutions as well as training for public security forces are in place in many countries. The company could engage with these programmes to extend some police reform activities to the area of the company's operations. (MIGA: II-18)
- Support programmes that promote "fair, objective, transparent, non-discriminatory and merit-based policies and practices on recruitment, salaries, performance evaluation, promotion and professional development" of public security forces. (ITGNs: 105)
- Provide resources to support programmes that strengthen accountability at the local level.

SSR Programmes

There are a number of entry points that can assist companies in the identification of regional and national security sector reform programmes.

1. The **International Security Sector Advisory Team** (ISSAT) offers detailed country and region specific information on SSR programmes, resources, experts and news. The country profiles are part of the ISSAT Security and Justice Reform Community of Practice (CoP), an online platform that allows practitioners to access and contribute to a vast repository of policy guidance documents, case studies and e-learning courses. It provides a great opportunity to identify and engage with security sector reform practitioners and programmes. The country profiles can be accessed here: http://issat.dcaf.ch/Learn/Resource-Library/Country-Profiles
2. The **African Security Sector Network** (ASSN) is an extensive network of organisations from across Africa focusing on the security sector. The network includes Regional Hubs in Accra, Juba, Mzuzu and Nairobi, and promotes the cooperation and exchange of actors and organisations working in security related domains. The ASSN can be accessed here: http://www.africansecuritynetwork.org/site/index.php?option=com_content&view=article&id=142&Itemid=73
3. The **Security Sector Reform Resource Centre** provides SSR Country Snapshots, which provide up-to-date information on SSR programmes, stakeholders and donors around the world. Not all countries are yet covered by the Country Snapshots but they are continuously being added / expanded. The Country Snapshots can be accessed here: http://www.ssrresourcecentre.org/countries/
4. The **UN Security Sector Reform Website** provides an overview of international organisations, training providers and UN agencies involved in SSR programmes around the world. The website can be accessed here: http://unssr.unlb.org/.

Engage with other concerned companies to get home governments or multilateral institutions to provide the material and support needed. The company could “contribute to a consolidated programme of equipment and training that will jointly benefit all companies in the area.” (MIGA: II-18)

If the company feels compelled to provide financial and material support to public security forces, assess all potential risks and establish safeguards

(See Challenge 2.6.b.)

- Assess the security benefit of providing resources to public security forces against the risks of human rights violations. If the benefits outweigh the costs and risks, establish and disseminate clear criteria for providing material support.
- Analyse any past cases of material support as the basis for the provision of such material.

Develop clear procedures for the provision of financial and material support to public security forces assigned to the project site

- Develop a protocol for the provision of equipment, goods and services to public security forces. (MIGA: II-17)

- Condition equipment transfers on the government's commitment to respect human rights and the appropriate standards and codes for the protection of individuals and the use of force in the context of law enforcement operations (human rights) and in the conduct of hostilities (i.e. where international humanitarian law applies).
- "List anything provided to governments, including public forces, in a Record of Transfer Register. The register identifies exactly what the company provided, when and for what purpose. The recipient's representative should sign a receipt for all items provided." (MIGA: II-19)
- Ensure full transparency of payments made and/or equipment transferred.

Ensure that financial and material support provided to public security reaches personnel on the ground

- Endeavour to split the payments intended to contribute to public security forces between the relevant authorities at national and local levels.
- Where public security forces are entitled to payments in the form of a per diem or supplement to enable travel to company sites, ensure these are delivered directly to individuals.
- Ensure that any equipment to be used for the protection of the project site is secured at the site and released only according to agreed procedures. (MIGA: II-19)

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D. If payments (cash and in-kind) to public security forces in exchange for their services are not transparent, this may raise suspicions of corruption.

GOOD PRACTICES*

Ensure transparency of contractual agreements and payments made to host governments

- Make "a clear and unequivocal commitment to transparency of all revenue flows to governments. This should apply to every country in which a company operates." (CSBP, Flashpoint Issue 9: 6)
- Make all payments to governments available in company financial reviews and/or website, making sure figures are presented in a clear format. Guidance on related good practices can be found at www.publishwhatyoupay.org.

Work with host government authorities to increase transparency in the management of payments made by companies

- Assist in the development of a national financial reporting framework. Reporting frameworks need to be comprehensive and consistent for companies at the country level, and allow for proper analysis by civil society organisations and other observers.
- Work with other companies to promote common minimum standards for financial reporting.
- Cooperate with other companies to advocate for transparency of payments at the national level/with the host government.

Support programmes by governments, civil society and multilateral institutions to increase transparency in security sector financing

- Engage in multi-stakeholder processes such as the Extractive Industries Transparency Initiative at both the national and international levels. "This includes working collaboratively with home and host governments, international financial institutions, investors, civil society organisations, industry representative associations and other companies, including state-owned enterprises, toward ensuring that such initiatives evolve into meaningful and accountable standards of practice." (CSBP, Flashpoint Issue 9: 6)
- Seek ways to support security sector reform programmes that promote effective and accountable management of security budgets.

Inform communities about the company's actions

- Use booklets, video and audio that explain the companies' operational processes and payments in simple language. (CSBP, Flashpoint Issue 1: 6)
- Establish a public information office in a nearby location to the project site where anyone can make inquiries about the operations. (CSBP, Flashpoint Issue 1: 6)

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2.2. Privatisation of public security

A. Public security forces protecting company personnel and assets may risk prioritising the security of company's operations over the security of the local population.

GOOD PRACTICES*

Ensure that contracts with public security forces are agreed with the relevant authorities rather than with individuals. This way, individuals will maintain their status as public security personnel even when providing a service for a company.

Develop a comprehensive company policy on security, human rights and community relations

- Develop principles for relations between security forces protecting a project site and the neighbouring communities, clearly setting out roles and responsibilities of public and private security.

Conduct joint meetings and trainings with public and private security to ensure that roles and responsibilities are properly understood. (See Section 3.7. Relationship between public and private security)

- Reach an agreement with relevant authorities regarding the content and regularity of the training. Include as a minimum the following topics: human rights, international humanitarian law, sexual violence, rules of engagement for the use of force, conflict management, crowd control and public order. (See Challenge 2.5.b.)

Discuss security arrangements with host communities on a regular basis as a way of monitoring the conduct of public security forces

- Clarify the purpose of security arrangements, making reference to the VPs and the International Code of Conduct for Private Security Service Providers, during community consultations. (IGTs: 19)
- Establish mechanisms that enable communities to voice their concerns on security arrangements.
- Ensure all vulnerable groups are included in these discussions.

Establish an operational-level grievance mechanism that allows individuals and communities to report any abuse anonymously (GPs: 31-32) (See Challenge 2.8.d.)

- Establish at least one of the following mechanisms to allow for anonymous reporting of human rights abuses (MIGA: III-16):
  - A Report Abuse hotline,

- “A computer address in the company offices that is solely accessible by a trusted monitor and a secure mailing address”,
- “Tip boxes” located in areas where individuals have unobserved access to the boxes and can drop in anonymous notes, tips or other information, with clear instructions posted above them.

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2.3. Memorandum of Understanding (MoU)[2]

A. Companies may find it challenging to agree on a MoU with host government stakeholders.

GOOD PRACTICES*

Build trust among relevant host government stakeholders and prepare the ground for a meaningful MoU

- Complete stakeholder mapping exercise within host government and identify entry points (See Challenge 1.1.a.)
- Invest the necessary time and effort to agree on a MoU, as "they can be highly effective in successful implementation of the VPs". (IGTs: 45)
- Ensure the MoU is based on national law. This will foster local ownership and commitment.
- Build support from home governments, NGOs, civil society and community members for the MoU. (IGTs: 45)

Develop and agree on MoU content. Include clauses around[3]:

a) Adherence to the provisions contained in the VPs, the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

b) Public security forces' respect for company security policies and procedures

c) Vetting procedures to ensure that no one allegedly implicated in past human rights and international humanitarian law abuses (i.e. there is a conviction, pending case or very strong evidence) provide security to the company

d) A training programme, if applicable, for public security forces assigned to the company's operations (See Section 2.5. Training)

e) "A protocol to manage equipment transfers in a manner that aligns with the VPs" (See Section 2.6 Equipment)

f) Modalities for company contributions to salaries, goods or services, if applicable, based on the risk assessment

g) An agreed system of information-sharing around security issues, with due regard for necessary confidentiality

h) Commitment to a collaborative working relationship with the joint objective of respecting human rights and international humanitarian law if applicable

i) Points of contact and coordination mechanisms (MIGA: III-5)

j) Include the VPs as an annex to the MoU (MIGA: III-5)

Develop a standard MoU template and adapt it to the local context

If it is not possible to agree on a full MoU from the start, develop specific agreements around key areas of concern such as training, equipment transfers or the working relationship between the company and public security forces

Keep other companies informed of the process

- Discuss challenges and share good practices, both in terms of process and outcomes, with other companies. If a security forum is in place, this would be the ideal environment for this kind of discussion. Otherwise, consider setting ad hoc meetings with security and government relations staff from other companies.

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B. Agreements with public security may be reached at the national level, but not reflected in the engagement at the local level. Human rights violations may still occur despite having a MoU in place.

GOOD PRACTICES*

Seek and maintain regular and constructive relationships with the local leadership of public security forces

- Start with introductory meetings that bring key stakeholders to the table. "These should be attended by the local commander of the public security forces, company representatives responsible for security and community affairs (...) and ideally, a member of the company's senior management". (IGTs: 41)
- Organise regular meetings and identify contact points. The introductory meetings should ideally lead to the scheduling of regular meetings (e.g. once a month) in order to exchange security information and address concerns regarding human rights and international humanitarian law. Contact points on each side should be identified early on. (IGTs: 40-41)
- Formalise the relationship. This could be done for instance through an exchange of letters or by signing an agreement at the local level.
- Invite counterparts to participate in occasional social events. "This promotes mutual understanding, builds confidence and 'humanises' (the relationship)". (MIGA: III-11)
- Invest time. Relationship building requires patience and commitment. There will be a trickle-down effect eventually, even though it will probably not happen immediately.

Demonstrate a policy commitment to the VPs and set out the company's expectations

- Develop a clear statement of policy. This should be "approved at the most senior level of the (company)" and stipulate the human rights expectations of its partners or parties directly linked to its operations. The statement should be actively communicated and publicly available. (GPs: 16)
- Explain the VPs to public security forces. "At provincial and national levels, management may include the VPs as a talking point in wider discussions. At the local and site levels, company management should dedicate time to make the VPs the topic for a separate meeting." (MIGA: III-15)
- Refer public security forces to the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials as well as to the rules governing the conduct of hostilities under international humanitarian law in the context of armed conflict. Ensure that obligations are explained in ways that are easily understood by different audiences.
- Use language that public security forces can relate to. Appeal for example to "values such as 'operational excellence' or 'best practice' ". (IGTs: 41, 47)
- Translate policies, rules and explanatory documents into local languages.

Incorporate VPs into an agreement/MoU at the local level

- Develop, if required, separate agreements or MoUs at both the national and local levels. Clearly identify different responsibilities between the national level and local level implementation.
- Negotiate and sign a site security agreement. Such an agreement should establish the "conditions, expectations, obligations and standards of behaviour outlined for all parties" (MIGA: III-3), both "in standard operational procedures and in extraordinary or emergency circumstances" (MIGA: III-6). "The ideal outcome is a binding agreement that specifies the responsibilities and obligations of the company and the public security forces, signed by the senior leadership of the company and the respective agencies with detailed implementation instructions at subordinate levels" (MIGA: III-3). Roles and responsibilities of public and private security should be clearly set out.
- Make sure agreements/MoUs are realistic. This means basing requirements on an analysis of the actual challenges faced by the company and public security forces at the local level. Ensure that agreements are flexible so that arrangements can be adapted in line with evolving requirements.
- Link the agreement to existing host nation laws and agreements. (MIGA: III-5)
- Agree on a training programme for public security forces covering as a minimum the following topics: human rights, international humanitarian law, sexual violence, rules of engagement for the use of force, conflict management, crowd control and public order. (See Challenge 2.5.b.)
- Develop a clear policy to respond to requests for equipment at the local level (See Section 2.6 Equipment)
- Invest time in negotiations. "The company will have to consult with multiple levels of the host country government and convince them of the usefulness of (an agreement)". (MIGA: III-7)
- Establish monitoring mechanisms to identify where agreements are not respected. Act swiftly to address instances of non-compliance with host state points of contact.

Ensure arrangements made at the local level with senior public security authorities are agreed at the national and regional levels

- Identify relevant interlocutors at different levels within the public security forces chain of command through a stakeholder mapping exercise.
- Meet with the regional public security forces commander(s) on a periodic basis. "Unless there is a real emergency, all issues should be discussed with the regional public security commander before taking them up the chain of command". (MIGA: III-11)
- Where possible, promote information sharing between different public security forces (e.g. through organising coordination meetings).

Engage with other stakeholders

- Develop a network of stakeholder relationships, including national government agencies, civil society organisations and other companies to exchange security and human rights information.

Establish a broad-based security working group at the local level

- Establish a security working group to promote coordinated, bottom up approaches to addressing security and human rights challenges. It can also offset the impact of changes in the government at the national level on progress made at the local level.
- Invite the police chief, the military commander, the local head of government, one or two local leaders and other companies operating in the area to participate in a working group.
- If appropriate, invite representatives of civil society organisations, including women's networks and groups.
- The first objective in establishing such a working group is to build trust and to promote exchanges among relevant actors. These structures may take time to become action-oriented, but the time taken to build up mutual confidence and a common understanding of the issues is invaluable.
- Ensure that the working group meets regularly and that there is a clear focal point responsible for logistics, agenda and recording of key issues from meetings.
- Consider co-chairing of meetings (e.g. one company and one civil society representative) to highlight the legitimacy of the group.

CASE STUDY: MONTHLY SECURITY AND HUMAN RIGHTS MEETINGS IN LUBUMBASHI[4]

Since 2012, monthly security meetings have been held in Lubumbashi to discuss challenges and share good practices around extractive operations in the province of Katanga, in the Democratic Republic of the Congo (DRC). Initially, meetings have been coordinated by the NGO Pact Congo and the company Tenke Fungurume Mining (TFM). Participation in the meeting is open to all extractive companies working in the area, regardless of their VPs status, as well as local public institutions, public security forces, private security companies, human rights NGOs and the United Nations Organization Stabilization Mission in the DRC (MONUSCO). This open approach has promoted the implementation of VPs good practices beyond formal members of the initiative.

Each meeting focuses on one or more concrete challenges (e.g. impact of mining on the environment, legal obligations of companies when contracting private security services, vetting requirements, correct procedures for use of non-lethal defensive equipment). The meetings also provide the opportunity for participants to share updates on any security incidents around extractive operations in the region.

These meetings are conducted in a manner that allows for open and ongoing exchanges among participants, facilitating the sharing of information between companies, public authorities and civil society organisations. Efforts are underway to systematise the follow up of recommendations made during these sessions and assess how these have had an impact. The monthly VPs meetings in Lubumbashi provide a framework that facilitates multi-stakeholder collaboration to address local challenges.

Manage human resources appropriately

- Get the right person(s) for the job. Ensure those on the spot responsible for relations with public security forces have credibility. Key requirements include cultural awareness, operational experience and ability to speak the local language (all this may require hiring more than one person). Political awareness is also essential. The company representative(s) must not be seen to be aligned with one particular group, for example a conflict party, opposition political group, the ruling political elite or with the advocacy position of lobby groups

Reassess and update the MoU regularly

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2.4. Vetting

A. Vetting of public security forces may be very sensitive and difficult (or illegal) to conduct, particularly in fragile states and in post-conflict contexts. The lack of relevant information, such as personnel records, may make it impossible to conduct background checks as recommended in various guidance documents.

GOOD PRACTICES*

Maintain close relationships with different echelons of public security forces and actively seek opportunities to discuss vetting procedures

In collaboration with the relevant government authorities, identify which institutions should be consulted in order to conduct background checks

Establish procedures to help ensure that individuals allegedly implicated in human rights abuses do not provide security services for companies

- Include a clause in the MoU establishing that no one allegedly implicated in past human rights and international humanitarian law abuses (i.e. there is a conviction, pending case or very strong evidence) provide security to the company. (IGTs: 45)
- Provide additional monitoring of activities of security forces in the company's area of operations where there are allegations of misconduct.
- When there is a credible and verified report of human rights abuses and/or international humanitarian law violations, require that the concerned individual(s) is/are withdrawn from the site until an official investigation is concluded. (MIGA: II-12)

Use multiple sources to obtain relevant information

- When legally authorised, "conduct an official check of police records for any outstanding criminal warrants on prospective candidates". (MIGA: II-11)
- Study history of abuses in the region. If information on individuals within public security forces providing security to the company is not available/accessible, investigate the historical conduct of public security forces in the region, focusing on any allegations of misconduct or abuse. (IGTs: 38)
- Obtain information on one particular risk from three or more different sources. Potential sources may include: the web, official media, international and local NGOs, organisations from the United Nations family, other businesses, community leaders and members, independent consultancies, home country embassies, industry associations, etc. (IGTs: 24) "Women's community organisations can be useful sources of information as they may have intimate knowledge of individual community members."[5]

- Protect source confidentiality. "Some information sources may be putting themselves at risk in disclosing information." (IGTs: 24) There are ways of using the information received without having to disclose the source. For instance, part of this information may actually be publicly available or it may help identify other actors that could know more about the issue and would be ready to act as witnesses.
- Establish at least one of the following mechanisms to allow for anonymous reporting of human rights abuses (MIGA: III-16):
    - A Report Abuse hotline,
    - "A computer address in the company offices that is solely accessible by a trusted monitor and a secure mailing address",
    - "Tip boxes" located in areas where individuals have unobserved access to the boxes and can drop in anonymous notes, tips or other information, with clear instructions posted above them.

If appropriate, use the services of a security consultancy company. In some countries, internationally recognised and reputable security companies that specialise in political risk advice, investigations and security consultancy, are capable, and legally allowed, to conduct thorough background investigations that are beyond the scope of a company security department. (MIGA: II-11)

Share information with other stakeholders

- Establish a regular system of information sharing with other companies, civil society and appropriate organisations.

Support efforts by governments, civil society and multilateral institutions to strengthen state institutions (VPs: 5)

- Identify security sector reform programmes that could improve vetting of public security forces and explore ways of supporting these activities.
- Support efforts to promote "fair, objective, transparent, non-discriminatory and merit-based policies and practices on recruitment, salaries, performance evaluation, promotion and professional development" of public security forces. (ITGNs: 105)
- Identify ways to support training programmes for public security forces on use of force and firearms, human rights and international humanitarian law, and gender related issues. (See Section 2.5. Training)

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2.5. Training

A. Training provided by host governments to public security forces may be inadequate and/or incomplete – e.g. security forces may not be trained in international human rights standards or minimal use of force techniques.

GOOD PRACTICES*

Conduct a needs analysis that includes an assessment of the capabilities of public security forces.

Although not always feasible, this practice should be promoted whenever possible, since it is key to the design of an adequate training programme.

- Assess knowledge, fitness and aptitudes of public security forces.
- Identify capacity gaps through an aptitude test (to be also used as baseline survey that will serve as a reference to measure progress made after the training).
- Establish a monitoring mechanism to ensure quality is maintained as public security forces are rotated in and out.

Seek to ensure that the host government understands and covers training needs

- In meetings with host government stakeholders emphasise the need to enhance the quality of training of public security forces to improve respect of human rights and international humanitarian law. Expectations related to VPs provisions as well as the obligation of the host government to meet these expectations should be clearly explained.
- Seek support from influential stakeholders (e.g. national political or social leaders, home governments, international organisations) to ensure the host government assumes its responsibilities regarding the training of public security forces assigned to the area(s) of extractive operations.

Support national training programmes

- Engage with the relevant ministry (e.g. ministry of interior or ministry of defence) to identify how the company can contribute to improving training on human rights and international humanitarian law for public security forces. For instance, the company can provide budgetary or logistical support to existing national training programmes.

RECOMMENDATION OF THE COLOMBIAN MINING AND ENERGY COMMITTEE[6]

In Colombia, it is recommended that companies do not provide training to public security forces on international humanitarian law, neither directly nor through contractors. Decisions on doctrine must be taken by national defence authorities. However, companies may review the training curricula and make recommendations to address identified gaps in the content. Companies may also provide logistical or financial support to ensure the appropriate tools and materials are available for the training.

As for human rights training, companies may support the national training programme by providing direct training to public security forces. However, in order to ensure the coherence of the defence sector, it is highly recommended that the content is identified jointly by the company and the relevant authorities, and that public security management approves of the choice of trainers and methodology.

- Support sustainable approaches to national training programmes. Focus on train-the-trainer approaches and identify ways to embed good practices in the curricula of public security training institutions.

Map existing training programmes and partner with other stakeholders

- Identify existing human rights and international humanitarian law training programmes developed by a UN Mission, donors, civil society or other institutions.
- Support efforts to improve human rights and international humanitarian law training programmes at the national and/or local levels.
- In situations of armed conflict, liaise with the ICRC or another recognised provider with local knowledge and experience to check whether they would be able to provide international humanitarian law training to public security forces in the company's area of operations. If feasible, engage with relevant national and local authorities to ensure that all public security forces in the company's area of operations receive training from the ICRC or another recognised provider.
- Seek ways to develop linkages to security sector reform assistance programmes offering training to public security forces.

CASE STUDY: MONUSCO - TENKE FUNGURUME MINING (TFM) TRAINING OF PUBLIC SECURITY FORCES[7]

In the DRC, national law requires the presence of public security around extractive sites. At the same time, although not all public security forces have been trained to perform their duties according to international standards for international human rights and humanitarian law, private companies are not allowed to provide this training themselves.

In 2012, this issue was raised in the framework of the monthly Security and Human Rights meetings in Lubumbashi. The United Nations Organization Stabilisation Mission in the DRC (MONUSCO) was seen as one of the solutions to help address the issue. TFM approached MONUSCO, as one of the participants in the discussion group, and requested a partnership in order to help conduct additional human rights training for public security forces assigned to the TFM concession area. All the participants in the monthly security and human rights meetings have been invited to partner with MONUSCO to assist in the training of the public security used within their respective areas. Since training public security forces is part of MONUSCO's mandate, this was a solution that complied with national law, addressed the challenge and was approved by all parties involved. The first training was held in December 2012.

The training focuses on the rule of law, democracy, use of force, human rights, Voluntary Principles, sexual violence and self-defence. It includes practical role play exercises allowing participants to learn how to react in real-life situations, such as having to confront a violent group. Participants include the mining police, territorial police, representatives of the national intelligence services, the public prosecutor's office, local NGO representatives, as well as TFM employees and contractors.

The training, conducted on the basis of a partnership between MONUSCO and TFM, is an innovative and pragmatic solution to a genuine need. MONUSCO provides specialized trainers, while the company offers food, transportation for training attendants and training facilities on site. Beyond the direct benefits of the training, this approach helps to establish an effective working relationship between TFM and the public security forces assigned to their operations. Through dialogue-based training that introduces security providers to TFM, they become more familiar with the company policies and procedures that they are invited to follow.

If the company feels compelled to provide training directly to public security forces consider the good practices under Challenge 2.5.b.

GO BACK TO LIST OF CHALLENGES

B. Companies may feel compelled to become involved in the training of public security forces assigned to their area of operations because of the low levels of awareness and understanding of security and human rights issues by these forces.

GOOD PRACTICES*

Conduct a needs analysis that includes an assessment of the capabilities of public security forces. Although not always feasible, this practice should be promoted whenever possible, since it is key to the design of an adequate training programme.

- Assess knowledge, fitness and aptitudes to work on public security.
- Identify capacity gaps through an aptitude test (to be also used as baseline survey that will serve as a reference to measure progress made after the training).
- Establish a monitoring mechanism to ensure quality is maintained as public security forces are rotated in and out.

Consider alternatives to providing training directly to public security forces (See Challenge 2.5.a.)

If the company feels compelled to provide training directly to public security forces, reach an agreement with relevant authorities (e.g. ministries of defence and interior) regarding the content and regularity of the training

- Pre-deployment training should be provided to all public security personnel working on and in the proximity of the company's premises.
- Include as a minimum the following topics:

  a) Human rights, international humanitarian law (in countries affected by armed conflict), self-defence and sexual violence.

  b) Rules of engagement for the use of force and firearms applicable to the protection of a project site. Refer participants to the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. It is of key importance that public security forces understand the different rules applicable to law enforcement operations and to the conduct of hostilities (i.e. when international humanitarian law applies). As a rule, public security forces should adopt a defensive approach when protecting a project site.

  c) Conflict management, crowd control and public order. This "is often critical to help ensure respect for human rights and prevent interventions that may destabilise the (...) situation". (OECD: 176)

d) Incident response and first aid, to "ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment" (VPs)

- Conduct practical exercises that include locally-relevant scenarios and possible contingencies. One method is to "use the 'talk-through, walk-through, run-through' formula": communicate all tasks and expectations to participants; discuss each step of the actions and responsibilities of participants; and run-through the whole scenario with role-players. "Training events are most effective if the scenario for the simulated incident is plausible or even a repeat of a previous incident". (MIGA: III-9)
- Conduct joint drills and rehearsals between public security forces, company security and local site mine management for incident management. In general terms, these exercises "should address the phases of an incident response including:
  - Preparation and review of Rules of Engagement,
  - Alert,
  - Deployment,
  - Designation of the on-site team leader,
  - Actions on contact,
  - Resolution of the incident,
  - Provision of medical attention (and evacuation) if required,
  - Review of post-incident lessons learned,
  - Final reporting and follow-up." (MIGA: III-9)
- Ensure the training addresses the specificities of providing security around corporate operations.
- Demonstrate the value of training to trainees. This can be done, for example, by issuing certificates with an internationally recognised qualification, or through the creation of incentives for participants by including additional skills-based training, e.g. first aid.

Use the right language

- Use language that resonates with public security forces. Focusing on the rules for the use of force, presenting different scenarios and sharing good practices on how to respond to challenging situations can be a much more effective way of addressing security and human rights issues than talking about general principles. (see IGTs: 77)
- Ensure the training is adapted to the literacy level of participants.

Complement the training with:

- Induction training to familiarise public security personnel with the company, in particular with its structure, policies, processes (e.g. handling of complaints and lines of reporting) and the project site.
- Five-minute talks focused on key VPs principles delivered regularly by supervisors.
- Supporting materials (e.g. pocket book with principles on the use of force).

If necessary, cover the travel and per diem costs for trainees to attend the training.

This is particularly important if the training takes place far from their home base.

- Where possible, travel / per diem costs should be paid directly to trainees to ensure resources reach the intended recipients and reduce the risk of misappropriation.

Train the trainers

- Support training programmes for trainers of public security forces.

CASE STUDY: ENGAGEMENT WITH PUBLIC SECURITY FORCES IN IRAQ[8]

Since 2009, BP has been working with the Government of Iraq to develop a comprehensive VPs programme for the Rumaila oilfield operations in Southern Iraq. One element of this programme is a Training Assistance Programme with the public security provider, the Iraqi Oil Police Force (OPF).

"Once the agreement was signed, Safestainable (an independent consultancy specialised on sustainable security management) was requested to operationalize the training concept, develop the course schedule and prepare the curriculums for a 3-year Training Assistance Programme, under the guidance and with close support from the Rumaila Security Department. Collaboration was essential to ensure all trainings were relevant to tactical requirements and reflected the operational environment and its constraints.

The Training Assistance Programme has been based on a Train the Trainers approach to promote OPF ownership and increase its sustainability. The programme follows a systematic training cycle and relies on a training model called the Systems Approach to Training to guide the formal curriculum development, validation and evaluation process.

The programme aimed to develop a cadre of OPF trainers with the skills and knowledge to train their counterparts to effectively carry out all duties. It followed that over the 3 years the OPF trainers would deliver foundation, intermediate and advanced courses to all OPF policemen on the Rumaila field. Arabic speaking training consultants were engaged, all of which had professional backgrounds in senior positions in Middle East and North African public security forces and thereafter with human rights experience gained in the UN or ICRC.

Training consultants initially delivered a pilot course to the OPF to introduce the curriculum, and then participated in the trainer selection process, before delivering a series of "Train the Trainer" courses. Thereafter they acted as mentors to the OPF trainers, providing continuous refresher training and monitoring the quality of training to ensure effective delivery. The Rumaila security training team oversaw all aspects of programme management and ensured continuity in the absence of the visiting training consultants.

Each year the Training Assistance Programme is evaluated to measure its impact on OPF policemen performance and identify further training needs. At the end of the programme a final evaluation is scheduled to measure its impact as a component of the overall Rumaila VPs programme with its objective to maintain security in Rumaila operations carried out under a frame that guarantees the respect of the human rights."

- Support capacity building programmes for representatives of civil society organisations on how to train security forces. "It helps in building local training capacity, ensures that content is relevant and sensitive to local contexts, and maximises the outreach to community level." (OECD: 230)
- In case the country of operations is affected by armed conflict, explore opportunities for the ICRC to provide international humanitarian law training to trainers.

Evaluate impact of training

- Conduct a test at the end of the training and compare it with the baseline survey (or aptitude test conducted as part of the needs analysis) in order to evaluate the impact of the training.
- Follow up on the impact on human rights of the training. For instance, this can be done through surveys or consultations with local communities, including all vulnerable groups (e.g. women), in order to find out whether the provision of security and the human rights situation have improved as a consequence of training.

Facilitate regular refresher trainings

- Refresher trainings should be an integral part of the training programme agreed with the host government with an agreed timeframe.
- Include a few new topics on each refresher training.

GO BACK TO LIST OF CHALLENGES

C. Companies may lose the benefit from the briefings, induction and training they provide due to the frequent rotation of public security forces.

GOOD PRACTICES*

Engage with the relevant ministry (e.g. ministry of interior or ministry of defence) in order to:

- Understand rotation policies (be they explicit or implicit policies);
- Request that sufficient notification is provided with regard to deployment of new staff;
- Emphasise the need for adequate training to be provided prior to deployment (not once they have already assumed their roles);
- Ensure that personnel stay in post for sustained periods; and
- Request notification of any changes to deployment/rotation policies.

Support national training programmes to improve the capacity of public security forces

- ▶ Engage with the relevant ministry to identify how the company can contribute to improving training on human rights and international humanitarian law for public security forces. (See Challenge 2.5.a.)

Support training programmes provided by other stakeholders at the national or regional levels to ensure all public security forces receive training

- ▶ Support human rights training programmes developed by multilateral organisations, NGOs, national human rights institutions or other stakeholders.
- ▶ In situations of armed conflict, liaise with the ICRC or another recognised provider with local knowledge and experience to check whether they would be able to provide international humanitarian law training to public security forces in the company's area of operations. If feasible, engage with relevant national and local authorities to ensure that all public security forces in the company's area of operations receive training from the ICRC or another recognised provider.
- ▶ Support security sector reform programmes offering training to public security forces.

Brief public security forces assigned to the project site area on company policies and VPs standards on a regular basis to ensure that new personnel are familiar with these policies and standards

GO BACK TO LIST OF CHALLENGES

D. Security actors may have very different attitudes to human rights than found in VPs member companies' home states.

GOOD PRACTICES*

Communicate company's adherence to the VPs and include this commitment in agreements with the host government to facilitate acceptance by national security actors

- Prepare a clear statement of policy that stipulates the enterprise's human rights expectations of its partners or parties directly linked to its operations. The statement should also be publicly available to enhance its weight (GPs: 16). It "provides a starting point from which the enterprise can better leverage respect for human rights". (UNIG: 27)
- Communicate company policy regarding ethical conduct and human rights to public security forces. (VPs: 3)
- Consult national laws to identify existing norms reinforcing VPs standards and make reference to them in any contracts or agreements with host state actors.
- Include VPs in contracts/agreements/MoUs with the host government. The existence of "contracts or other formal agreements can play an important role in requiring or creating incentives for those other parties to respect human rights". Effective "communication between the company staff that draw up the contract, departments that will be involved in its execution and those that have oversight of human rights issues" is essential. (UNIG: 47-48)

Meet regularly with the management of public security forces

- "Establish a pattern of regular, formal meetings with public security providers in order to exchange security information and address concerns regarding human rights and (international) humanitarian law." (IGTs: 40)

Focus on common values

- Focus the dialogue on concepts like "operational excellence," "best practice", "respect for human life and dignity" or other shared values. Also, "establishing camaraderie between the public provider and the company security manager on the basis of shared or similar experiences in public service can be very effective" in making the case for VPs relevance and importance. (IGTs: 41, 47)
- Work with local public security force commanders to establish mutually agreed Rules of Engagement for the use of force under human rights and international humanitarian law. "These rules then should become a part of any training the public security forces do prior to deployment to the company's facilities." (MIGA: III-8)

GO BACK TO LIST OF CHALLENGES

CASE STUDY: HUMAN RIGHTS TRAINING IN CAMEROON[9]

In Cameroon, as in many countries, oil and gas operations are considered a national asset, with public security forces charged with the responsibility for the safety and security of extractive operations. However, when Kosmos Energy started their operations at the Sipo-1 well in February 2013, it was the first time for an oil project in Cameroon to be situated onshore. The human rights challenges commonly present at extractive operations were accordingly new to most of the actors involved. Firstly, Kosmos Energy could not rely on public security forces to be either trained or familiar with the human rights standards central to the company's VPs commitment. Secondly, the military and company presence created an unfamiliar, unprecedented and possibly insecure situation for the nearby local communities.

To avoid any local conflict or human rights violation, Kosmos Energy needed to reach all the different stakeholders and thus enable them to act in concert to ensure their compliance with applicable human rights standards. The challenge the company faced was to identify a shared discourse, which is consistent with universal human rights standards while resonating with the reality of the local context.

In order to identify and design a suitable human rights training, Kosmos partnered with The Fund for Peace (FFP), a U.S.-based organisation that promotes sustainable security, to assist and build the training capacity of the special unit of Cameroon's military in charge of the extractive operations security, known as the Battalion d'Intervention Rapide (BIR).

At the beginning of this joint process FFP interviewed members of the BIR from different ranks as well as representatives of local communities affected by the extractive operations. A meeting was convened with the village chief, the leadership council, and prominent members of the community. FFP briefed the community members on the intent of the programme and sought feedback on concerns related to the deployment. This feedback was factored into the design of the programme. Based on this scoping study a training programme was developedaround five key elements.

Firstly, the training **focused on practical situations the soldiers of the BIR have commonly encountered** in the past. The programme was based on everyday situations such as local protests and road blocks rather than general principles of human rights (FFP, 2013: 2). Secondly, the joint process **identified common values such as honour, respect and ensuring human security**, which were used in the training to 'translate' the aim of human rights standards into the local discourse (ibid.). Thirdly, **the training material was adapted to the local context**. For instance, the programme approached concepts such as 'human security' from the perspective of the family, since the initial scoping study identified the deep importance of family to Cameroonians (ibid. 4). Fourthly, the joint process **provided a platform for the BIR participants to present and discuss their own operational experience**. BIR soldiers and commanders could review their peers' challenges and share personal good practices. Lastly, the joint-process found a suitable medium **through which all affected actors could best be reached** that was designed to augment and support the actual training course, and provide a take-away resource for participants. It was decided that the best approach would be a series of comic books, which proved easy to disseminate. The comic series, entitled "Captain Cameroun", reflected local and challenging situations highlighting both inappropriate and appropriate security responses focusing on the previously identified shared values: family, honour, respect and ensuring human security.

The outlined training approach proved successful in numerous ways:

- The approach created a sense of local ownership and thereby avoided any top-down and possibly condescending and ineffective implementation of human rights standards.
- The platform allowed the BIR to be taken seriously as a professional and committed security actor, which can contribute to the human rights training programme.
- Common values were able to bridge the gap between abstract human rights standards and the local, complex security reality on the ground.
- The focus on the local context and practical situations ensured that the classroom messages could be recognised and applied in the soldier's everyday work.

Work with stakeholders at the national level to develop a discussion around the VPs (See Challenge 1.1.b.)

- Work with other companies, home country officials, NGOs and industry associations to advance the dialogue on the VPs. (IGTs: 47)
- "Consider recommending that the government establish a formal in-country VPs process." (IGTs: 47)

GO BACK TO LIST OF CHALLENGES

2.6. Equipment

A. The lack of appropriate equipment to help manage social conflicts may lead to excessive use of force by public security forces.

GOOD PRACTICES*

Conduct/update needs and risk assessment

- Assess company needs against the capacity of public security forces. The needs assessment should look at issues such as: transportation, communications, training and availability of non-lethal weapons.
- Assess whether providing any of the above-mentioned resources to public security could pose a security or reputational risk to the company. Balance the benefits against the possible negative consequences.
- Conduct research to analyse relevant past incidents involving logistical or financial support to public security forces.
- Update the risk assessment regularly by drawing on local sources to ensure that changes to the security environment are taken into account.

Seek to ensure that the host government provides appropriate equipment and other resources to public security forces

- Engage with the appropriate government agencies and emphasise the need for public security forces to have the proper equipment to fulfil their duties effectively in compliance with human rights and international humanitarian law standards. (MIGA: II-17)
- Include a provision in the agreement/MoU that the host government will use part of the funds paid by extractive companies to provide equipment and other resources to public security forces. (MIGA: II-17).
- Consider 'split' payments with a part going to central government and another part directly paid to the public security forces assigned to the area of operations.
- Seek support from other stakeholders, such as home governments, multilateral organisations or local industry associations, to encourage the host government to assume its responsibilities regarding the good performance and adequate equipment of public security forces assigned to the area(s) of corporate operations.
- Monitor the payments chain to ensure dedicated funds reach public security forces responsible for company security.

Support efforts by home governments, civil society and multilateral institutions to strengthen state institutions

- Explore opportunities for international donors to provide necessary material and support (including training) within broader assistance programmes.
- Identify security sector reform programmes, such as police reform and training programmes, that address equipment issues. Collaborate with relevant stakeholders to extend activities to the area of the company's operations. (MIGA: II-18)

Ensure security forces have been trained on the rules for the use of force and firearms under human rights and international humanitarian law (See Section 2.5. Training)

If the company feels compelled to directly provide logistical, financial and/or in-kind support to public security forces, consider the good practices under Challenge 2.6.b.

In case of excessive use of force by public security forces consider the good practices under Challenge 2.7.a.

GO BACK TO LIST OF CHALLENGES

B. Companies may find themselves with little other option than to provide logistical, financial and/or in-kind support to public security forces in order to cover their most basic needs.

GOOD PRACTICES*

Conduct/update needs and risk assessment

- Assess company needs against the capacity of public security forces. The needs assessment should include issues such as: minimum salaries, food, accommodation, transportation, communications, training and availability of non-lethal weapons.
- Assess whether providing any of the above-mentioned resources to public security could pose a security or reputational risk to the company. Balance the benefits against the possible negative consequences.
- Conduct research to analyse relevant past incidents involving logistical, financial or in-kind support to public security forces.
- Update the risk assessment regularly drawing on local sources to ensure that changes to the security environment are taken into account.

Consider alternatives to the provision of logistical, financial and/or in-kind support

(See Challenge 2.6.a.)

Develop a company policy/protocol for the provision of logistical, financial and/or in-kind support to public security forces in collaboration with all relevant company departments.

Ensure it includes the following provisions:

- Address the following questions:

  a) What is provided: equipment, per diem, goods and/or services?

  b) Why is it needed?

  c) How will it be managed and used?

  d) Who is the recipient and what degree of oversight is required? (MIGA: II-17)

- Ensure all purchases are sourced through standard procurement processes. Consider making public the reasons justifying any assistance and seek approval from the recipient to publish details of any agreement related to the assistance."[10]
- Include support costs as part of the provision agreement.
- Establish safeguards for equipment transfer/provision of logistical, financial or in-kind support to public security forces (see case study on IGTs: 72):

  a) Confirm the legality of the transfer.

  b) Prohibit the transfer of lethal equipment (e.g. firearms).

c) Agree to such requests based on a written undertaking from both the capital and the senior official or officer at the local level that the public security forces will respect human rights and obey international humanitarian law.

d) Specify the use of the equipment or goods and seek to obtain formal agreement from public security forces on this.

e) Prohibit the "transfer, loan or sale of equipment to a third party. Termination conditions should be included in the event that any funding, equipment, facilities or help-in-kind is misused."[11]

f) Establish "adequate controls to prevent misappropriation or diversion of equipment which may lead to human rights abuses". (VPs: 3) If possible, "provide some tracking technology or tracking system, to some types of equipment". (IGTs: 43)

g) "Support training to enhance management skills or individual competencies within the recipient organisation to use funds or equipment responsibly."[12]

h) Establish a monitoring procedure to address misappropriation or diversion of equipment.

- Ensure the "company policy (...) is realistic, flexible and open to scrutiny". (MIGA: II-17)
- "Gain senior level clearance"[13] from company management.

Engage with the appropriate government agencies to establish the conditions of the transfer

- Communicate the company policy on equipment transfers. Explain that the implementation of the company policy will be monitored.
- Agree on the terms and conditions for the provision of logistical, financial and/or in-kind support. For instance, agree that any equipment provided can only be used with the company's authorisation. Although it may be a sensitive issue to address, try to agree on a procedure to address potential misuse of equipment provided by the company.
- Include a clause/clauses in the agreement/ MoU on the terms and conditions for the transfer of equipment. Attach the company policy on equipment transfers as an annex.
- "List anything provided to (...) public forces in a Record of Transfer Register." Identify "exactly what the company provided, when and for what purpose." Items should only be provided against signature by a senior officer. (MIGA: II-19) (See Annex 1 - Record of Transfer Register)
- Ensure full transparency of payments made and/or equipment transferred.

Monitor the use of equipment

- "Monitor the use of equipment provided by the company and investigate properly situations in which such equipment is used in an inappropriate manner". (VPs: 5) This may be done through reports and proactive checks by the company. "Another option is to seek third party verification that equipment that has been transferred is being used appropriately." (IGTs: 43)
- Consult with home governments "in cases where there are risks of inappropriate use of equipment transferred to public security (forces) by the company". (IGTs: 16)
- If company equipment is used without authorisation, follow the procedure established in agreement with the appropriate government agencies, where it exists, or otherwise refer to the company protocol.

Work with other concerned companies

- Agree on a common approach to equipment transfers.
- Share good and bad practices with other companies operating in the same area.
- If feasible, "contribute to a consolidated program of equipment and training that will jointly benefit all companies in the area". (MIGA: II-18)

GO BACK TO LIST OF CHALLENGES

C. Misunderstandings may result from companies operating with different policies on the provision of equipment to public security forces. Furthermore, when companies provide different types of equipment, maintenance may prove a challenge for public security forces.

GOOD PRACTICES*

Seek to ensure that the host government provides appropriate equipment to public security forces

- Engage with the appropriate government agencies to discuss equipment related challenges. Emphasise the need for public security forces to have the proper equipment to fulfil their duties effectively in compliance with human rights and international humanitarian law standards. (MIGA: II-17)
- Include a provision in the agreement/MoU that the host government will use part of the funds paid by extractive companies to provide equipment and other resources to public security forces. (MIGA II-17).
- Seek support from other stakeholders, such as home governments, multilateral organisations or local industry associations, to ensure the host government assumes its responsibilities regarding the good performance and adequate equipment of public security forces assigned to the area(s) of extractive operations.

Develop an information sharing system with other companies or other stakeholders.

(IGTs, p.42)

Work with other concerned companies

- Discuss the possibility of adopting a common approach to equipment transfers.
- Contribute to a consolidated program of equipment and training that will jointly benefit all companies in the area. (MIGA II-18)

Work through a VPs in-country process, if any, or suggest launching one. Alternatively, approach the issue of equipment for public security forces through fora such as a ‘security managers working group’, industry association meetings, etc.

GO BACK TO LIST OF CHALLENGES

2.7. Use of force

A. Public security forces may be unprepared and untrained to use force appropriately[14].

GOOD PRACTICES*

Conduct/update risk assessment

- Check performance history of public security forces vis-à-vis use of force and respect for human rights and international humanitarian law.
- Ensure the risk assessment examines the particular risks faced by men, women, boys and girls, which are likely to be different, as well as risks to older persons, indigenous peoples and any other vulnerable groups.

Minimise the presence of public security forces at company sites (MIGA: III-1)

- Avoid asking a member of the public security forces to become involved in operations at company sites if private security can legally and practically respond to needs. (MIGA: III-1)
- Request public forces only when there is an urgent need at a specific location and then clearly define their mandate as well as the time limits for their expected withdrawal. (MIGA: III-1)

Ensure public security forces are briefed on VPs standards and company's policies

- "Clearly communicate the expectation that all operations be conducted in full respect for human rights and (international) humanitarian law," following international rules of engagement. (IGTs: 39) (See Rules of Engagement on IGTs: 90)
- Promote the following principles with public security:

  a) "Force should be used only when strictly necessary and to an extent proportional to the threat". "In cases where physical force is used by public security, such incidents should be reported to the appropriate authorities and to the company. Where force is used, medical aid should be provided to injured persons, including to offenders." (VPs: 4)

  b) "The rights of individuals should not be violated while exercising the right to exercise freedom of association and peaceful assembly, the right to engage in collective bargaining, or other related rights of company employees as recognised by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work." (VPs: 4)

- Distribute copies of the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms.
- Ensure that the local commander provides a detailed briefing, instructing personnel on standards of conduct. (MIGA: III-8)

UN Code of Conduct for Law Enforcement Officials

Article 1 - Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Article 2 - In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Article 3 - Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Article 4 - Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Article 5 - No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Article 6 - Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Article 7 - Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Article 8 - Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them. Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Establish mutually agreed rules and procedures for the use of force with local public security force commanders (MIGA: III-8)

- Agree on a process for the escalation of force that allows for a proportional response to a threat, the use of lethal force being the last resort.
- Define a clear hierarchy, identifying those in charge and having authority to engage public security. (MIGA: III-10)
- If possible, agree that any public security forces assigned to the company's facilities are held as a response force and not routinely used for guard duties. "Ensure they have adequate transportation to respond rapidly to an incident". (MIGA: III-8, 9)
- Ensure "the procedures for involving public security forces in an incident (are) clear to company management, the security department and the public security forces themselves." (MIGA: III-8)
- Ensure comprehensive after-action reports are developed and recommendations implemented.

Ensure public security forces assigned to the area of operations have received adequate training (See Section 2.5. Training)

Support security sector reform programmes

- Engage with security sector reform programmes that "support selection and recruitment policy that is based on proper recruitment mechanisms, integrity assessments, and vetting or other forms of review/screening of existing personnel. Support public announcements for vacancies/openings and transparency throughout the process." (ITGNs: 105)
- Identify security sector reform programmes, such as police reform and training programmes, that could extend activities to the area of the company's operations. (MIGA: II-18).

Consider the formulation of an external stakeholder advisory panel to help monitor security and human rights issues

- Include stakeholders with legitimacy in the eyes of public security providers (e.g. former minister of defence, international statesperson, etc.) and other stakeholders, particularly communities (e.g. a prominent NGO, statesperson, etc.)." (IGTs: 47)
- Ensure participation of individuals that represent the interests of most vulnerable groups, such as women and indigenous people.

Map out the ways in which public security forces can be held accountable for breaking the law (See Challenge 2.8.d.)

GO BACK TO LIST OF CHALLENGES

2.8. Human rights violations

A. In situations where they observe or are alerted to human rights violations by public security forces, companies may face the challenge of criticising the same institution that is providing security for their operations.

GOOD PRACTICES*

Demonstrate a policy commitment and establish the company's expectations regarding appropriate conduct by public security forces

- Develop a clear statement of policy that is approved at the most senior level of the company, is informed by relevant expertise, stipulates the company's human rights expectations of public security forces and is actively communicated to them. The statement should also be publicly available. (GPs: 16) (See Challenge 1.3.a.)
- Explain the VPs to the public security forces.
- Underline that individuals credibly involved in human rights abuses should not provide security for companies. (VPs: 4)
- "Promote observance of applicable international law enforcement principles, particularly those reflected in the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms" (VPs: 4) as well as to the rules governing the conduct of hostilities under international humanitarian law in the context of armed conflict.
- "(Refer) to expectations created by contracts or an investment agreement with the government". (IGTs: 41)

Communicate regularly with management of public security forces at different levels

- Hold regular meetings with the management of public security forces at different levels, including the appropriate ministry, to discuss security and human rights.
- Build trust with public security actors. An effective way of doing this is by recognising good performance and professional conduct, (e.g. forward special commendations and letters of recognition through the chain of command to those deserving recognition). (MIGA: III-13, 14)
- Use language carefully. Talk of "professionalisation" and emphasise the objective of helping security institutions deliver a better service. "Improved effectiveness is often a key argument for winning local support". (OECD: 33) Appeal to values such as "operational excellence" or "best practice". (IGTs: 41)
- "Establish formal and consistent reporting and communications mechanisms" with public security forces. (IGTs: 14)

- "Company security should prepare a monthly Security Status Report that summarises all significant security incidents and developments and the actions taken during the reporting period." The on-site public security forces' commander (if there is one), as well as the public security forces' commanders at the local and provincial levels should all be on distribution for the report. (MIGA: III-13)
- Collect and analyse media or NGO reports on any security incident as basis of the request for an investigation by local authorities. (MIGA: III-18)

Incorporate requirements for appropriate conduct of public security forces into an agreement/MoU at the local level (See Section 2.3. MoUs)

- Negotiate and sign a site security agreement/MoU that establishes the "conditions, expectations, obligations and standards of behaviour outlined for all parties", both "in standard operations procedures and in extraordinary or emergency circumstances". "The ideal outcome is a binding agreement that specifies the responsibilities and obligations of the company and the public security forces, signed by the senior leadership of the company and the respective agencies with detailed implementation instructions at subordinate levels." (MIGA: III-3, 6)
- Use any in-kind support the company provides to agree clear rules on deployment and conduct of public security forces. (MIGA: III-7)
- Include a clause that establishes a procedure to follow in case of human rights and international humanitarian law violations.
- Ensure the agreement is consistent with host nation laws and relevant regulations.
- Invest time in negotiations to ensure the VPs are well integrated into the MoU.

Engage with other stakeholders

- Use influence with government officials to ensure respect for human rights and international humanitarian law by public security forces.
- Seek home government support to gain access to high-level public security officials. (see Example 2 in IGTs: 77)
- Consult regularly with other companies having common concerns and consider collectively raising those concerns with the host and home governments. (VPs: 4)
- Engage with NGOs as "valuable interlocutors or mediators in terms of communicating with security providers, governments or host communities." (IGTs: 18)
- Seek information on human rights violations through community-level grievance mechanisms.
- "Consider establishing a multi-stakeholder security forum" (IGTs: 44) to discuss security and human rights issues. The group should meet regularly (e.g. monthly) and work together to find appropriate solutions to security incidents or challenges. Its membership should include at least "a representative from the company (usually the security manager), the police chief, the military commander, the local head of government and one or two local leaders". (MIGA: V-8) (see Lubumbashi case study) Ensure that the local population, in particular the most vulnerable groups (e.g. women and indigenous peoples), is adequately represented in the forum.

Demonstrate efforts to put an end to human rights violations by public security forces assigned to the company’s area of operations

- Demonstrate ongoing efforts to mitigate the impact of violations. (GPs: 22)
- In cases of severe violations, if possible, end the relationship with public security forces. If it is not possible to put an end to the relationship, minimise the presence of public security forces at company sites.

Support security sector reform programmes

- Engage with security sector reform programmes that “support selection and recruitment policy that is based on proper recruitment mechanisms, integrity assessments, and vetting or other forms of review/screening of existing personnel. Support public announcements for vacancies/openings and transparency throughout the process.” (ITGNs: 105)
- If legally allowed, support programmes that promote “vetting based on human rights standards and review of human rights records for all individuals, to ensure that those personally responsible for gross human rights violations are excluded from the reformed security sector; ensure that the removal of persons as a consequence of vetting complies with due process of law and the principle of non-discrimination.” (ITGNs: 106)

GO BACK TO LIST OF CHALLENGES

B. Raising awareness on human rights policies may be more challenging with the armed forces than the police.

GOOD PRACTICES*

Communicate regularly with different levels within the armed forces

- Establish a working relationship with military forces representatives at different levels and hold regular meetings to discuss security and human rights. (MIGA: III-14)
- Develop institutional relationships with the ministry of defence.
- Build trust with the armed forces. An effective way of doing this is by recognising good performance and professional conduct among personnel assigned to company operations (e.g. forward special commendations and letters of recognition through the chain of command to those deserving recognition). (MIGA: III-13, 14)
- Use language carefully. Talk of "professionalisation" and emphasise the objective of helping security institutions deliver a better service. "Improved effectiveness is often a key argument for winning local support". (OECD: 33) Appeal to values such as "operational excellence" or "best practice". (IGTs: 41)
- "Establish formal and consistent reporting and communications mechanisms" with the armed forces. (IGTs: 14)
- "Company security should prepare a monthly Security Status Report that summarises all significant security incidents and developments and the actions taken during the reporting period." The on-site army commander (if there is one), as well as the commanders at the local and provincial levels should all be on distribution for the report. (MIGA: III-13)

Support efforts to clearly delimitate the roles of public security forces

- Ensure that company practices support efforts to define the specific roles of the police, paramilitary forces and the military and to provide adequate oversight in order to avoid blurred lines of responsibility. "In principle, the police should have the primary responsibility for internal security." However, if police and paramilitary forces are not competent or sufficiently equipped, the deployment of the army may be necessary. (OECD: 124) If that is the case, seek to ensure personnel deployed are properly trained and equipped for the task.

Support human rights and international humanitarian law training programmes for public security forces (See Section 2.5. Training)

- Include a clause in the agreement with public security requiring that all public security forces assigned to the company's site undergo human rights and international humanitarian law training. (IGTs: 45)
- Support training programmes for trainers of public security forces. If possible, insist that army trainers are military and police trainers are policemen, since they are better placed to communicate the content of training in a way that trainees can relate to. Furthermore, public security forces are much more likely to take the training seriously if it is a colleague or someone on their chain of command delivering the training.

GO BACK TO LIST OF CHALLENGES

C. Public security forces may themselves suffer human rights abuses, which may affect the quality of security service provision.

GOOD PRACTICES*

Assess the risk of human rights violations of public security forces

- Consider any relevant past incidents where the rights of public security forces were violated.
- Consult host and home government representatives, civil society, and other sources in order to gather information about the severity of this risk.
- Assess the different risks faced by men and women in public security forces, considering in particular the risk of gender-based violence.

Engage with national and local authorities

- Engage with relevant interlocutors at each level of public security forces command, including the relevant ministry. Meet with the regional and local public security forces representative on a regular basis (preferably not less than quarterly). (MIGA: III-11) Raise this challenge as part of the discussion on security and human rights.
- Seek home government support to have access to high-level public security officials in order to discuss this problem.
- Ensure that salaries/stipends are paid to public security forces assigned to areas of company's operations.

"Work with NGOs to address human rights abuse allegations" (IGTs: 18)

- Identify NGOs that may be working on related issues. "There may be a number of NGOs in the country with whom the company can work." (IGTs: 17) This may be a sensitive issue, so the company will need to carefully assess which is the best approach.
- In case of credible evidence of gender-based violence directed at members of public security forces, consult a local organisation with gender expertise to identify potential mitigation strategies.

Support security sector reform programmes

- Engage with security sector reform programmes that "support selection and recruitment policy that is based on proper recruitment mechanisms, integrity assessments, and vetting or other forms of review/screening of existing personnel. Support public announcement for vacancies/openings and transparency throughout the process." (ITGNs: 105)
- Support security sector reform programmes that seek to strengthen capacities of relevant national institutions (such as ombudsperson or similar mechanisms) to address this challenge.

Establish an operational-level grievance mechanism that allows individuals to report any abuses anonymously (GPs: 31)

GO BACK TO LIST OF CHALLENGES

D. Companies may not adequately monitor the behaviour of public security forces and/or press for proper resolution of human rights violations.

GOOD PRACTICES*

Carry out human rights due diligence in order to identify, prevent, mitigate and account for how the company addresses its adverse human rights impacts

- Assess actual and potential human rights impacts of company presence and activities, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Ensure impacts on vulnerable groups, such as children, older persons, indigenous peoples and women, are assessed as well.
- Human rights due diligence:

  a) Should cover adverse human rights impacts that the company may cause or contribute to through its own activities, or which may be "directly linked to its operations, products or services by its business relationships, even if they have not contributed to those impacts". A company's "'activities' are understood to include both actions and omissions." (GPs: 13-14) Where possible, assess the human rights context prior to a proposed business activity.

  b) "Will vary in complexity with the size of the enterprise, the risk of severe human rights impacts, and the nature and context of its operations". (GPs: 17)

  c) "Should be ongoing, recognising that the human rights risks may change over time as the business enterprise's operations and operating context evolve." (GPs: 17)
- Assess local capacity to investigate abuses and provide for proper resolution. Risk assessments should "consider the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses and for those responsible for violations of international humanitarian law in a manner that respects the rights of the accused." (VPs: 5)

Engage with national, regional and local authorities

- Hold bilateral meetings with host government representatives. Keeping these discussions confidential may make company efforts more effective. (MIGA: VI-5)
- Use leverage to reduce adverse human rights impacts as a result of business relationships. "Leverage may be increased by, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors." (GPs: 22)

Consult with potentially affected groups and other relevant stakeholders

- Include meaningful discussions on security and human rights in community consultations "in a manner that takes into account language and other potential barriers to effective engagement". (GPs: 20) These consultations should include men and women of different ethnicities and age groups.

- Encourage host governments and public security forces to send a representative to community consultations. (IGTs: 41)

Engage in pro-active monitoring rather than just responding to complaints

- Establish a company policy on what employees should do in case of an alleged human rights violation by public security forces.
- Include the establishment of a monitoring system in a MoU. (IGTs: 45)
- Record all allegations. Use a confidential and reliable tracking system assessment and reporting tool to monitor human rights violations. (MIGA: II-9)
- Ensure evidence is reliable. "Every effort should be made to ensure that information used as the basis for allegations of human rights (and international humanitarian law) abuses is credible and based on reliable evidence." (VPs: 5)
- "Consider the formulation of an external stakeholder advisory panel to help monitor security and human rights issues."
  - "Include stakeholders with legitimacy in the eyes of public security providers". (IGTs: 47)
  - Ensure the local population participates in monitoring mechanisms. It is particularly important that the needs of most vulnerable groups, including women and indigenous people, are adequately represented in the panel.

Establish an operational-level grievance mechanism that allows individuals to report any abuse anonymously (GPs: 31)

- Establish at least one of the following mechanisms (MIGA: III-16):
  - A report abuse hotline,
  - A system to receive SMS,
  - "A computer address in the company offices that is solely accessible by a trusted monitor and a secure mailing address",
  - 'Tip boxes' located in areas where individuals have "unobserved access to the boxes and can drop in anonymous notes, tips or other information", with clear instructions posted above them.
- "Grievance mechanisms need not be VPs-specific. VPs related issues should be integrated into any existing community grievance mechanisms." (IGTs: 19)
- Ensure the grievance mechanism "does not have to wait until an issue amounts to an alleged human rights abuse or a breach of other standards before it can address it". (UNIG: 68)
- "Where businesses are aware of alleged violations within their area of operations, whether or not a grievance is raised, record the allegation and any actions taken."[15]
- Grievance mechanisms should be culturally appropriate and ensure grievances are handled in a way that is accepted by the community.
- Make the grievance mechanism "known to, and trusted by, those stakeholders for whom it is intended". (UNIG: 65)

Where force was used, ensure that medical attention is provided to injured parties

(VPs: 4)

Report abuses

- Educate company staff about "the obligation to report allegations so that appropriate inquires can take place". (MIGA: III-16) "The company has a greater ability to influence its own workforce than it has with the other security stakeholders." (MIGA: V-6) (For an Incident Report Template see IGTs: 95)
- Report any credible and verified allegations of human rights and international humanitarian law abuses by public security in their areas of operation to appropriate host government authorities. (VPs: 5) Request for investigation "to the lowest level that has the authority to conduct an incident investigation as long as that level is not itself implicated in the incident." (MIGA: III-18-19)
- Ensure the public prosecutor's office, or equivalent entity, is informed.
- Ensure legal and physical protection of those making the allegations and victim(s). (IGTs: 46)

Request that the alleged perpetrator(s) is/are withdrawn from the site until an official investigation is concluded

Actively follow-up the status of investigations and press for proper resolution

(VPs: 5)

- Conduct a full-scale internal investigation "if the alleged incident occurred on company property, if it involved company equipment, or if it occurred because of company activities or operations". "A similar inquiry is appropriate for allegations that occur in the company's areas of operations." (MIGA: III-17-18)
- Where appropriate, urge that investigation and action be taken to prevent any recurrence. Companies should "do as much as possible to ensure that the host government investigates any human rights abuse allegations, protects victim(s) and resolves the situation according to the rule of law." (IGTs: 15)

Involve other stakeholders in the follow-up of investigations

- Share information about security incidents.
- Inform the national ombudsman or human rights agency with the responsibility for investigating human rights allegations, so that they "encourage the appropriate authorities to perform a proper investigation and take disciplinary legal action where justified". (MIGA: III-19)
- "Support the capacity of civil society organisations to actively monitor security policies and practices affecting their constituents and to advocate appropriate solutions." (ITGNs: 98)
- Engage with home country governments and international organisations. They "can serve as important interlocutors between the company and the host government during instances of human rights (and international humanitarian law) abuse allegations." (IGTs: 16) This is also a good way to safeguard good relationships with authorities and avoid the perception of undue influence.
- "Where an incident triggers significant concern from external stakeholders, consider commissioning an external investigation[16]."

Provide for or cooperate in the remediation of adverse impacts the company has caused or contributed to through legitimate processes (GPs: 24)

2.8. Human rights violations

Track effectiveness of response on the basis of "appropriate qualitative and quantitative indicators" and drawing on "feedback from both internal and external sources, including affected stakeholders". (GPs: 22)

"Conduct lessons learned exercises internally and with all appropriate stakeholders" (IGTs: 46)

- Wherever a significant human rights impact has occurred, initiate a process to identify how and why it occurred. This is important to prevent or mitigate its continuation or recurrence. "If the evidence is sufficiently clear, linking this kind of analysis to staff incentives and disincentives, whether financial compensation, promotion or other rewards, can play an important role in helping to embed respect for human rights into the practices of the enterprise." (UNIG: 54)
- "Work with public security providers, as applicable, to apply lessons learned." (IGTs: 46)

GO BACK TO LIST OF CHALLENGES

[*] These good practices are not meant to be prescriptive. It is up to the user to evaluate whether they could be feasible, useful and appropriate to the local context in a specific situation on the ground.

[1] Voluntary Principles on Security and Human Rights: Performance Indicators (International Alert), p.15.

[2] "The title and format of this agreement depends on the requirements of the parties. It may be a Joint Protocol, Memorandum of Agreement, Memorandum of Understanding or Letter. The content is more important." (MIGA: III-3)

[3] Except where otherwise indicated these bullet points have been extracted from IGTs: 45.

[4] This case study has been written by DCAF in collaboration with TFM.

[5] "Implementing the Women, Peace and Security Resolutions in Security Sector Reform", Gender and Security Sector Reform Toolkit, Tool 13 (DCAF, OSCE/ODIHR, UN-INSTRAW), p.12.

[6] Colombia's Mining and Energy Committee Recommendation to support the defence sector in the implementation of the comprehensive human rights and international humanitarian law policy of the ministry of defence: http://cmecolombia.co/recomendaciones-para-apoyar-al-sector-defensa-en-la-implementacion-de-la-politica-integral-de-derechos-humanos-y-derecho-internacional-humanitario-del-ministerio-de-defensa/

[7] This case study has been written by DCAF in collaboration with TFM.

[8] The full case study has been developed by BP and Safestainable and it is available at: http://www.securityhumanrightshub.org/sites/default/files/publications/Case_Study_Iraq_Engagement_With_Public_Security.pdf

[9] This case study has been developed jointly by the FFP, Kosmos and DCAF. It is also available at: http://www.securityhumanrightshub.org/sites/default/files/publications/Case_Study_Cameroon_Human_Rights_Training.pdf

[10] Voluntary Principles on Security and Human Rights – Implementation Guideline (BP), p. 13

[11] Ibid, p. 13

[12] Ibid, p. 13

[13] Ibid, p. 13

[14] This refers to law enforcement operations. In situations of armed conflict international humanitarian law applies, which establishes different rules on the use of force.

[15] Voluntary Principles on Security and Human Rights – Implementation Guideline (BP), p. 15

[16] Ibid, p.15.

III. Working with Private Security Providers

III. Working with Private Security Providers

3.1. Risk and impact assessment

A. Companies[1] may establish inadequate and inappropriate private security arrangements as a result of a failure to properly identify risks and impacts.

GOOD PRACTICES*

Carry out due diligence in order to identify, prevent, mitigate and account for human rights risks and impacts

- Initiate human rights due diligence as early as possible in the development of a new activity or relationship, such as before signing a contract with a PSP, prior to major changes in the operation (e.g. increase in the number of security guards protecting the site) or in response to or anticipation of changes in the operating environment (e.g. rising social tensions). (GPs: 20)
- Include human rights due diligence within broader risk management systems, (e.g. environmental and social impact assessments) "provided that it goes beyond simply identifying and managing material risks to the company itself, to include risks to rights-holders" (GPs: 18).
- Ensure human rights due diligence is ongoing, since human rights risks and impacts may change over time as the company's operations and operating context evolve. (GPs: 18).

Conduct and review regularly risk and impacts assessments following international best practice

- Consult existing resources and guidance on risk and impact assessments, such as the resources available at the Security and Human Rights Knowledge Hub[2].
  - Search for available information on the country human rights profile, in particular human rights risk indicators, to gain a better understanding of the context.
  - Check national and local crime statistics as a reference to identify potential crimes and security incidents
- Consult with potentially affected groups and other stakeholders that can provide relevant information for the risk and impact assessment.
  - Consult potentially affected stakeholders (e.g. vulnerable groups, such as women, indigenous peoples, farmers, cattle breeders, fishermen, landowners and foreign nationals) using a language and terms they can understand well. Be transparent and share all information that is directly relevant to them (e.g. timeline of the project, area of operations, results of environmental impact assessment). Listen with an open mind and keep a record of any concerns they may have. Remember that concerns that have not been taken into account early on in the project may become grievances that escalate into tensions over time.

- Consult externally with other companies, home and host country officials, credible, independent experts, including from civil society, national human rights institutions and relevant multi-stakeholder initiatives to gain a good understanding of the context and how the project may impact the status quo.

To conduct an accurate risk and impact assessment, it is necessary to have a good understanding of the company's activities, relations and the context in which it operates. Some key aspects to consider include:

- Critical activities, functions, services and products.
- Number and composition of staff onsite (including expat versus local).
- Local actors, including their agendas and interests, the relations between them and with the company.
- Operating environment, root causes of tensions and drivers of conflict that can contribute to escalating violence.
- Project site size, topography and terrain. (IGTs: 50)
- Capacity and size of public security forces, number and composition of personnel in the area of operations (including ethnic or religious group).
- Background and capability of private security providers operating in the area.
- "Physical and technical security measures to be implemented that complement guard force, amount of equipment and other assets onsite." (IGTs: 50)
- Reputational risk. "An aggravated security context, in which company security staff become involved in violent skirmishes with local communities, is likely to attract the attention of local or international NGOs and media, leaving the company open to allegations from which, given the escalating nature of violence, it might be difficult to distance itself." (CSBP, Flashpoint Issue 7: 2)

- ▶ Assess security risks to the company's operations, personnel and local communities, as well as actual and potential human rights impacts of the company's security arrangements, taking all internationally recognized human rights as a reference point.
  - Include adverse human rights risks and impacts that may be directly linked to the company through its security providers.
  - Ensure human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalisation (e.g. women, children, indigenous peoples or foreign nationals) are well understood and assessed. Consult with specialised organisations working with these groups or hire an expert to help with the identification of these groups and the impact assessment.
  - In situations of armed conflict, assess also all risks and impacts that may affect respect of international humanitarian law[3].
- ▶ Update the risk and impact assessment regularly.
  - Ensure the PSP is involved in these assessments.
  - Collect data on and analyse any security incidents around the company's area of operations.

Conduct a security needs analysis based on the risk and impact assessment and develop a security plan

- Integrate the findings from risk and impact assessments across relevant internal functions and processes, (GPs: 20) and ensure all relevant company departments work together to identify security needs and develop the security plan. This will avoid duplication of efforts and incoherence in actions.
- Identify context-appropriate prevention mechanisms to avoid the identified risks and impacts. If complete prevention is not possible, consider appropriate mitigation mechanisms for each risk and impact.
- Consider carefully which risks and impacts require a security-related prevention or mitigation mechanism. Although this should be assessed on a case by case basis, remember that there are situations in which having a too high security profile may jeopardise good relations with local communities. If the decision is to take security measures, consider the advantages and disadvantages of the different options (e.g. public security forces, private security providers, in-house security, and security equipment).
- Develop business resilience and emergency response strategies in case of disruptive events (e.g. public disorder) as part of the security plan.
- Consider whether there is a need to review the company's risk management policy.
- Ensure that gender-specific risks are being accounted for, for example, by having a gender-sensitive approach to security practices (e.g. female staff to conduct searches), oversight mechanisms and access to 'tip boxes'.
- Establish a legitimate, accessible, predictable, equitable and transparent grievance mechanism to provide remediation for actual impacts related to the project. (GPs: 33) Note that such a mechanism needs to be established at the outset and made known to all potentially affected stakeholders. (See Challenge 3.10.a.)

Where the security plan involves contracting private security services, consider the following good practices

- Review the risk and impact assessment to ensure the following elements have been properly analysed:
  - National private security regulation and any potential deficits in the system.
  - Private security industry background and history of past performance in the country, in particular any cases of human rights abuses by PSPs.
  - Perception of private security providers by local authorities and the general population, in particular community perceptions of and cultural sensitivities surrounding the industry, weapons, religion, foreigners, other clans, etc. (IGTs: 50)
  - Need versus risk of having armed guards. While in some contexts having armed security might heighten tensions with local communities, in other contexts "the use of armed protection is so common that by not following this practice, an agency exposes itself as a soft target." (EISF: 15). In some countries private security guards are not allowed by national law to carry certain type of weapons, firearms or ammunition. If allowed by national law, consider which posts require armed private security. In some contexts it may be better to have a well equipped small incident response team rather than having all private security guards armed. In others it may be appropriate to stipulate that private security guards should be unarmed and their primary role limited to "behind the fence"

duties, (BP: 9) except when required by the risk assessment or to respond to an emergency or threat situation.

- Any other potential risks and impacts that may be created or increased by the use of private security.

- "Identify which private security functions will be better handled by outsiders versus those functions better handled by local community members assigned to the force." (IGTs: 50)
- Identify the activities to be sub-contracted to a PSP and develop a Request for Proposals (RFP). (See Challenge 3.2.a.)
- Ensure that the company's security arrangements do not aggravate risk factors.

Communicate how risks and impacts are addressed (e.g. on the company website or in meetings with local communities)

- Develop procedures to share information about the security team activity, location, operational and logistical status, relevant threat information, and incident reporting to company management and staff, communities and relevant civil or military authorities.

Evaluate regularly the actual effectiveness of private security arrangements to prevent and mitigate risks and impacts, in particular after an incident

- In cases where security measures have failed to prevent or mitigate risks and impacts, repeat the whole process described in this section to understand what went wrong and why, and identify appropriate alternative measures.
- Incorporate lessons learned into future risk and impact assessments.

GO BACK TO LIST OF CHALLENGES

3.2. Bids and contracts

A. Companies may find it difficult to properly assess quality and cost considerations when selecting private security providers

GOOD PRACTICES*

Use the findings of the risk assessment to define quality and cost considerations

(See Challenge 3.1.a.)

- Comply with national and international laws and standards concerning PSPs. If faced with conflicting requirements (e.g. a national law may prevent the implementation of certain international best practices), seek innovative ways to honour the principles of internationally recognised human rights. (GPs: 25)
- Ensure that all private security staff's human rights and international humanitarian law records are screened. (See section 3.5. Vetting)
- Ensure that PSPs are aware of their obligations, trained in human rights and international humanitarian law, and proficient in the use of security equipment and firearms, if applicable. (See Section 3.6. Training)

Stipulate in a Request for Proposals (RFP) "that each applicant (PSP) provide background information in order to assist the client in assessing their application in terms of due diligence, professionalism and financial probity" (SCG: 4)

- The RFP should provide information on (based on SCG: 3):
  - Operational tasks the PSP is expected to accomplish
  - Type of security required, including whether armed or unarmed
  - Number of posts to be covered
  - Percentage of local staff, if relevant
  - Minimum training and experience levels required
  - Language skills and any other required skills/expertise, if relevant
  - Description of working environment
  - Equipment requirements for the PSP
  - Extent to which the PSP will be in contact with the public
  - Existing grievance mechanisms
- The RFP should require that bids include information on

1. Description of the private security company
   - Evidence of business licenses
   - Ownership structure
   - Company policies, codes and standards, including whether the PSP adheres to the VPs and/or any private security industry standards, such as the International Code of Conduct for Private Security Service Providers (ICoC)

- Membership in trade associations, multi-stakeholder initiatives or national industry regulatory bodies (e.g. ICoC Association or the South Africa Private Security Industry Regulatory Authority - PSIRA)
- Proof of "sufficient insurance to cover risks and associated liabilities arising from its operations and activities" (PSC.1: 15), including insurance for its employees
- Company balance sheets and statement of overall turnover (SCG: 4), including tax payment
- Relations with subcontractors, subsidiary corporations and ventures

2. Employees
    - Extent of pre-employment screening for employees/management staff (SCG: 4)
    - Qualifications, background and experience of PSC managerial and operational staff
    - Proof of training provided by the company to its employees on human rights and humanitarian law, the use of force, weapons and firearms, and first aid
    - Salaries, benefits and work conditions of employees
    - Turnover rate of employees (SCG: 4)
3. Equipment
    - Evidence of equipment licenses (particularly as these relate to weapons and firearms)
    - Number and type of weapons, firearms and ammunition
    - Transportation and communications equipment
4. Track record and relevant experience
    - Information on any human rights incidents or complaints relevant to the operating environment and/or tasks to be performed and any remedial action taken
    - A list of principal services provided in the last three years (SCG: 4)
    - References from similar clients, in particular from those operating in the local area (SCG: 4)
    - Experience in working with public security in the country/region and any other relevant experience
5. Implementation plan for the bid
    - Number and work pattern of employees (full time/part time) for the job (SCG: 4)
    - Cost of providing the services needed by the company in compliance with the above

The ICoC explicitly states that "Signatory Companies will not knowingly enter into contracts where performance would directly and materially conflict with the principles of this Code, applicable national or international law, or applicable local, regional and international human rights law, and are not excused by any contractual obligation from complying with this Code. To the maximum extent possible, Signatory Companies will interpret and perform contracts in a manner that is consistent with this Code." (ICoC: par. 20)

Contracting companies should therefore bear in mind that demanding very low price bids for the required services may exclude PSPs which are compliant with the ICoC from participating in the bidding in the first place, if the remuneration is not sufficient to comply with their standards.

Conduct a thorough due diligence assessment of bids and bidding PSPs, involving consultation with "like-minded industry players, non-governmental organisations, government officials, and other stakeholders, about the reputation of and their experiences with various (PSPs)" (IGTs: 52)

The **Sarajevo Client Guidelines for the Procurement of Private Security Companies** (SEESAC, 2006) recommend to "evaluate bids in two stages; automatic exclusion on the basis of set criteria and the assessment of tenders according to award criteria." (SCG: 4)

1. Automatic exclusion (SCG: 5):
    a. Inability to fulfil any aspect of the RFP;
    b. Failure to provide requested documentation;
    c. Submission of false information or misleading information;
    d. Bankruptcy or proceedings for a declaration of bankruptcy;
    e. Failure to pay taxes or social security obligations;
    f. Grave professional misconduct by the company or one of its management;
    g. Conviction of the company or its management of an offence concerning its professional conduct;
    h. Proven involvement in political activities; and
    i. Proven breaches of international humanitarian and human rights law.
2. Award criteria (See score sheet on SCG: 6-7):
    a. Personnel standards
    - Average officer experience: employee backgrounds, experience in industry, contract specific experience
    - Training and professionalism: human rights training (and international humanitarian law in situations of armed conflict), additional training, contract specific training, use of force and firearms and other skills
    - Employment conditions: pay and remuneration, benefit packages, working conditions, types/hours of shifts worked
    - Selection and recruitment: recruitment and selection methodology, criminal screening, human rights abuse (and international humanitarian law violations) screening, drug screening, discharge from police/security services, psychological screening
    - Use of force and firearms: basic training, regular further training

    b. Contract management
    - Management structure and experience: structure, organisation and skills of management team, contract specific knowledge of management team
    - Contract resources and implementation mechanisms: contract manager availability, contract manager response time, rostering methodology, back-up capacity, general and client specific procedures, reporting, staff standards inspections, HQ support/24 hours support room

    c. Contract infrastructure
    - Equipment: communication tools and systems, IT hardware and software, uniforms, vehicles
    - Technical support: surveillance/CCTV, guard control system, access control system, alarm installation, central monitoring system

d. Company standards

- Company policy and practice: financial and contractual policy, human rights and security policy, health and safety policy, equal opportunities policy, disclosure of information and confidentiality
- Company associations: relationship with the police/security services, relationship with political parties and organisations
- Governance and oversight: code of conduct/ethics, rulebooks, responsibilities regarding policy and enforcement, ethics committee, employee tribunals, membership of trade association
- Human resource management: philosophy and practice, number of employees, staff turnover, absenteeism
- Force and firearms policy: weapons in use, storage and maintenance procedures, inspection procedures, oversight and procedures for reporting use
- References and certification: sector related, contract related, past experience of tendered contract, non-statutory certification

e. Financial

- Appropriate costing
- Value for money

Select a PSP on the basis of the two-stage evaluation process and establish formal contract with the selected provider (See Challenge 3.2.c.)

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B. Human rights responsibilities and potential liabilities of both the company and the PSP may not be clear.

GOOD PRACTICES*

Develop company policies and procedures that clarify and explain the roles and responsibilities of the different security actors around the project site and include these in the contract with the PSP

- Ensure policies and contracts clearly stipulate that both the company and the PSP should respect human rights in all circumstances. "This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved." (GPs: 13)
- Discuss roles and responsibilities with the PSP and address any ambiguities or misunderstandings.
- Ensure both company staff and private security personnel are familiar with company mechanisms to prevent human rights risks and impacts, as well as with procedures to deal with and support investigations of alleged human rights abuses.
- Include company policies and procedures in the contract with the PSP and ensure the contract complies with relevant national laws and regulations. (See Challenge 3.2.c.)
    - Confirm with international and national experts the validity of all contract clauses related to legal liabilities and responsibilities. It may be possible to transfer risks and responsibilities to the PSP through a required insurance clause (proof of risk indemnity insurance should be requested with the RFP). However, indemnification clauses will have limited application, depending on the national legal framework.

Carry out due diligence in order to identify and address human rights risks and impacts, taking into account potential liabilities

- Conduct/update risk and impact assessment jointly with the PSP. (See Challenge 3.1.a.)
- Consider the risk of corporate complicity in human rights abuses if the PSP protecting the company's site is involved in such abuses and "treat this risk as a legal compliance issue, given the expanding web of potential corporate legal liability arising from extraterritorial civil (and criminal) claims, and from the incorporation of the provisions of the Rome Statute of the International Criminal Court in jurisdictions that provide for corporate criminal responsibility. In addition, corporate directors, officers and employees may be subject to individual liability for acts that amount to gross human rights abuses." (GP: 25-26)
- Note that the risk attached to human rights abuses does not merely lie in the legal domain. Even if the legal responsibility will be determined to lie with the PSP, the reputational damage will likely be shared by the contracting company.
- Demonstrate the company's ongoing efforts to mitigate any human rights impacts and provide for or cooperate in the remediation of adverse human rights impacts the company has caused or contributed to through legitimate processes. (GPs: 24) (See Challenge 3.10.a.)

- Do not assume that conducting due diligence, by itself, will automatically and fully absolve the company from liability for causing or contributing to human rights abuses. (GPs: 19)

Ensure clear communications and effective coordination

To the extent possible, share information on company's security arrangements and procedures with local stakeholders

- Appoint a company representative with a good understanding of the local context and a long-term commitment to the job to serve as an interlocutor between the community, the company and the PSP.
- Establish ongoing dialogue about operations, procedures and potential impact of operations on local communities, particularly on vulnerable groups.
- Clarify roles and responsibilities of the PSP and share the company's own code of conduct for private security providers.
- Suggest steps to take in case of alleged human rights abuses, providing information on the company's grievance mechanism.

Ensure that grievances and complaints are not merely passed on to the PSP but are discussed and addressed together with company representatives

- Keep accurate records of all reported grievances and of all actions taken to address them.
- Conduct review of handling of grievances together with the PSP, identifying lessons learned and adjusting procedures accordingly, if appropriate.

GO BACK TO LIST OF CHALLENGES

C. In the absence of implementation guidance, PSPs may not fully perform according to international standards, despite their inclusion in contracts.

GOOD PRACTICES*

Develop policies, procedures and guidelines defining the roles and responsibilities of private security providers

- ▶ Develop a human rights policy and ensure it is embedded throughout the company.
- ▶ Develop security and procurement policies that reflect the company's human rights policy. These policies should (based on GPs: 16):
  - Be approved at the most senior level of the company;
  - Be informed by relevant internal and/or external expertise;
  - Stipulate the company's human rights expectations of personnel, business partners, PSPs and suppliers;
  - Be publicly available and communicated internally and externally to all personnel, business partners, contractors and other relevant parties;
  - Be reflected in the company's security procedures.
- ▶ Clarify the role of private security in all work site safety and security policies and procedures. (IGTs: 54)
- ▶ Adopt the ICoC or develop a code of conduct for PSPs based on the VPs and/or the ICoC, ensuring coherence with the company's security policy and procedures. Make this code a standard part of all contracts issued by the company.
  - Define the company's standards and expectations clearly, so that the PSP understands its performance objectives and deliverables. (MIGA: IV-1) "Address the ambiguities and clarify what they mean to prevent the private security provider from guessing the intent and measure of success". (MIGA: IV-2)
  - Provide copies of this code of conduct and written rules for the use of force to each guard.
  - Make PSP management and guards sign the code of conduct for PSPs adopted by the company, acknowledging understanding of the document and committing to comply with the principles therein, and ensure the company's security department keeps a copy of all signed documents.
  - Share and discuss this code of conduct with relevant stakeholders, such as other companies, public security forces and local communities. Where appropriate, amend this code to integrate feedback received during these discussions.
- ▶ In all policies and guidelines, reference applicable international and national instruments and standards, including (based on IGTs: 54):
  - Law and professional standards of the host country
  - Universal Declaration of Human Rights
  - International Covenant on Civil and Political Rights
  - International Covenant of Economic, Social and Cultural Rights

- International Labour Organization's Declaration on Fundamental Principles and Rights at Work
- Geneva Conventions of 1949 and their Additional Protocols of 1977
- UN Principles on the Use of Force and Firearms by Law Enforcement Officials, and the UN Code of Conduct for Law Enforcement Officials
- Convention Against Torture
- UN Guiding Principles on Business and Human Rights
- Voluntary Principles on Security and Human Rights
- Montreux Document on Private Military and Security Companies
- International Code of Conduct for Private Security Providers

Develop a contract with the PSP that includes clear "clauses and performance requirements that ensure respect for relevant national law, international humanitarian law and human rights law" by the contracted PSP (MD Part 2: par. 14), **and discuss these with the PSP to make sure the security provider understands its performance objectives.** Such clauses may address:

- Compliance with international human rights and humanitarian law (in situations of armed conflict), company policies and code of conduct for PSPs (include these as an annex to the contract). These should be broken into specific provisions against which performance can be assessed (for sample contract clauses on VPs for private security contracts see IGTs: 93).
- Roles and responsibilities of the company and the PSP.
- Mutually agreed rules for the use of force.
- Minimum age to carry out security services (i.e. 18 years old).
- Vetting, including past conduct and regular performance evaluations, where feasible. This includes records relating to posts held with the military, police or PSPs. (ICoC: par. 48) (See Section 3.5. Vetting)
- Fair remuneration and working conditions for private security personnel. (See Challenge 3.3.a.)
- Training on human rights and international humanitarian law (in situations of armed conflict). (See Section 3.6. Training)
- Regular testing to evaluate:
  - Understanding of use of force, human rights and international humanitarian law standards, and, if applicable, competency in safe handling of authorised arms and ammunition (for every type of firearm used);
  - Physical and psychological fitness standards to perform their contracted duties; and
  - Substance abuse.
- Possession of required registration, licenses or authorisations, and lawful acquisition and use of equipment, in particular weapons. (MD Part 2: par. 14)
- Procedures for apprehending persons "to defend themselves or others against an imminent threat of violence, or following an attack or crime committed by such persons against Company Personnel, or against clients or property under their protection, pending the handover of such detained persons to the Competent Authority at the earliest opportunity." (ICoC: par. 34) All apprehended persons should be treated "humanely and consistent with their status and protections under applicable human rights law or international humanitarian law." (ICoC: par. 33)

- Work with subcontractors, including requirements that the PSP:
  - Communicates in advance any intention, and obtains necessary approval, to engage with subcontractors as part of the service agreement; (PSC.1: 20)
  - Demonstrates that subcontractors comply with equivalent requirements as the PSP initially contracted by the company; (MD Part 2: par. 15) and
  - Be liable, as appropriate and within applicable law, for the conduct of its subcontractors. (MD Part 2: par. 15)
- Monitoring mechanisms.
- Evaluation and reporting requirements.
- Investigation and reporting of unlawful or abusive behaviour and appropriate disciplinary action, including that appropriate reparation be provided to those harmed by the misconduct of PSPs and their personnel. (MD Part 2: par. 14)
- Liabilities in case of damage to property, employees, reputation of the company or of human rights abuses to third parties.
- Compliance inspections and an annual audit (e.g. conducted by the contracting company or by an independent third party) to verify the successful delivery of the performance objectives established in the contract and the code of conduct.
- Clear provisions for termination of the relationship by the company where there is credible evidence of unethical or unlawful behaviour by private security personnel (VPs: 6-7) or for any other failure to comply with contractual provisions.
- Financial rewards (e.g. further work) and penalties (e.g. withholding payments) for compliance or noncompliance with contractual provisions that relate to human rights requirements. (IGTs: 53)

Complement training provided by the PSP to its staff with the following measures:

- Remind PSP personnel of key points of the ICoC/company's code of conduct for PSPs, as well as of site specific safety controls, on a regular basis (e.g. at the beginning of shifts, during shifts, during refresher sessions).
- Convene regular meetings where private security personnel can discuss good practices, ask specific questions and share their experiences among themselves. (See Cameroon case study)
- Print the key points of the ICoC/company's code of conduct for PSPs and the rules for the use of force on plasticized "smart cards" issued to all private security personnel. The smart cards should be in the appropriate local language for ready reference and inspection. (MIGA: IV-3)

Conduct regular performance checks and meet regularly with the PSP management to discuss the findings (MIGA: IV-5)

- Develop a checklist based on the contract and the code of conduct and use it during the monthly performance checks.
- Consider using an external human rights monitor to check compliance on a regular basis (e.g. engage with an NGO to identify human rights gaps).
- Review security incident reports to identify actual or potential human rights abuses and take appropriate measures (See Challenge 3.10.a.). Identify lessons learned and integrate them in security procedures and practices.

If the PSP still fails to comply with any or several of the clauses in the contract, consider the following options (IGTs: 57):

- Negotiate a timeline for compliance.
- Withhold payments as established in the contract until the issue is satisfactorily addressed.
- Condition ongoing relationship on performance and provide further, detailed guidance and training, together with regular performance review.
- Terminate the relationship with the PSP.

Termination of Contract with PSP and Transition of Security Delivery[4]

A company may choose to terminate its contract with a Private Security Provider ('PSP) for a variety of reasons including cost, change in requirements or a failure of the PSC to fulfil its contractual obligations.

Where a contracting company (henceforth, a 'company') terminates a PSP contract with a view to replacing it with another PSP, both the termination of the existing contract and the transition to new security arrangements need to be managed proactively, as failure to do so may expose the company and those associated with its operations (such as: its personnel, contractors, suppliers and/or other public or private security providers) to multiple risks.

Companies should consider PSP contract termination from two angles: legal and operational. As with any contractual arrangement, a company should seek advice on its legal obligations relating to the termination of the PSP contract. It is beyond the scope of this section to discuss legal issues (which, by nature, are jurisdiction- and contract-specific). Instead, the focus is on the operational issues relating to discontinuing a PSP contract.

Among the more pertinent operational issues for a company to consider are:

- Licences: Licenses are required for a variety of PSP-related items and services including: the use, transport and on-site storage of weapons; specific firearms; and the delivery of PSC services at the operating site. Such licences may be granted by both local and national authorities. The company should conduct a review to establish which licences and permits have been granted, who 'owns' them (for instance, are weapons licensed for use on the site specifically, licensed to individuals or licensed for general use by the PSP) as well as if and how they can be transferred. It is possible that the exiting PSP has secured licences in relation to the property unbeknown to the company. In this instance, the company should contact the relevant authorities, as well as the exiting PSP, to complete the inventory.
- Equipment: Apart from weapons, a PSP will make use of other equipment and materials. It is important for the company to determine who owns the equipment and, where appropriate, to arrange for its transfer.
- Employees/Consultants: In some cases, a company will be responsible for individual employees or contractors of the PSP beyond the termination of the contract. Such responsibilities may include obligations to continue employment, pay for healthcare or insurance.
- Records: A company may have access to the PSP's records (personnel, incident logs, etc.). Consideration should be given to retaining or transferring copies of this information as appropriate.
- Systems: In many circumstances, the exiting PSP will have access to the company's operational systems (including IT). Consideration should be given to closing this access and safeguarding confidential or sensitive data.

- Complaints: Companies should consider whether there are any outstanding complaints against the PSP or its operatives. Priority should be given to managing these complaints.
- Public security: PSPs typically play a role in managing relationships with police and military units. Companies should determine whether there is any Memorandum of Understanding in place with public security forces and, if so, whether it names the PSP. Companies should also establish which individuals in the PSP are responsible for these relationships with public security officials and, where necessary, how to transfer and institutionalise these relationships.
- Sub-contractors: PSPs often subcontract to other PSPs and outsource support functions such as vehicle maintenance. Companies should establish what sub-contractors exist, how they will be affected, which party is responsible for them, and how any transfer of service delivery will be managed.
- Knowledge transfer: The outgoing PSP is likely to have developed significant knowledge of relevant security issues surrounding company operations. Companies and their new PSPs should attempt to gain intelligence from the outgoing PSP.

It is always prudent to consider and factor in issues of termination as part of the negotiation and drafting of the contract. The above are, of course, just a sample of some of the practical issues that a company must consider prior to terminating a contract with a PSP. Every situation is unique and each company must unwind all aspects of its existing contractual arrangements, effectively deconstructing the contract to identify what rights and responsibilities a company has to its PSP and vice versa.

Of particular importance to the termination of the PSP contract is the issue of coordination. It is critical that processes are coordinated in order to ensure that there is no gap in the provision of security services. The termination of a PSP contract is not just a matter for a company's security and legal departments; it also has an impact on other departments, including operations, human resources, and communications.

PSPs are often a source of significant local employment and their operatives are 'the face' of a company – patrolling the perimeter of operations and interacting with external parties on a regular basis. Therefore, changing a PSP will inevitably have an impact on a wide range of stakeholders including local communities. It is important for a company to be proactive in the management of its community relations and, to the extent possible, engage communities in terms of the termination and transition of the PSP contract.

Where the PSP itself instigates the termination of the contract, the company should conduct its own assessment of the reasons for such a termination. The company must be particularly vigilant to ensure that the PSP has not chosen to terminate its contract as a result of material threats, abuses or other issues at the operating site and, moreover, has not adequately informed the company of these concerns and issues.

The immediate termination of a PSP contract may put a company and its operators at significant risk if it is not adequately managed. For this reason, it is advisable to conduct contingency planning for such an eventuality, taking into account the issues identified above.

In sum, the effective termination of a PSP contract and subsequent management of the transfer to a new contractor will require coordination between departments and stakeholders. To protect a company from potential risks, these processes, in conjunction with the abovementioned operational issues, must be proactively managed.

GO BACK TO LIST OF CHALLENGES

3.3. Labour standards

A. PSPs may not adequately pay their employees or provide safe working conditions. In such situations private security guards may not perform their duties according to companies' expectations

GOOD PRACTICES*

Ensure the risk assessment includes an analysis of the private security industry and specific companies' background, labour environment, national labour laws and private security regulation (See Challenge 3.1.a.)

During the bidding process pay special attention to the following aspects as part of the award criteria (See Challenge 3.2.a.):

- Employment conditions: pay and remuneration and linkage to performance, benefit packages, working conditions, types/hours of shifts worked, supervisory structure. (SCG: 6)
- Training on human rights, international humanitarian law (in situations of armed conflict), use of force and firearms, crowd management, conflict-diffusion techniques, and other skills, such as restraining or apprehending individuals.
- PSP policies and practices: labour and employment policy, human rights policy, security policy, due diligence and risk assessment practices, disciplinary procedures, health and safety policy, equal opportunities policy.
- Human resource management philosophy and practice (SCG: 7), including performance management systems.
- Existence of monitoring and supervisory as well as internal accountability mechanisms.
- "Sufficient insurance to cover risks and associated liabilities arising from (the PSP's) operations and activities", (PSC.1: 15) including insurance for its employees and compensation for grievances/complaints or associated adverse impacts on community members.
- References from similar clients, in particular from those operating in the local area. (SCG: 4)

Consider including clauses in the contract requiring the PSP to:

- ▶ Comply with the VPs, the International Code of Conduct for Private Security Service Providers (ICoC), the ILO Declaration on Fundamental Principles and Rights at Work and relevant and applicable labour laws (all these should be reflected in company policies and adopted by the PSP as a condition of procurement eligibility).
- ▶ "Ensure that their policies on the nature and scope of services they provide, on hiring of personnel and other relevant personnel reference materials such as personnel contracts include appropriate incorporation of (the ICoC)" and relevant and applicable international conventions and national labour laws. (ICoC: par. 52)

- Communicate contract terms and conditions clearly to all personnel in a format and language that is accessible to them, (ICoC: par. 52) and provide all employees with a contract of employment in a written form setting out the terms and conditions of their employment (SCC: 4), before the start of the assignment.
- Instruct personnel on applicable legal framework(s) and guidelines on ethical conduct[5].
- Inform personnel of all risks associated with their employment.
- Organise the work of private security personnel, in particular regarding overtime, night work and weekend work, finding a balance between "security of employment and ensuring the quality of the employee's private life; and meeting the needs of the client." (SCC: 4) This should be done in compliance with international norms that specify the maximum overtime allowed and, where national laws differ or are silent about this, the PSP should attempt to align with the lowest overtime threshold.
- Pay fair salaries and benefits (considering international requirements/emerging norms about fair wages) to all employees in a timely fashion, ensuring that different wages and benefits to various nationalities is "based on merit and national economic differential, and shall not be based on racial, gender or ethnic grounds"[6] and commensurate to their responsibilities and working conditions.
- Provide security guards with personal protective equipment (e.g. bulletproof vests, safety vests, torches,...).
- Make provisions for health insurance and "insure staff (e.g. through the provision of employee life insurance schemes) against the risks associated with their work". (SCC: 4)
- Avoid retaining the personal travel documents of their personnel or hold them "for the shortest period of time reasonable for administrative processing or other legitimate purposes." (ICoC: par. 54)
- Ensure that PSPs will not, and will require their personnel not to, "solicit or accept, directly or indirectly, anything of value in exchange for not complying with national and international law and/or standards, or with the principles contained within this Code." (ICoC: par. 26)
- Have a clear policy regarding the use of third party labour brokers, to avoid the risk of unethical recruitment and forced labour. Ensure that labour brokers do not charge recruitment fees, or retain travel documents, and provide clear and consistent information about the location and terms of employment and any associated travel costs and how these are to be paid.
- "Respect the right of personnel to terminate their employment."[7]

Consider providing performance incentives for private security guards, bearing in mind the risk that in certain situations this could open the door to more demands and internal tensions.

Ensure that grievance mechanisms are accessible to company staff, private security personnel and local communities (See Challenge 3.10.a.)

- Consider placing tip boxes in areas where individuals have "unobserved access to the boxes and can drop in anonymous notes, tips or other information", with clear instructions posted above them. (MIGA: III-16)
- Establish whistleblower protection mechanisms that guarantee protection of sources.
- Ensure access to a management focal point for direct redress of problems.

GO BACK TO LIST OF CHALLENGES

3.4. Local procurement

A. Depending on the local context and capacities, international PSPs may not meet the same standards in all countries in which they operate.

GOOD PRACTICES*

Develop policies, procedures, and guidelines defining the roles and responsibilities of private security providers (See Challenge 3.2.c.)

Check if the local branch of the PSP the company is working with is included in the membership of the International Code of Conduct for Private Security Services (ICoC) Association (ICoCA)[8] or has made a commitment to another applicable standard developed by nationally or regionally recognised regulatory authorities, such as PSIRA[9] or ANSI (PSC.1[10]), or relevant ISO standards

Develop a contract with the PSP and discuss it together to make sure the security provider understands its performance objectives (See Challenge 3.2.c.). The contract should:

- Reference company policy and procedures;
- Be informed by the VPs and ICoC;
- Include clear "clauses and performance requirements that ensure respect for relevant national law, international humanitarian law and human rights law" by the contracted PSP (MD Part 2: par. 14); and
- Reflect the findings of company due diligence and risk assessment activities.

Conduct a training needs analysis and ensure the required training is provided to private security guards assigned to the company's operations (See Challenge 3.6.a.)

Meet regularly with the contracted PSP to address the following issues:

- Implementation of required functions consistent with company policies and contractual requirements regarding VPs, code of conduct for PSPs and international and national humanitarian and human rights requirements.
- Vetting of personnel, to the best of the PSP's ability, including ongoing efforts to ensure knowledge of capacity and risks associated with hiring personnel from a particular location/service background/community/ethnic background. Where feasible, personnel records should be kept on file by the contractor and made available for inspection. (MIGA: IV-5)
- Training of all employees on all standards specified in the contract, including on the use of equipment, on an ongoing and as needed basis as indicated by due diligence and risk assessment activities.

- Provision of defensive equipment, personal protective equipment, personal security equipment, appropriate weapons and firearms, and ammunition, by the PSP to its guards as required by the contract.
- Investigation of all allegations of human rights abuses, as well as of "all occasions when force or apprehension of a suspect has occurred to ensure this was done in accordance with company and contractor standards". All such incidents should be reported to the company security manager and, where appropriate, to the local authorities. (MIGA: IV-5)
- Review of community and other stakeholders' complaints to identify prevention or mitigation measures.
- "Confidentiality of information gathered in the course of duties". (MIGA: IV-5)

Supervise the performance of PSPs through regular monitoring conducted either by the company security department or by an independent third party

- Use checklists and performance indicators shared with the contractor. (MIGA: IV-1) Tie these indicators "to specific outcomes, such as financial rewards or penalties for the contractor, or the cessation of the contract." (SCG: 8) Potential performance indicators include (based on SCG: 8):
    - No-show rate;
    - Missed guard tours;
    - Missed supervisory visits;
    - Missed training, incomplete training or failure to pass training tests;
    - Internal and third party complaints;
    - Misuse of force/firearms, including accidental discharges of weapons;
    - Inappropriate interactions with community, public security, or other stakeholders;
    - Violations of agreed procedure;
    - Violations of international humanitarian law and human rights abuses;
    - Violations of international or national laws governing the private security industry;
    - Violations of company or industry code of conduct or ethics;
    - Failure to cooperate with client investigation, request for information or incident reporting requirements; and
    - Violations of the terms of the contract.
- Identify gaps in service delivery and examine options to fill gaps, including additional training and other support needs. (IGTs: 55)
- Check all complaints against the PSP reported through grievance or any other mechanisms and record all allegations of human rights abuses by private security.
- Ensure that such monitoring encompasses "detailed investigations into allegations of abusive or unlawful acts; the availability of disciplinary measures sufficient to prevent and deter; and procedures for reporting allegations to relevant local law enforcement authorities when appropriate." (VPs: 6)

Work with host and home governments, other companies, civil society organisations and other relevant stakeholders, to agree on minimum standards for PSPs and monitoring mechanisms to supervise their conduct and performance

GO BACK TO LIST OF CHALLENGES

B. Companies may have to procure services locally due to national legal or contractual requirements or as a commitment to help develop the local economy, even where local PSPs do not meet international standards.

GOOD PRACTICES*

Ensure the risk assessment includes an analysis of the private security industry and specific companies' background, national labour laws, private security regulation and history of performance of local PSPs

- Identify trends in cases of human rights abuses in which local PSPs have been involved. NGOs can be of help in assembling such data.
- Elaborate a list of all PSPs that are known to have been involved in human rights abuses and violations of international humanitarian law and use it as part of the criteria for automatic exclusion in the evaluation process for the selection of a PSP. (See Challenge 3.2.a.)
- Evaluate risks and benefits of contracting a local PSP or, as an alternative, of hiring local guards as in-house security versus having external providers.
- Consider if a stakeholder engagement programme could help identify and address risks in ways that minimise the need for local PSPs.

Develop company policies on ethical conduct and human rights for all personnel, business partners and other parties directly linked to its operations, products or services, including contracted PSPs (See Challenge 3.2.c.)

- Share the company's security policies and procedures with relevant stakeholders, such as other companies, public security forces and local communities. Highlight information about "local hiring guidelines, prohibitions on the use of deadly force, and procedures for requesting police back-up." (MIGA: IV-1)

Consider the different posts required and define the desired profile for each job,

taking into account factors such as:

- Level of education, training and experience required for the job, including whether it would be possible to address some of the training gaps to reach the desired level through additional training provided by the company. Local private security personnel with a lower level of education and training can assume basic guard duties while more extensively trained personnel can be used for other positions.
- Local language(s) skills.
- Knowledge of the local situation.
- Relations with the local community, including potential tensions between local communities and guards from different communities, ethnicities, religions, etc.
- Risks associated with each activity.

Publish a Request for Proposals (RFP) and "evaluate bids in two stages; automatic exclusion on the basis of set criteria and the assessment of tenders according to award criteria" (SCG: 4) (See Challenge 3.2.a.)

In situations where there is no PSP that complies with all the desired criteria, consider the following options:

- Assess whether there is any applicant that would be suitable provided they receive additional training or support to develop relevant policies and processes.
    - "Agree to a training programme with the provider together with milestones and timelines." (IGTs: 57) (See Challenge 3.6.a.)
    - Work with other companies to invest in training on human rights and humanitarian law (in situations of armed conflict) for local PSPs. (IGTs: 57)
    - Print the key points of the VPs, the code of conduct for PSPs and the rules for the use of force on plasticized "smart cards" issued to all private security personnel. The smart cards should be in the appropriate local language for ready reference and inspection. (MIGA IV-3)
    - Provide support to identify and manage human rights risks.
- In cases where some of the identified gaps cannot be addressed through additional training or support, consider whether the balance of risks versus benefits justifies the contracting of the PSP that submitted the strongest application. If yes, conduct enhanced due diligence to establish all feasible preventive and mitigation measures to address the identified human rights risks and potential impacts. (See Challenge 3.1.a.)
- In situations where there is no eligible PSP operating in the area, but it is still desirable to have local guards, consider hiring local in-house security that would only start work after receiving all required training.
- Whenever there are doubts on local providers' delivery capacity, consider the feasibility of hiring both international and local PSPs for different security functions.
- Consider other non-security jobs that could be offered to local community members.

Develop a contract with the PSP that includes clear "clauses and performance requirements that ensure respect for relevant national law, international humanitarian law and human rights law" by the contracted PSP. (MD Part 2: par. 14) Discuss these with the PSP to make sure the security provider understands its performance objectives. (See Challenge 3.2.c.)

- If the PSP refuses to include a requirement to comply with the VPs and/or the company's code of conduct for PSPs, consider the following options (IGTs: 57):
    - Negotiate a timeline for compliance and support a strategy to become compliant.
    - Withhold payments as established in the contract until the issue is satisfactorily addressed.
    - Condition ongoing relationship on performance and provide further, detailed guidance and training, together with regular performance review.
    - Terminate the relationship with the PSP.
- "Consider pricing and duration of a specific contract as a way to promote relevant international humanitarian law and human rights law. Relevant mechanisms may include:
    - Securities or bonds for contractual performance;

- Financial rewards or penalties and incentives;
- Opportunities to compete for additional contracts"; (MD Part 2: par. 17)
- References provided to other clients.

Conduct a training needs analysis and ensure the required training is provided to private security guards assigned to the company's operations (See Challenge 3.6.a.)

Meet regularly with the contracted PSP to address the following issues:

- Implementation of required functions consistent with company policies and contractual requirements regarding VPs, code of conduct for PSPs and international and national humanitarian and human rights requirements.
- Vetting of personnel, to the best of the PSP's ability, including ongoing efforts to ensure knowledge of capacity and risks associated with hiring personnel from a particular location/ service background/community/ethnic background. Where feasible, personnel records should be kept on file by the contractor and made available for inspection. (MIGA: IV-5)
- Training of all employees on all standards specified in the contract, including on the use of equipment, on an ongoing and as needed basis as indicated by due diligence and risk assessment activities.
- Provision of defensive equipment, personal protective equipment, personal security equipment, appropriate weapons and firearms, and ammunition, by the PSP to its guards as required by the contract.
- Investigation of all allegations of human rights abuses, as well as of "all occasions when force or apprehension of a suspect has occurred to ensure this was done in accordance with company and contractor standards". All such incidents should be reported to the company security manager and, where appropriate, to the local authorities. (MIGA: IV-5)
- Review of community and other stakeholders' complaints to identify prevention or mitigation measures.
- "Confidentiality of information gathered in the course of duties". (MIGA: IV-5)

Supervise the performance of private security providers through regular monitoring

conducted either by the company security department or by an independent third party.

- Use checklists and performance indicators shared with the contractor. (MIGA: IV-1) Tie these indicators "to specific outcomes, such as financial rewards or penalties for the contractor, or the cessation of the contract." (SCG: 8) Potential performance indicators include (based on SCG: 8):
  - No-show rate;
  - Missed guard tours;
  - Missed supervisory visits;
  - Missed training, incomplete training or failure to pass training tests;
  - Internal and third party complaints;
  - Misuse of force/firearms, including accidental discharges of weapons;
  - Inappropriate interactions with community, public security, or other stakeholders;
  - Violations of agreed procedure;
  - Violations of international humanitarian law and human rights abuses;
  - Violations of international or national laws governing the private security industry;

  - Violations of company or industry code of conduct or ethics;
  - Failure to cooperate with client investigation, request for information or incident reporting requirements; and
  - Violations of the terms of the contract.

- Identify gaps in service delivery and examine options to fill gaps, including additional training and other support needs. (IGTs: 55)
- Check all complaints against the PSP reported through grievance or any other mechanisms and record all allegations of human rights abuses by private security.
- Ensure that such monitoring encompasses "detailed investigations into allegations of abusive or unlawful acts; the availability of disciplinary measures sufficient to prevent and deter; and procedures for reporting allegations to relevant local law enforcement authorities when appropriate." (VPs: 6)

Work with host and home governments, other companies, civil society organisations and other relevant stakeholders, to agree on minimum standards for PSPs and monitoring mechanisms to supervise their conduct and performance

GO BACK TO LIST OF CHALLENGES

3.5. Vetting

A. Vetting requirements may be unrealistic in certain contexts. In particular, documentation on past performance of the PSP, as well as service and criminal records of its employees, may be unobtainable.

GOOD PRACTICES*

As part of the risk assessment exercise, gather as much information as possible on the private security industry in the country, in particular with regard to regulation and performance history of local PSPs.

- Consult with host and home government authorities, other companies, civil society organisations and local communities.
- Conduct research using local media, web resources and reports developed by international organisations, multi-stakeholder initiatives, civil society organisations and experts.
- Examine applicable private security laws and other national legal requirements, in particular with regard to the issuance of business and equipment licenses, and training certificates. This will provide the company with some notions of the kind of documentation that PSPs will be able to submit with their applications to bid for a contract.
- Identify trends in cases of human rights abuses in which local PSPs have been involved.
- Elaborate a list of all PSPs that are known to have been involved in human rights abuses and violations of international humanitarian law and use it as part of the criteria for automatic exclusion in the evaluation process for the selection of a PSP. (See Challenge 3.2.a.)
- Where a country's public security is known to be associated with human rights abuses and violations of international humanitarian law, and is a likely source of private security personnel, incorporate this into the risk assessment.

Develop a Request for Proposals (RFP) requesting that each applicant provides background information in order to assist the client in assessing their application in terms of due diligence and professionalism. (SCG: 4) (See Challenge 3.2.a.) Key information required for vetting purposes should include (based on SCG: 4):

- Ownership structure.
- Relations with subcontractors, subsidiary corporations and ventures.
- Evidence of business licenses and equipment licenses (particularly as these relate to weapons, firearms and ammunition).
- Extent of pre-employment screening for employees and management staff, including proof of qualifications, background and work experience.
- Proof of training provided by the company to its employees on human rights and humanitarian law, the use of force, weapons and firearms, and first aid.

- A list of principal services provided in the last three years.
- References from similar clients, in particular from those operating in the local area, as well as from local officials and communities.
- Information on any human rights incidents or complaints relevant to the operating environment and/or tasks to be performed and any remedial action taken.

"Evaluate bids in two stages; automatic exclusion on the basis of set criteria and the assessment of tenders according to award criteria" (SCG: 4) (See Challenge 3.2.a.)

1. The exclusion criteria related to vetting should consider (SCG: 5):
   - Inability to fulfil any aspect of the RFP;
   - Failure to provide requested documentation;
   - Submission of false information or misleading information;
   - Grave professional misconduct by the company or one of its management, particularly with regard to the excessive use of force;
   - Conviction of the company or its management of an offence concerning its professional conduct;
   - Proven involvement in political activities;
   - Proven breaches of or complicity in breaches of international humanitarian and human rights law, including through its business relations with subcontractors, subsidiary corporations and ventures.
2. The award criteria related to personnel standards should take into account:
   - Selection and recruitment: recruitment and selection methodology, criminal screening, human rights and international humanitarian law abuse screening, drug screening, discharge from public or private security services, psychological screening. (SCG: 6)
   - Average officer experience: employee backgrounds, experience in industry, contract specific experience. (SCG: 6)
   - Training on human rights, international humanitarian law (in situations of armed conflict), use of force and firearms, crowd management, conflict-diffusion techniques, and other skills, such as restraining or apprehending individuals.
   - "Existence and implementation of policies relating to international humanitarian law and human rights law, especially on the use of force and firearms, as well as policies against bribery, corruption, and other crimes." (MD Part 2: par. 12)
   - "Existence of monitoring and supervisory as well as internal accountability mechanisms." (MD Part 2: par. 12)
   - Systems to control the management, use and handling of weapons, firearms and ammunition (registers, licenses, handing over, transportation).

Ensure the selected PSP has an effective vetting programme

ICoC: Selection and Vetting of Personnel

45. Signatory Companies will exercise due diligence in the selection of Personnel, including verifiable vetting and ongoing performance review of their Personnel. Signatory Companies will only hire individuals with the requisite qualifications as defined by the applicable contract, applicable national law and industry standards, and the principles contained in this Code.

46. Signatory Companies will not hire individuals under the age of 18 years to carry out Security Services.

47. Signatory Companies will assess and ensure the continued ability of Personnel to perform their duties in accordance with the principles of this Code and will regularly evaluate Personnel to ensure that they meet appropriate physical and mental fitness standards to perform their contracted duties.

48. Signatory Companies will establish and maintain internal policies and procedures to determine the suitability of applicants, or Personnel, to carry weapons as part of their duties. At a minimum, this will include checks that they have not:

a) been convicted of a crime that would indicate that the individual lacks the character and fitness to perform security services pursuant to the principles of this Code;

b) been dishonourably discharged;

c) had other employment or engagement contracts terminated for documented violations of one or more of the principles contained in this Code; or

d) had a history of other conduct that, according to an objectively reasonable standard, brings into question their fitness to carry a weapon.

For the purposes of this paragraph, disqualifying crimes may include, but are not limited to, battery, murder, arson, fraud, rape, sexual abuse, organized crime, bribery, corruption, perjury, torture, kidnapping, drug trafficking or trafficking in persons. This provision shall not override any law restricting whether a crime may be considered in evaluating an applicant. Nothing in this section would prohibit a Company from utilizing more stringent criteria.

49. Signatory Companies will require all applicants to authorize access to prior employment records and available Government records as a condition for employment or engagement. This includes records relating to posts held with the military, police or public or Private Security Providers. Moreover, Signatory Companies will, consistent with applicable national law, require all Personnel to agree to participate in internal investigations and disciplinary procedures as well as in any public investigations conducted by competent authorities, except where prohibited by law.

Develop a contract with the PSP that includes clear "clauses and performance requirements that ensure respect for relevant national law, international humanitarian law and human rights law" by the contracted PSP. (MD Part 2: par. 14) Discuss these with the PSP to make sure the security provider understands its performance objectives (See Challenge 3.2.c.)

Encourage the PSP to sign a formal declaration that none of their employees have been implicated in abuses of human rights and/or violations of international humanitarian law (IGTs: 57)

- Request an attestation by personnel that nothing in their present or past conduct would contradict the company's policies and code of conduct for private security. (PSC.1: 19)

GO BACK TO LIST OF CHALLENGES

3.6. Training

A. Private security personnel may lack adequate training and not be familiar with international standards on human rights and international humanitarian law and how they apply to their day-to-day security duties.

GOOD PRACTICES*

Conduct a training needs analysis at the time of contract negotiations with the PSP

Agree on a training programme with the PSP based on the results of the needs analysis, including who will deliver what part of the training (i.e. the company, the PSP or a third party)

- Ensure pre-deployment training is provided to all private security personnel working on the company's premises.
- Include as a minimum the following topics:

  a. Human rights, international humanitarian law (in countries affected or threatened by armed conflict), and national criminal law.

  b. Religious, gender, and cultural issues, and respect for the local population.

  c. Rules for the use of force and firearms, including self-defence and de-escalation techniques. Refer participants to the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms, the International Code of Conduct for Private Security Service Providers and "national laws or regulations in effect in the area duties will be performed." (ICoC: par. 59) Use of force training shall include weapon-specific training for all personnel who are to carry a weapon.

  d. Procedures for apprehending persons "to defend themselves or others against an imminent threat of violence, or following an attack or crime committed by such persons against Company Personnel, or against clients or property under their protection." (ICoC: par. 33) All apprehended persons should be treated "humanely and consistent with their status and protections under applicable human rights law or international humanitarian law." (ICoC: par. 34)

  e. Site safety training.

  f. Incident response and first aid, to "ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment."[11]

  g. PSPs' duties and responsibilities with regard to conflict management and dealing with incidents of public disorder, (un)lawful protests, strikes, labour disputes and evictions, ensuring this does not conflict with the mandate of public security forces.

h. Anti-bribery and anti-corruption measures.

i. Grievance procedures and policies and "handling (of) complaints by the civilian population, in particular by transmitting them to the appropriate authority." (MD Part 2: par. 10)

- Require that all private security personnel deployed on the company's site pass an oral or written exam and a physical test after the training proving they are capable of performing the required security services.
- Conduct refresher courses (e.g. quarterly or bi-annually) for all private security personnel on site, including a few new topics on each refresher training.
- Ensure the training is updated regularly to reflect changed circumstances on the ground and based on ongoing risk assessment and due diligence activities.
- Include the details and conditions regarding the training programme in the contract with the PSP.

Ensure that participants can relate to the training programme

- Ensure the training is adapted to the background, literacy level and languages of participants.
- Conduct practical exercises that include locally-relevant scenarios and possible contingencies. One method is to "use the 'talk-through, walk-through, run-through' formula": communicate all tasks and expectations to participants; discuss each step; and run-through the whole scenario with role-players. "Training events are most effective if the scenario for the simulated incident is plausible or even a repeat of a previous incident." (MIGA: III-9)
- Encourage the organisation of joint drills and rehearsals for incident management (having previously assessed all potential risks), involving public security forces, private security providers and in-house security. In general terms, these exercises "should address the phases of an incident response including:
    - Preparation and review of rules (for the use of force),
    - Alert,
    - Deployment,
    - Designation of the on-site team leader,
    - Actions on contact,
    - Resolution of the incident,
    - Provision of medical attention (and evacuation) if required,
    - Review of post-incident lessons learned,
    - Final reporting and follow-up." (MIGA: III-9)

Lessons identified from these drills and rehearsals should be iteratively inserted to the relevant procedures, processes and standing orders.

Complement the training with additional measures such as by providing:

- Induction training to familiarise private security personnel with the company, in particular with its structure, policies, processes (e.g. handling of complaints and lines of reporting) and the project site; with the country law regarding provision of private security services; and with community and local government relations.

- Job-specific training, focused on any "significant hazards, threats, risks, and potential impacts associated with their work." (PSC.1: 21)
- Short talks focused on key aspects of the VPs and the code of conduct for PSPs delivered regularly by supervisors.
- Supporting materials (e.g. pocket book/laminated card with principles on the use of force).

Monitor performance and, if necessary, provide additional training

- Conduct regular monitoring to verify whether the learnings from the training are put into practice. As part of this exercise, consult with local communities to find out whether the situation has improved as a consequence of training.
- Identify any remaining gaps and ensure these are addressed in refresher trainings.
- If necessary, conduct additional training to address any further training needs.

Work with other companies to invest in training on human rights and humanitarian law (in countries affected by armed conflict) for local PSPs (IGTs: 57)

GO BACK TO LIST OF CHALLENGES

B. Non-local PSPs may be unaware of or lack training in the culture, traditions and values of the local community. This may result in security practices that could be considered culturally inappropriate or disrespectful, leading to increased risk of conflict.

GOOD PRACTICES*

Analyse the local context, paying particular attention to:

- Different cultures and ways of life within the national population (e.g. livelihoods, language, customs) and related sub-groups within a community, including the potential for conflict between such groups.
- "Traditional lifestyles, a close attachment to ancestral territories and the natural resources found in them"[12].
- Environmental and natural resource management strategies[13].
- Intangible cultural heritage, such as language, ceremonies, spirituality[14].
- Structure and operation of the local economy[15].
- Governance and decision making structures and implications for vulnerable or marginalised groups (e.g. women and indigenous peoples).
- Power structures and the politics within communities and society as a whole.
- Social structures, in particular the different roles of women and men within the social and cultural context, including the division of labour and the different rights and obligations within the household and the broader community[16].
- "Different value systems, which may include approaches to negotiation and reaching agreement that are quite different to those in mainstream society"[17].
- "Cultural protocols, including traditional ways of dealing with grievances and conflict"[18].

Ensure the company's human rights policy addresses relations with local communities

- ▶ Consult with communities, including any inter-communal sub-groups and particularly vulnerable groups (e.g. women, youth).
- ▶ "Account for differing community perceptions of and cultural sensitivities surrounding the industry or business mission, specific project, gender, orientation, weapons, religion, foreigners, other clans, etc." (IGTs: 50)
- ▶ Establish, implement, and maintain procedures to ensure all persons performing tasks on behalf of the company are aware of "the culture, such as customs and religion, of the environment in which they are operating". (PSC.1: 21)
- ▶ Require that employees and PSPs "work without prejudice or bias, regardless of the nationality, sex, religion or culture of individuals. In complying with this requirement, employees are not expected to express personal or political views, or behave in an overtly nationalistic manner. Employees are to exercise restraint in the expression of views both in private and public and are to adopt as low a profile as allowed by their work." (SCC: 2-3)

Develop guidelines for effective engagement between the company's security personnel, the PSP and local communities

- Ensure the company's security and community relations departments collaborate in developing these guidelines.
- Clarify roles of the company's security department, in-house security and PSPs in engaging with local communities.
- "Strive for consistency of approach and employment longevity of representatives of the company so that relationships can be built and trust maintained"[19].
- Consider the help of local experts for the development of culturally appropriate guidelines and procedures.
- Seek solutions developed with local communities.

Consider local experience and references from other clients working in the area as part of the award criteria in the selection of a PSP (See Challenge 3.2.a.)

- Ensure the selected PSP has locally appropriate policies and procedures.

Establish security arrangements taking into account findings from the context analysis and the risk and impact assessments (See Challenge 3.1.a.)

- Ensure the presence of female and male staff, since "particularly in traditional indigenous communities, men will generally be more comfortable engaging with male representatives of a company, and women with female representatives"[20].
- Ensure security arrangements (e.g. selection of personnel) do not inadvertently foster tensions through favouring one religion/ethnic group over others.

Agree on a training programme with the PSP (See Challenge 3.6.a.)

- Ensure that private security personnel are aware and trained in aspects regarding the culture, traditions and values of the local community.
- Provide "practical advice that can enhance cross-cultural communication and understanding (e.g. advice on body language, initiating and ending conversations, culturally disrespectful actions, etc.)"[21].
- Involve local community representatives in the delivery and teaching of the programme and sharing their experiences.

Set regular meetings with local communities

- Consider political, cultural and legal sensitivities, when choosing a method of communication and the venue for meetings with local stakeholders.
- Clearly communicate the company's values and commitments to local stakeholders.
- Be as open as possible sharing information on security arrangements.
- Begin early, ideally start dialogue before any security personnel are deployed on site.
- Listen with an open mind to communities' security concerns and be willing to reconsider security arrangements accordingly.
- Work together with local communities to address concerns, risks and impacts.

- Consider establishing a multi-stakeholder security forum or draw on existing community security platforms.
- If appropriate, invite other relevant stakeholders, such as local authorities or public security.

Establish grievance mechanisms that are respectful of customary approaches to dispute resolution[22]

- If a community has an existing dispute resolution mechanism, consider how/if the company's programme can align with and/or complement that process.
- Consider whether it is necessary to conduct outreach and/or capacity building to empower communities to access and effectively use the grievance mechanism.

GO BACK TO LIST OF CHALLENGES

3.7. Relationship between public and private security

A. In some countries public security personnel work for PSPs when off-duty. This may create confusion over roles and responsibilities, which may lead to inappropriate practices, in particular with regard to the use of force, apprehension and detention.

GOOD PRACTICES*

As part of the risk and impact assessment, consider risks and potential impacts of using public security personnel as private security providers

- Assess the capabilities, practices and human rights track record of public security forces.
- Analyse the legal framework that regulates the private security industry and find out if it is legally allowed for public security personnel to work for a PSP when off-duty. If legal, ensure the assessment provides a clear picture of any restrictions and conditions.
- Consider focused stakeholder engagement with affected communities to identify any additional concerns and/or risks associated with the use of public security as private providers.

Request a letter of consent from the relevant public security institution stating that the concerned individuals are allowed to work for a PSP

Conduct a training needs analysis during contract negotiations with the PSP and agree on a training programme with the provider based on the results, including who will deliver what part of the training (i.e. the company, the PSP or a third party).

- Ensure the training programme follows the recommendations listed in Challenge 3.6.a., with a special focus on the following elements:
- Differences in the mandate and responsibilities between public and private security roles.
- Rules for the use of force and firearms. Refer participants to the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms, the International Code of Conduct for Private Security Service Providers and "national laws or regulations in effect in the area duties will be performed." (ICoC: par. 59) It is essential that public security officers working as private security understand the different rules applicable to the provision of private security services, to law enforcement operations and to the conduct of hostilities in situations of armed conflict (i.e. when international humanitarian law applies).
- Use of force training that addresses:
  - Reasonable steps to avoid the use of force;
  - Use of force continuum including force de-escalation techniques to resolve threats with minimum necessary force;
  - Compliance with all national and international obligations;
  - Proportionality to the threat and appropriateness to the situation;

    - "Self-defence or defence of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life" (PSC1: 24); and
    - Weapon-specific training for all personnel who are to carry a weapon.
- ■ Restraining or apprehending individuals.
- ■ Practical exercises that include locally-relevant scenarios and possible contingencies to put all of the above into practice. Start by providing a background briefing to PSPs on local conditions, operating environment, risk assessment findings and stakeholder engagement observations. Communicate all tasks and expectations to participants; discuss each step of the actions and responsibilities of participants; and run-through the whole scenario with role-players. (MIGA: III-9) When feasible and relevant, public security should also participate in these exercises, this will help participants understand their different roles and responsibilities in the event of an incident.

- ▶ Include the details and conditions regarding the training programme in the contract.

Complement the training with additional measures

- ▶ Request supervisors to deliver short talks focused on key principles of the VPs and the code of conduct for PSPs regularly.
- ▶ Provide supporting materials (e.g. pocket book with key aspects of the code of conduct for PSPs).
- ▶ Identify and engage with 'champions' within the public security sector that due to rank or status can effectively promote good practices with colleagues.

Ensure that all private security personnel working on the company's site wear the PSP or company uniform, which should be clearly distinguishable from the public security uniform, and are "individually identifiable whenever they are carrying out activities in discharge of their contractual responsibilities" (ICoC: par. 43). Having a distinct uniform for each job may help personnel differentiate between their two roles.

Ensure that off-duty officers do not bring their weapons, firearms or ammunition to the company premises

GO BACK TO LIST OF CHALLENGES

B. Companies working with both public and private security may face multiple lines of command, poor communication, inadequate coordination, and resulting difficulties in investigating human rights abuses.

GOOD PRACTICES*

Conduct/update risk and impact assessment (See Challenge 3.1.a.)

- Analyse the structure, functioning and performance of public security forces.
- Identify specific challenges in the interaction between public and private security.

Meet with the chain of command of public security forces and other government stakeholders at the regional and/or local level (See Section 2.1. "Security arrangements"), before finalising private security arrangements

- "Clearly communicate private security plans and arrangements to assigned public security and other government stakeholders" (IGTs: 54), sharing information from the risk assessment.
- Raise the VPs and international standards on the conduct of both public and private security providers.
- Seek agreement on the different roles assigned to public and private security. On this basis, agree with the chain of command of public security forces the rules for their deployment around the company's facilities, in particular try to determine mechanisms and procedures for scaling up or down depending on the changing environment.
- Only request the permanent deployment of public security forces if there is a high level of lawlessness, or if "the site is so remote that the response time for public security forces to arrive exceeds the ability of the company's private security (providers) to manage security risks and protect the site". (MIGA: III-8)
- Request the management of public security to designate points of contact at each relevant level in the chain of command.
- Establish formal and consistent reporting and communications mechanisms between public security forces, the company and its PSPs.
- Agree on a process for investigations of human rights abuses.
- Establish a written agreement or MoU with the local management of public security reflecting all of the above, or consider substitute measures in the absence of a MoU (See Section 2.3. MoUs).

Finalise negotiations with the selected PSP and establish a contract including specific requirements regarding the PSP's engagement with public security (See Challenge 3.2.c.)

- Define clearly the different roles and responsibilities of public and private security.
- Share information on public security arrangements around the company's site, as well as on any agreements reached with the public security forces chain of command.

- Require the PSP to designate a focal point for liaising with the company's security department and with public security points of contact.
- Establish reporting and communications mechanisms based on the agreement with public security.
- Clarify what equipment is available and who can use it.

Following prior agreement with the public security forces chain of command, encourage the organisation of joint drills involving public security working in the company's area of operations, the PSP and the company's in-house security

- Clarify roles, responsibilities and reporting lines, and promote information sharing between different actors.
- Ensure joint drills "address the phases of an incident response including:
  - Preparation and review of rules (for the use of force),
  - Alert,
  - Deployment,
  - Designation of the on-site team leader,
  - Actions on contact,
  - Resolution of the incident,
  - Provision of medical attention (and evacuation) if required,
  - Review of post-incident lessons learned,
  - Final reporting and follow-up." (MIGA: III-9)
- Consider inviting relevant local stakeholders to these exercises. This will promote understanding of the different roles and responsibilities of public and private security.

Set regular meetings to discuss security arrangements (e.g. once a month) with the appointed points of contact for both public security forces and the PSP, as well as ad hoc meetings immediately after an incident. These meetings should address any relevant security related updates in the area.

Coordinate with other companies operating in the area

- Share experiences on working with both public and private security; identify key challenges and lessons learned.
- Seek coherence in security practices, in order to prevent confusion on the roles of different security actors.
- Consider developing a contingency plan in case public security previously assigned to the company's area of operations become unavailable.

GO BACK TO LIST OF CHALLENGES

C. Where public security response times are inadequate, or where company operations are located in remote areas, it may be necessary for PSPs to act as first responders in high risk situations, or to otherwise deal with situations that are normally the responsibility of public security forces.

GOOD PRACTICES*

Conduct needs assessment

- Assess company needs against the capacity of public security forces. The needs assessment should focus on issues such as training, equipment, transportation and communications.
- Measure average response times for public security forces to get to the project site in an emergency.
- Identify additional training and equipment needs of private security personnel.
- Assess alternative available solutions, including community led or third party (international organisation, home government associated) assistance.

Update risk assessment

- Analyse relevant past security incidents where public security response was required and identify trends, if any.
- Assess whether providing logistical, financial or in-kind support to local public security (e.g. providing training or communications equipment) can improve public security's ability to respond. Consider whether other actors (e.g. home governments, human rights institutions, international organisations, multi-stakeholder initiatives) can address gaps through capacity building, training and other assistance activities. If this is not feasible, balance benefits against possible negative consequences of providing such support. (See Section 2.6. Equipment)

Engage with a wide variety of stakeholders

- Engage with host government actors and the command of public security forces at the national, regional and local levels to identify appropriate means of addressing this challenge.
- Meet with other companies operating in the area, if any, to share experiences and concerns and to pool efforts in improving the situation.
- Consult with international NGOs, civil society organisations and local communities to discuss risks and impacts associated with the current situation and to jointly identify possible solutions.

Establish early warning mechanisms that allow the company to request public security support with sufficient time for them to arrive before situations become violent

- Develop an information sharing system with other companies and local stakeholders (IGTs: 42). This can help identify local tensions before they develop into high risk situations.

- Consider establishing a multi-stakeholder security forum to discuss security and human rights issues. The forum should include representatives from local communities, ensuring the most vulnerable groups are adequately represented.
- Identify early warning signs based on research on past security incidents conducted as part of the risk assessment.

Consider providing assistance to improve the response time of public security,

taking into account the findings of the needs and risk assessments

- Seek ways to improve communication and coordination between public and private security (See Challenge 3.7.b.)
  - Establish formal and consistent reporting and communication mechanisms with public security forces, including the designation of points of contact at each relevant level.
- Consider the possibility of providing logistical, financial or in-kind support to improve the response time of public security forces. (See Challenge 2.6.b.)

Establish a security response team that can act as first responders as necessary

- Develop response guidelines and procedures (including rules for use of force, weapons and firearms, as well as procedures for restraining and apprehending persons) and ensure response team members are trained accordingly.
- Ensure the response team coordinates with public security and retreats as soon as public security is deployed on site.

Include a clause outlining the approach to the issue of apprehending persons in the company's code of conduct for PSPs and in the contract with the PSP

- Stipulate that PSPs may "not take or hold any persons except when apprehending persons to defend themselves or others against an imminent threat of violence, or following an attack or crime committed by such persons against Company Personnel, or against clients or property under their protection, pending the handover of such detained persons to the Competent Authority at the earliest opportunity." (ICoC: par. 34)
- Stipulate that all apprehended persons should be treated "humanely and consistent with their status and protections under applicable human rights law or international humanitarian law, including in particular prohibitions on torture or other cruel, inhuman or degrading treatment or punishment." (ICoC: par. 33)
- Stipulate that there should be no firearms in the room where the person(s) is/are temporarily detained and that force shall not be used to try to prevent people from escaping.
- Require the presence of a female guard if there are women among the apprehended persons.
- Make this provision part of the information communicated to local communities and public security authorities.

Adjust the training programme for private security personnel on a regular basis to address findings from the needs and risk assessments (See Challenge 3.6.a.)

- Ensure training covers all relevant aspects regarding appropriate and proportionate use of force. Use of force training shall address:

  - Reasonable steps to avoid the use of force;
  - Use of force continuum including force de-escalation techniques to resolve threats with minimum necessary force;
  - Compliance with all national and international obligations;
  - Proportionality to the threat and appropriateness to the situation;
  - "Self-defence or defence of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life" (PSC.1: 24); and
  - Weapons and firearms specific training for all personnel who may carry a weapon.

- ▶ Include a session on conflict management, crowd control, public order and apprehending persons, based on the company's code of conduct for PSPs.
- ▶ Explain the differences between the roles of public security forces and PSPs. (See Challenge 3.7.a.)
- ▶ Conduct practical exercises using real-life scenarios so that private security personnel learn good practices in responding to high risk-situations in an effective way, and in compliance with the standards expressed in the VPs, the ICoC and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

If the above recommendations are not sufficient to properly manage security risks, consider requesting the permanent deployment of public security forces closer to the project site

- ▶ Engage with all relevant stakeholders (e.g. host government authorities, public security representatives, other companies, local communities) to ensure their different needs and concerns are taken into account in the deployment of public security forces.
- ▶ If the host government lacks the necessary resources, consider providing financial or in-kind support for the permanent deployment of public security forces. If the company takes this course of action, address potential risks through the risk assessment and communicate to local stakeholders.

GO BACK TO LIST OF CHALLENGES

3.8. Security equipment and use of force

A. Private security personnel may not always have equipment that allows for a graduated use of force or may carry inappropriate weapons and firearms. This may result in the excessive use of force.

GOOD PRACTICES*

Conduct/update risk and impact assessment (See Challenge 3.1.a.)

- Examine applicable private security laws and other national legal requirements and identify authorised weapons, firearms and ammunition for PSPs, as well as any required equipment licenses.
- Identify trends in cases of human rights abuses in which local PSPs have been involved and assess whether the lack of appropriate equipment was one of the causes.
- Assess risks versus need for armed private security. Weapons and firearms should only be authorised if their use reduces the risk of violence. "In some contexts armed protection is inescapable, as arms-carrying forms part of the 'local security culture' (...). In these contexts, the use of armed protection is so common that by not following this practice, (a company) exposes itself as a soft target." (EISF: 15)
- Evaluate the PSPs equipment, as well as the company's own equipment on site.
- Assess the extent to which PSP personnel are also affiliated with public security and/or have other ways of accessing weapons and firearms not provided by the PSP.

Match the authorised security equipment on site to the security risks and threats identified

- Develop guidelines for the use of force (e.g. use of force continuum) by PSPs and in-house security personnel which reflects the security equipment authorised by the company.
- Establish site controls to ensure safe handling and maintenance of equipment.
- Re-evaluate security equipment required on site as security risks and threats evolve.

Adopt the ICoC or develop a code of conduct for PSPs based on the VPs and/or the ICoC and make this code a standard part of all contracts issued by the company

Request that each applicant provides background information in order to assist the company in assessing their application in terms of equipment and training capabilities as part of the Request for Proposals (RFP) (See Challenge 3.2.a.)

“Evaluate bids in two stages; automatic exclusion on the basis of set criteria and the assessment of tenders according to award criteria” (SCG: 4) (See Challenge 3.2.a.)

1. The exclusion criteria related to equipment and the use of force should consider:
    - Failure to submit the required documentation, such as proof of equipment licenses (particularly as these relate to weapons and firearms) and training certificates.
    - Conviction of the company or its management for an offence concerning its professional conduct related to excessive use of force. (SCG: 4)
    - Proven breaches of or complicity in breaches of international humanitarian and human rights law (including through its business relations with subcontractors, subsidiary corporations and ventures).
    - Independent reports and/or proceedings before international or regional fora (e.g. OECD National Contact Points, Inter-American Commission on Human Rights) involving abuses by the PSP.
2. The award criteria related to equipment and the use of force should take into account:
    - Training on human rights, international humanitarian law (in situations of armed conflict), use of force and firearms, crowd management, conflict-diffusion techniques, and other skills.
    - PSP policies or procedures for procurement and management of weapons and ammunition based on local and international legal and regulatory requirements. These should address:
        - ▫ “Compliance with registrations, certifications, and permits;
        - ▫ Acquisition;
        - ▫ Secure storage;
        - ▫ Controls over their identification, issue, use, maintenance, return, and loss;
        - ▫ Records regarding when and to whom weapons are issued;
        - ▫ Identification and accounting of all ammunition and weapons; and
        - ▫ Proper disposal with verification”. (PSC.1: 20)
    - Proof of legal acquisition and authorisations for the possession and use of weapons and ammunition required by applicable law. (ICoC: par. 56)
    - Other equipment: communication tools and systems, IT hardware and software, uniforms, vehicles, defensive equipment.
    - Technical support: surveillance/CCTV, guard control system, access control system, alarm installation, central monitoring system.
    - “Existence of monitoring and supervisory as well as internal accountability mechanisms, such as:

        a) Internal investigation and disciplinary arrangements in case of allegations of wrong-doing by its personnel;

        b) Mechanisms enabling persons affected by the conduct of the personnel of the (PSP) to lodge a complaint, including both third party complaint mechanisms and whistle-blower protection arrangements”; (MD Part 2: par. 12)

        c) Regular performance reporting and specific incident reporting to the company and, if appropriate, to the relevant authorities; (MD Part 2: par. 12)

        d) Requirement for PSP personnel and its subcontracted personnel to report any misconduct to the PSP’s management or a competent authority. (MD Part 2: par. 12)

Agree with the PSP on the procedures for the use of force, the authorised security equipment and the required training during contract negotiations

Develop a contract with the PSP that includes clear clauses and performance requirements on equipment and training standards, and discuss these with the PSP to make sure the security provider understands its performance objectives (See Challenge 3.2.c.). These clauses should require the PSP to:

- Provide all personnel with appropriate training with regard to the rules on the use of force, based on the standards contained in the VPs, the ICoC, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and "national laws or regulations in effect in the area duties will be performed". (ICoC: 13)
- Provide all necessary security equipment to their personnel (e.g. protective equipment, non-lethal arms and, if required, lethal arms), including safe carry and concealment systems if they are to carry firearms.
- Ensure that private security "personnel who are to carry weapons will be granted authorisation to do so only on completion or verification of appropriate training with regard to the type and model of weapon they will carry. Personnel will not operate with a weapon until they have successfully completed weapon-specific training" and they "must receive regular, verifiable and recurrent training specific to the weapons they carry and rules for the use of force". (ICoC: par. 58)
- Control the day to day use and deployment of weapons, firearms and ammunition.
- Guarantee that under no circumstances will its personnel carry and use weapons or ammunition which are illegal under any applicable law, nor will they alter weapons and ammunition in any way that contravenes applicable national or international law. (ICoC: par. 57).
- Ensure that off-duty public security officers working for the PSP do not bring their weapons, firearms or ammunition to the company premises.
- Report any incident involving its personnel that involves the use of any weapon and conduct an internal inquiry in order to determine the following:

  a) "Time and location of the incident;

  b) Identity and nationality of any persons involved including their addresses and other contact details;

  c) Injuries/damage sustained;

  d) Circumstances leading up to the incident; and

  e) Any measures taken by the (PSP) in response to it.

Upon completion of the inquiry, the (PSP) will produce in writing an incident report including the above information, copies of which will be provided to the client and, to the extent required by law, to the Competent Authorities". (ICoC: par. 63)

If the PSP is unable to provide the necessary equipment to its personnel, consider whether the company should provide any of this equipment to the PSP (See Challenge 3.8.b.)

If the PSP fails to comply with any or several of the clauses in the contract, consider the following options:

- Negotiate a timeline for compliance.
- Withhold payments as established in the contract until the issue is satisfactorily addressed.
- Condition ongoing relationship on performance and provide further, detailed guidance and training, together with regular performance review.
- Terminate the relationship with the PSP.

In cases of breaches of national and/or international law by PSPs, report the incident to the relevant authorities and stakeholders and take the necessary steps to address remedy and prevent future similar incidents (See Challenge 3.10.a.)

GO BACK TO LIST OF CHALLENGES

B. Companies may find themselves with little other option than to provide the PSP with the necessary equipment to effectively perform their functions.

GOOD PRACTICES*

Take all appropriate measures to ensure the PSP provides the necessary equipment to its personnel (See Challenge 3.8.a.)

If the company decides to provide equipment to the PSP, develop relevant policies and procedures and add these to the contract

- Develop a company policy for the provision of equipment to PSPs.
  - Specify the types of equipment the company may provide and its intended use.
  - Prohibit the provision of weapons, firearms or ammunition to PSPs.
  - Prohibit the transfer, loan or sale of equipment provided by the company to a third party. (BP: 13)
  - Establish clear procedures for the handing over of any equipment, ensuring it is all kept on record.
  - Require written commitment by the PSP to respect human rights and international humanitarian law.
  - Require the storage of equipment in the company's facilities.
- Establish monitoring procedures to supervise the use of equipment.
- Refer to the incident reporting mechanism included in the contract (or develop one if none is in place).
- Add the company's policy for the provision of equipment to PSPs and the related monitoring and incident reporting procedures to the contract with the PSP. Termination conditions should be included in the event that security equipment is misused. (BP: 13)

Agree on a training programme with the PSP for guards assigned to the company's operations (See Challenge 3.6.a.) with a special focus on the rules for the use of force

- Refer participants to the UN Code of Conduct for Law Enforcement Officials, the UN Basic Principles on the Use of Force and Firearms, the International Code of Conduct for Private Security Service Providers and "national laws or regulations in effect in the area duties will be performed." (ICoC: par. 59).
- Address the following topics:
  - Reasonable steps to avoid the use of force;
  - Use of force continuum including force de-escalation techniques to resolve threats with minimum necessary force;
  - Compliance with all national and international obligations;
  - Proportionality to the threat and appropriateness to the situation; and

- “Self-defence or defence of others against the imminent threat of death or serious injury, or to prevent the perpetration of a particularly serious crime involving grave threat to life”. (PSC.1: 24)

Supervise the performance of PSPs and the use of equipment provided by the company through regular monitoring

- Monitor PSPs through a variety of means: radio networks, CCTV visual monitoring (including installing cameras in security response vehicles), unannounced physical site inspections and regular personal equipment inspections.
- Support the oversight of PSPs by local authorities and community groups. (OECD: 215)
  - Develop a network with relevant stakeholders, ensuring the different groups in local communities are adequately represented (in particular the most vulnerable groups), and provide them with some guidance on what to do whenever there is a risk of a human rights abuse.
- Check all complaints against the PSP reported through grievance or any other mechanisms and record all allegations of human rights abuses by private security. (See Challenge 3.10.a.)

Engage with relevant stakeholders to develop performance monitoring mechanisms for PSPs

- Identify and engage with stakeholders with close knowledge of PSP activities and impacts (e.g. home governments, other companies, civil society organisations).
- Explore how existing mechanisms (e.g. ICOCA, local mechanisms) can support monitoring.
- Exchange information about unlawful activity and abuses committed by PSPs. (VPs: 7)

Conduct investigation into credible allegations and any incident involving the inappropriate use of equipment or force and, where appropriate, report abuses to the relevant authorities (See Challenge 3.10.a.)

- Establish whistleblower protection mechanisms that guarantee protection of sources.
- Integrate any lessons learned into future training provided to PSPs.

GO BACK TO LIST OF CHALLENGES

3.9. Oversight and accountability

A. PSPs may not be subject to effective oversight by national authorities and/or their clients. In these situations, PSPs' accountability for their actions may be inadequate.

GOOD PRACTICES*

As part of the risk assessment, analyse the national framework for the provision of private security services, focusing on the enforcement of laws and regulations

Questions to address in a private security sector assessment (OECD: 213)

Accountability and oversight

- What laws and regulations are in place to govern the private security sector and the use of firearms by civilian corporate entities?
- How effective is their enforcement and which agencies are responsible for that enforcement?
- Which government agencies or ministries are involved in the control and regulation of PSCs (for example trade, economy, industry, the interior)?
- What procedures and criteria exist for licensing and registering companies?
- What systems and standards exist for vetting and licensing private security personnel?
- Have private security companies or their personnel been implicated in crime, including gender-based violence or trafficking, and have incidents led to trials or prosecutions?
- What voluntary codes of conduct, industry bodies and standards exist?
- Do procurers of private security services have procurement criteria or report information on the companies or individuals that they employ?
- Are there regulatory restrictions on the use of force and firearms by private military companies (PMCs) and/or PSCs?

Develop a procurement policy in alignment with the company's human rights and anti-bribery and anti-corruption policies

- Stipulate the company's human rights expectations of contractors and suppliers and incorporate these expectations in the code of conduct for PSPs and the contract.
- Make the policy publicly available and communicate it internally and externally to all personnel, business partners, contractors and other relevant parties.
- Encourage national professionalism by employing only reputable PSPs. (OECD: 214) Where feasible, consider hiring PSPs who have achieved PSC.1 or that are members of the ICoC Association (ICoCA), which will require certification, monitoring, reporting and performance assessments, and a complaints procedure (ICoCA: par. 11,12,13).

When selecting a PSP, review carefully the applicants' standards and procedures such as (See Challenge 3.2.a.):

- PSP policy and practice: financial and contractual policy, human rights and security policy, health and safety policy, equal opportunities policy, disclosure of information and confidentiality.
- PSP operational procedures, in particular with regard to the command and control structure and communication procedures.
- PSP associations: relationship with public security forces, relationship with senior officials, political parties and organisations.
- Governance and oversight: code of conduct/ethics, rulebooks, responsibilities regarding policy and enforcement, ethics committee, employee tribunals, membership of trade association (SCG: 4) and, particularly, monitoring and internal accountability mechanisms, such as:

  a) "Internal investigation and disciplinary arrangements in case of allegations of wrong-doing by its personnel;

  b) Mechanisms enabling persons affected by the conduct of the personnel of the (PSP) to lodge a complaint, including both third party complaint mechanisms and whistle-blower protection arrangements"; (MD Part 2: par. 12)

  c) Regular performance reporting, specific incident reporting, and reporting on demand to the company and if appropriate to the relevant authorities; (MD Part 2: par. 12)

  d) Requirement for PSP personnel and its subcontracted personnel to report any misconduct to the PSP's management or a competent authority. (MD Part 2: par. 12)

- Selection and recruitment: recruitment and selection methodology, criminal screening, human rights abuses and international humanitarian law violations screening, drug screening, discharge from police/security services, psychological screening.
- Human resource management: philosophy and practice, training policy, number of employees, staff turnover, absenteeism.
- Force and firearms policy: weapons in use, storage and maintenance procedures, inspection procedures, oversight and procedures for reporting use.
- References and certification: sector related, contract related, past experience of tendered contract, non-statutory certification.

Include clear clauses and performance requirements in the contract with the PSP that ensure respect by the PSP for relevant national law, international humanitarian law, human rights law (MD Part 2: 15) **and company policies.** Discuss these with the PSP to make sure the security provider understands its performance objectives (See Challenge 3.2.c.)

- ▶ Require the PSP to establish its own internal grievance mechanism, in alignment with the company's own mechanism and consistent with company codes and policies, and report back to the company all reported grievances. The PSP should cooperate with official investigations into allegations of contractual violations and breaches of international humanitarian and human rights laws. (See Challenge 3.10.a.)
- ▶ Consider including contractual sanctions commensurate to the conduct, including :
  - Financial penalties or withholding of progress payments pending compliance with contract requirements;

- "Removal of individual wrongdoers from the performance of the contract"; (MD Part 2: par. 20)
- Scaling back of contract tasks;
- "Removal from consideration for future contracts, possibly for a set time period"; (MD Part 2: par. 20) and
- Termination of the contract.

Reduce the range of scenarios where PSP personnel operate individually

Meet regularly with the contracted PSP to address the following issues:

- Implementation of required functions consistent with company policies and contractual requirements regarding VPs, code of conduct for PSPs and international and national humanitarian and human rights requirements.
- Vetting of personnel, to the best of the PSP's ability, including ongoing efforts to ensure knowledge of capacity and risks associated with hiring personnel from a particular location/service background/community/ethnic background. Where feasible, personnel records should be kept on file by the contractor and made available for inspection. (MIGA: IV-5)
- Training of all employees on all standards specified in the contract, including on the use of equipment, on an ongoing and as needed basis as indicated by due diligence and risk assessment activities.
- Provision of defensive equipment, personal protective equipment, personal security equipment, appropriate weapons and firearms, and ammunition, by the PSP to its guards as required by the contract.
- Investigation of all allegations of human rights abuses, as well as of "all occasions when force or apprehension of a suspect has occurred to ensure this was done in accordance with company and contractor standards". All such incidents should be reported to the company security manager and, where appropriate, to the local authorities. (MIGA: IV-5)
- Review of community and other stakeholders' complaints to identify prevention or mitigation measures.
- "Confidentiality of information gathered in the course of duties". (MIGA: IV-5)
- Any other findings from ongoing community engagement, due diligence and risk assessment activities.

Establish a monitoring mechanism to improve company oversight of the PSP

- Establish a focal point at the company who will be responsible for oversight of the PSP.
- Require the PSP to establish a focal point to oversee the conduct of its personnel and to meet with the company's focal point on a regular basis (e.g. daily or weekly).
- Monitor PSPs through a variety of means: radio networks, CCTV visual monitoring (including installing cameras in vehicles), daily inspections and unannounced physical site inspections.
- Use checklists and performance indicators shared with the contractor and assess these on a regular basis. (MIGA: IV-1) Tie these indicators "to specific outcomes, such as financial rewards or penalties for the contractor, or the cessation of the contract." (SCG: 8) Potential performance indicators include (based on SCG: 8):
    - No-show rate;

- Missed guard tours;
- Missed supervisory visits;
- Missed training, incomplete training or failure to pass training tests;
- Internal and third party complaints;
- Misuse of force/firearms, including accidental discharges of weapons;
- Inappropriate interactions with community, public security, or other stakeholders;
- Violations of agreed procedure;
- Violations of international humanitarian law and human rights abuses;
- Violations of international or national laws governing the private security industry;
- Violations of company or industry code of conduct or ethics;
- Failure to cooperate with client investigation, request for information or incident reporting requirements; and
- Violations of the terms of the contract.

▶ Deploy an independent third party to monitor the performance of the PSP. "Monitoring by credible external professionals can provide an additional layer of assurance for stakeholders. It can generate practical advice and guidance to improve performance. It can increase transparency regarding the security arrangements for the business." (BP: 18)

▶ Identify gaps in service delivery and examine options to fill gaps, including additional training and other support needs. (IGTs: 55)

Establish an operational-level grievance mechanism that allows individuals to report unethical and unlawful conduct anonymously (GPs: 31) (See Challenge 3.10.a.)

Conduct investigation into credible allegations and, where appropriate, report abuses to the relevant authorities (See Challenge 3.10.a.)

Engage with the host government to improve national oversight of the private security sector

▶ In countries where domestic laws and regulations conflict with internationally recognised human rights, seek ways to honour internationally recognised human rights to the fullest extent which does not place the company in violation of domestic law[23].

▶ "Advocate for reform of domestic legislation that conflicts with international standards"[24].

▶ Address risks of human rights abuse and of violations of international humanitarian law, as well as issues of complicity, in agreements with host governments and associates[25]. (See Challenge 1.3.a.)

▶ "Give attention to, and report on, implementation of soft law guidelines"[26].

Work with other stakeholders to improve oversight of PSPs

- Support security sector reform programmes to enhance governance and oversight while respecting the core principle of local ownership.
  - Promote coordination within host government structures, as there is often no single regulatory agency or oversight mechanism of the private security industry.
  - Support efforts to strengthen the capacity of national human rights institutions, ombudsman institutions, anti-corruption commissions and independent security sector oversight bodies, to effectively oversee the private security industry.
- Work with other stakeholders (e.g. home governments, other contracting companies, relevant trade associations or other industry bodies, PSPs, civil society organisations) to develop frameworks for monitoring the performance of PSPs and to promote the adoption of effective remedy mechanisms.
  - Support multi-stakeholder initiatives such as the VPs or the ICoC Association and harness their potential to lobby host governments on relevant human rights matters[27].
  - Exchange experiences and lessons learned with other companies operating in the area and consider aligning companies' codes of conduct for PSPs.
  - Encourage PSPs to become advocates for human rights issues.
- Encourage oversight of PSPs by local stakeholders.
  - Clarify roles and responsibilities of the PSP and share the company's own code of conduct for PSPs.
  - Develop a network with relevant stakeholders, ensuring the different groups in local communities are adequately represented (in particular the most vulnerable groups), and provide guidance on what to do whenever there is a risk of a human rights abuse.
  - Suggest steps to take in case of alleged human rights abuses, providing information on the company's grievance mechanism and guidance on how to use it, and ensuring protection of whistleblowers.

GO BACK TO LIST OF CHALLENGES

3.10. Human rights abuses

A. Despite having clear company policies and processes to ensure respect of human rights, human rights abuses by private security providers may still occur.

GOOD PRACTICES*

Review the risk and impact assessment to ensure all risks and impacts have been properly analysed and all feasible preventive measures are in place (See Challenge 3.1.a.)

- ▶ As part of the exercise, assess local capacity to investigate abuses and provide for proper resolution. Risk assessments should "consider the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses and for those responsible for violations of international humanitarian law in a manner that respects the rights of the accused." (VPs: 3)

When contracting with a new PSP, require in the Request for Proposals that bidding PSPs are officially registered as per national regulations and provide evidence of business license (See Challenge 3.2.a.)

Ensure the contract with the PSP includes the following requirements and conditions (See Challenge 3.2.c.):

- Refresher trainings on use of force, human rights and international humanitarian law, where relevant, including practical exercises on how to manage security incidents. (See Challenge 3.6.a.)
- A monitoring system. (See Challenge 3.9.a.)
- An incident reporting mechanism. This includes that the PSP reports any incident where personnel "participate in, encourage, or seek to benefit from any national or international crimes including but not limited to war crimes, crimes against humanity, genocide, torture, enforced disappearance, forced or compulsory labour, hostage-taking, sexual or gender-based violence, human trafficking, the trafficking of weapons or drugs, child labour or extrajudicial, summary or arbitrary executions", (ICoC: par. 22) to the client. Contractual obligations towards the client may not be invoked as justifications for such acts.
- A process for investigating reported incidents.
- The right to cancel the contract in case of proven human rights abuses or of humanitarian law violations or to remove personnel involved in credible allegations of human rights abuses or humanitarian law violations.

Establish an early alert system and engage in pro-active monitoring

- Develop a company policy and internal process to deal with both potential and actual human rights abuses and ensure all company staff is familiar with these.
  - Provide human rights training to employees, including on how to identify signs of potential human rights abuses.
  - Designate focal points within the company (e.g. a security manager, a community relations officer) that will receive oral or written reports of potential and actual human rights abuses. Ensure their contact details are distributed to all relevant stakeholders.
  - Require systematic reporting of all alleged and confirmed human rights abuses.
- Monitor causes and triggers of conflict on a regular basis, especially in volatile environments and establish a concrete action plan to prevent and mitigate risks of escalation.
- Monitor PSPs through a variety of means: radio networks, CCTV visual monitoring (including installing cameras in vehicles) and unannounced physical site inspections.
- Support the oversight of the private security sector by local authorities and community groups. (OECD: 215)
  - Develop a network with relevant stakeholders, ensuring the different groups in local communities are adequately represented (in particular the most vulnerable groups), and provide them with some guidance and capacity support – directly or indirectly – on what to do whenever there is a risk of a human rights abuse.
- Encourage dialogue and "local cooperative agreements between security providers and communities that outline the roles and practices of the different actors in maintaining local security, law and order". (OECD: 215)

Establish an operational-level grievance mechanism that allows individuals to report an abuse anonymously

- Establish at least one of the following mechanisms (MIGA: III-16):
  - A report abuse hotline, either via phone or SMS.
  - A secure e-mail address that is solely accessible by a trusted monitor.
  - Tip boxes, with clear instructions posted above them, located in areas where individuals have "unobserved access to the boxes and can drop in anonymous notes, tips or other information".
- Consult with local communities during the design of the grievance mechanism to ensure it is culturally appropriate and that they are able to access it effectively.
- Ensure procedures are "fair, accessible and offer effective remedies, including recommendations for the prevention of recurrence." (ICoC: par. 67)
- Ensure the grievance mechanism "does not have to wait until an issue amounts to an alleged human rights abuse or a breach of other standards before it can address it." (UNIG: 68)
- Make the grievance mechanism "known to, and trusted by, those stakeholders for whom it is intended". (UNIG: 65) This may be done by organising meetings with local communities, or by publishing details of the grievance mechanism in prominent places as well as on a publically accessible website.
- Ensure that those "who report wrongdoings in good faith are provided protection against any retaliation for making such reports, such as shielding them from unwarranted or otherwise inappropriate disciplinary measures, and that matters raised are examined and acted upon without undue delay." (ICoC: par. 67)

- Keep records of all known alleged human rights abuses by private security, whether or not a grievance is raised.

Conduct investigation into credible allegations and, where appropriate, report abuses to the relevant authorities

- "Investigate allegations promptly, impartially and with due consideration to confidentiality". (ICoC: par. 67)
- Ensure that investigation teams are gender-sensitive and, if possible, are familiar with community and/or ethnic or tribal dynamics, and language.
- "Collect necessary information from internal and external sources to determine if allegation is credible and warrants an official investigation". (IGTs: 56)
    - Request an incident report from the PSP as established in the contract. Reports by the PSP should cover "any incident involving its personnel that involves the use of any weapon, which includes the firing of weapons under any circumstance (except authorised training), any escalation of force, damage to equipment or injury to persons, attacks, criminal acts, traffic accidents, (and) incidents involving other security forces" (ICoC: par. 63); and they should provide information on:
        - "Time and location of the incident;
        - Identity and nationality of any persons involved including their addresses and other contact details;
        - Injuries/damage sustained and how established;
        - Circumstances leading up and immediately subsequent to the incident; and
        - Any measures taken by the (PSP) in response to it", including any interaction with victims or witnesses. (ICoC: par. 63)
    - Quickly establish the basic facts (BP: 15):
        - What happened,
        - Who was involved,
        - Whether the business caused the event either directly or through its contractors and security providers, and
        - What is the actual or potential severity of the event.
- Keep records of all findings from the investigation.
- If an incident appears credible and serious, notify senior management and the relevant regional security advisor. (BP: 15)
- Based on the available information, "decide if (the) investigation should be conducted internally or by a responsible third party". (IGTs: 56) "Where an incident triggers significant concern from external stakeholders, consider commissioning an external investigation." (BP: 15)
- Where appropriate, report the abuse to "one or more of the following: the competent authorities in the country where the acts took place, the country of nationality of the victim, or the country of nationality of the perpetrator". (ICoC: par. 37)
- If the host government is to lead the investigation formally express the company's willingness to assist and cooperate. (BP: 15) Do "not participate in or tolerate from their personnel, the impeding of witnesses, testimony or investigations". (ICoC: 67)

"Pursue appropriate disciplinary or remedial actions" (IGTs: 56)

- "Prevent further escalation of the disruptive event". (PSC.1: 25)
- Where force was used, ensure that medical attention is provided to injured parties. (VPs: 6)
- "Determine proper course of disciplinary or remedial action based on outcomes of investigation". (IGTs: 56)
- Provide for or cooperate in the remediation of adverse impacts the company has caused or contributed to through legitimate processes. (GPs: 24)
- Take measures to "terminate business relationships with providers who have been found to have violated international humanitarian law or to have committed human rights abuses". (IGTs: 56)
- If the investigation is led by law enforcement authorities, "actively monitor status of investigations and press for proper resolution". (VP: 6)
- Cooperate as much as possible with investigations conducted by other legitimate actors (e.g. by ombudsman institutions, national human rights institutions, regional human rights commissions or multi-stakeholder initiatives).

Track effectiveness of response on the basis of "appropriate qualitative and quantitative indicators" and drawing on "feedback from both internal and external sources, including affected stakeholders" (GPs: 22)

Conduct lessons learned exercise

- Wherever a significant human rights impact has occurred, initiate a process to identify how and why it occurred. This is important to prevent or mitigate its continuation or recurrence. "If the evidence is sufficiently clear, linking this kind of analysis to staff incentives and disincentives, whether financial compensation, promotion or other rewards, can play an important role in helping embed respect for human rights into the practice of the (company)." (UNIG: 54)
- "Make appropriate changes to contracts, deployment, conduct or (work) with new private security providers, as appropriate, in order to prevent a recurrence." (IGTs: 56)
- "Provide supplementary training to private security providers, where applicable." (IGTs: 56)
- If appropriate, consider using the incident for practical exercises in future trainings.
- Consider whether and how to engage external stakeholders, (e.g. affected communities, civil society organisations) in the after-incident assessment and remediation activities.

Communicate how the company addresses its human rights impacts to all relevant stakeholders, particularly in the event of an incident that generates significant external stakeholder concern and publicity

- Ensure communications are accessible to its intended audiences (e.g. use billboards, posters, website). (GPs: 23)
- "Provide information that is sufficient to evaluate the adequacy of (the company's) response to the particular human rights impact involved". (GPs: 23)
- Consider sharing the 'lessons learned' with other companies working in the area.

GO BACK TO LIST OF CHALLENGES

* These good practices are not meant to be prescriptive. It is up to the user to evaluate whether they could be feasible, useful and appropriate to the local context in a specific situation on the ground.

1. In this chapter the term "Companies" refers to corporate clients who engage the services of a private security provider. Private security providers are always referred to as "PSPs" or, in some quotes, as "PSCs" (private security companies).
2. http://www.securityhumanrightshub.org/content/risk-impact-assessment
3. See "Business and International Humanitarian Law: an introduction to the rights and obligations of business enterprises under international humanitarian law", ICRC, 2006.
4. By Oliver Cushing, Head of Business Development, Tsamota Natural Resources, and Mark Camilleri, General Counsel, Tsamota Ltd.
5. International Stability Operations Association (ISOA) Code of Conduct.
6. Ibid.
7. Ibid.
8. A full list of member companies can be found at: www.icoca.ch
9. South Africa's Private Security Industry Regulatory Authority
10. ASIS International's Management System for Quality of Private Security Company Operations includes PSC 1- 4 standards. PSC 1 will soon be an ISO standard.
11. UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, par. 5.
12. Socio-Economic Assessment Toolbox (SEAT), version 3 (AngloAmerican, 2012), p. 134.
13. Good Practice Guide: Indigenous Peoples and Mining (ICMM, 2010), p. 47.
14. Ibid.
15. Ibid.
16. Ibid., p. 51.
17. Socio-Economic Assessment Toolbox (SEAT), version 3 (AngloAmerican, 2012), p. 133.
18. Good Practice Guide: Indigenous Peoples and Mining (ICMM, 2010), p. 47.
19. Ibid., p.18.
20. Ibid., p.30.
21. Ibid., p.32.
22. Socio-Economic Assessment Toolbox (SEAT), version 3 (AngloAmerican, 2012), p. 138.
23. OECD Guidelines for Multinational Enterprises, 2011: p.32.
24. From Red to Green Flags: The corporate responsibility to respect human rights in high-risk countries (IHRB, 2011), p.4.
25. Ibid.
26. Ibid.
27. Ibid.

IV. Working with Communities

Developed in collaboration with

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practical learning for
effective international action

IV. Working with Communities

Introduction

Despite progress made over the last decade in the field of business and human rights, including the development of new international standards and related guidance, developing positive relationships with local communities living in the areas of corporate operations continues to be challenging for many companies. Beyond the corporate responsibility to respect human rights, good relations with local communities makes sound business sense because it can prevent and mitigate risks, reduce costs[1] and even generate benefits for a company. Effective corporate-community relations allow the company to:

a) Obtain and maintain a 'social license to operate'[2];

b) Reduce the risk of local opposition, tensions and conflict that can cause delays, material damage, lost productivity, loss of property and even the shutdown of operations;

c) Reduce security and human rights risks and, consequently, the costs of insurance, legal support and compensation;

d) Attract and retain local expertise, which can provide an understanding of the local context that the company might lack; and

e) Strengthen the company's reputation, establish a competitive advantage, maintain a favorable corporate risk profile, increase investor confidence, and reduce the cost of project capital.

While effective stakeholder engagement requires considerable investment of time and resources, developing good relationships with local communities is essential to the long-term sustainability and success of a project. However, understanding *why* companies, at times, face opposition from local communities, crime and violence, and *how* to change the situation, remains elusive.

As reflected in this chapter, community-related security risks are frequently the result of unaddressed concerns, negative impacts, or misunderstandings about non-security related issues such as employment, land, environment, compensation, resettlement, and negative legacies from previous company projects, to name a few. When concerns and grievances go unaddressed or unmitigated, these issues can escalate into tensions and may eventually result in situations of violence.

This chapter therefore adopts both a prevention and a conflict management approach to addressing some of the most common security and human rights challenges related to corporate-community relations. While many good practices will be specific to a situation or context, some key recommendations recur because they are essential to good stakeholder engagement. These include:

a) Understanding the context and assessing actual and potential risks and impacts thoroughly;

b) Engaging with communities from the moment the first company representative, contractor or security guard sets foot on the ground. Communities should be considered as hosts and the company as a temporary visitor;

c) Mapping, analysing and engaging with all relevant stakeholders, ensuring vulnerable groups are included and feel comfortable to participate;

d) Ongoing and transparent sharing of information, including timely response to enquiries;

e) Showing respect for local culture and treating communities as partners rather than as a threat;

f) Listening carefully to concerns and grievances, and involving communities in the development of solutions to address them; and

g) Investing time in developing strong relationships with local communities and allowing ample time for community consultations and decision-making.

Given the nature of the issues addressed in this chapter, implementation will often fall under the responsibility of company security and community relations departments. However, as highlighted in Section 4.3, stakeholder relations should be a collective responsibility with firm commitment from company leadership and management. All company staff should apply the company's human rights policies and stakeholder engagement strategy in their activities. This involves aligning all corporate policies, processes, objectives, production targets, performance standards, and staff incentives with both business viability and respect for human rights. Companies should also involve their local staff as much as possible in the development and implementation of their stakeholder engagement strategy and other corporate policies, processes and practices, to ensure they are appropriate to the local context and culture.

Corporate-community relations do not happen in a vacuum. This chapter therefore addresses operational issues that must be analysed within the context of a complex operating environment. Community concerns and grievances targeted at the company will often be the result of weak governance, poor public services, and lack of genuine engagement on the part of the host government. Companies, therefore, must assess how all aspects of their operations, beyond just security measures, interact with the existing context. Critical analysis must be applied to understand whether the company's actions are reinforcing inequalities, increasing competition for resources, and reducing the extent to which community members have a voice in decision-making, or whether, conversely, company actions are reinforcing good governance, respecting human rights, and safeguarding human security. In this respect, while companies cannot and should not replace the government, efforts can be made to support a stronger government role. Furthermore, where national governance is weak, compliance with national legal requirements may not be enough to fulfill the corporate responsibility to respect human rights. In some situations, domestic laws may even conflict with international human rights law and standards. Companies will therefore need to conduct enhanced human rights due diligence and go beyond national legal requirements to ensure respect for human rights in their operations[3].

GO BACK TO LIST OF CHALLENGES

4.1. Stakeholder engagement strategy

A. The company may be faced with community-related security issues caused by unidentified root causes, unaddressed impacts of the operation or unfulfilled commitments. In these situations, tensions with communities may persist despite efforts by the company to address them.

GOOD PRACTICES*

Develop a map of all company facilities and identify the areas where company operations are likely to have an impact (i.e. "impact areas")

- Consider not only the primary project site(s), but also all related facilities and transport routes. (IFC: 14)
- Conduct a stakeholder mapping and analysis exercise in the impact areas. (See Challenge 4.1.b.)

Before commencing new projects, conduct a baseline assessment, or any other type of assessment allowing to understand the existing conditions, in the impact areas

- Identify pre-existing issues, such as historical inequality, legacy issues from previous operations, the existing human rights situation, social tension (e.g. previous protests over land or resources), existing infrastructure and the extent of public service provision.
- When entering into a joint venture with, or taking over operations from, another company, identify and assess the prior interactions between the industry, in particular the other company, and local communities.
- Start stakeholder engagement as soon as company staff or contractors set foot on the ground. (PDAC: 8) (See Challenge 4.1.b.)
- Consult with local authorities, embassies, other companies, international organisations, NGOs, local staff and local communities (including traditional leaders, women, youth, ethnic minorities or other under-represented groups) to gain insights into the local political context and power structures, existing social order, social relations and other relevant issues. (OECD 21)
- Use a variety of sources to conduct the assessment such as: independent third-party country risk assessments and conflict analysis (if they exist), "existing stakeholder databases, consultation and grievance logs, environmental and social impact assessment studies and consultation processes completed for an earlier phase of the project, annual environmental monitoring reports, and community investment plans of the company, local government, or other businesses in the same locality". (IFC: 113)

- Collect baseline data that is disaggregated by sex, age, and other categories such as ethnicity, religion and socio-economic status.
- Consider hiring experienced consultants that are familiar with international social assessment standards and/or anthropologists with knowledge of local indigenous groups to help with the study.[4]

Conduct a comprehensive risk assessment and update it regularly

- Assess not only risks to the business, but also risks to local communities resulting from the company's presence and operations. Analyse at least the following potential sources of heightened risk (Shift: 5):
  - The broader operational context, including factors such as conflict, potential for violence, corruption and weak governance, (Shift: 5) as well as the State's law enforcement capacity and the "judiciary's capacity to hold accountable those responsible for human rights abuses and (...) violations of international humanitarian law". (VPs: 3)
  - Business relationships, including the ability of suppliers, joint venture partners, customers and others to manage human rights risks, based on their experience, track record and management capacities. (Shift: 5)
  - Business activities, including activities commonly associated with human rights impacts, such as land acquisition and use, grazing, resettlement and extensive water usage. (Shift: 5)
  - The presence of vulnerable groups. (Shift: 6)
- In situations of armed conflict, conduct a conflict analysis as part of the risk assessment. (See Challenge 2.1.b.)
  - Analyse the implications of business operations on the dynamics of conflict, since this is key to identifying potentially significant risks of criminal and civil liability for the company, for complicity in violations of international humanitarian law[5].
  - Conduct an analysis of all parties to the conflict, to understand their positions and interests, their human rights record and their relationship to other actors and local communities.
  - Take into account that not all cultures are open to talking about conflict issues with outsiders. In a politically sensitive area it can be very risky to talk openly about conflict. It can be very useful to draw on the help of a conflict expert or someone practiced in community consultation. (PDAC-CDA: 11)
- Assess and evaluate the likelihood and potential consequences of risk scenarios that pose the greatest harm to the operation and the local community. (PDAC-CDA: 5)
- Note that risks and grievances are likely to vary depending on the stage of the project cycle and the magnitude of the activities of the project.[6]

Conduct an impact assessment and update it regularly

- Assess the different types of environmental and social impacts, considering all internationally recognised human rights norms, standards, and expert bodies' recommendations.
- Assess cumulative impacts on stakeholders of previous operations that the company may be contributing to, understanding that the dynamics between the company and the community is not based on the impact of its operations alone, but should also take into account the accumulation of impacts from other companies in the context.

- Seek to understand the concerns of stakeholders both within and outside the delimitation of the operations by consulting them directly. In situations where consultation is not possible, consider other alternatives, such as engaging with credible and independent experts, such as civil society groups and human rights defenders. (GPs: 20)
- Ensure all relevant company departments (security, community relations, operations, human resources, contracts, etc.) assist in identifying the scope of their activities and in understanding how they interact with and impact the community. (See Challenge 4.3.b.)

Impact Assessments should consider the following aspects:

Inclusiveness

- Collect information about the potential impact of a project on communities in consultation with women, men, indigenous peoples, migrants, members of different socioeconomic, caste, ethnic and religious groups and community organisations. (Oxfam: 9)
- Consult with specialised organisations working with vulnerable groups.
- Adopt a gendered perspective, as women and men may be affected differently by company operations.
- Obtain information about child rights impacts from adults who have close contact with children or expertise in children's rights[7].
- Arrange separate meetings for the women of the community, conducted by female members of the assessment team.

Methodology

- Use participatory research methods that actively engage community members in the assessment (e.g. focus groups, public perception studies, multi-stakeholder meetings).
- Explain the purpose of the assessment and how the information gathered will be used.
- Ensure that participants can express their views in their local language. Interpreters should be independent of the company (and, if possible, of local communities) to avoid bias.
- Publically report results of the impact assessment, if this has been mutually agreed upon with the community. (EO100: 28)

Content

- Consider all direct and indirect impacts of the company's operations on local communities, including: in-migration, displacement, loss of land, loss of livelihood, loss of biodiversity, all forms of pollution, prices of goods, services and accommodation, rise in violence and crime, effects on community health, damage to religious, spiritual or cultural sites of significance, and increased socio-political tensions, strife or conflict.
- Record and follow up on all concerns voiced by community members.

Legitimacy

- Ensure that the assessment team is familiar with the local setting and make sure that your team generates trust and confidence among affected communities.
- Work in partnership with reputable third parties that know the history and relations of local communities. "Relevant partners can be local and international civil society organizations, development agencies, or think tanks and universities." (UNGC: 11)

Extent and Scope

- Consider impacts throughout the various stages in the life cycle of the project.
- Update the impact assessment regularly and before any new stage of the project.

Develop a risk and impact mitigation strategy that is adapted to the local context

(See Challenge 4.4.a.)

Develop effective policies and mechanisms for identifying and settling disagreements and grievances (See Challenge 4.1.e.)

Follow up on commitments made by the company and update stakeholders regularly on the status of implementation

- Make it clear to the community who from the company is able to make commitments to the community.
- Keep a registry of commitments made by the company, update this regularly and share it with concerned stakeholders in a manner that is accessible and understandable to all. Ensure that the registry includes:
  - Record of final agreements reached with the communities, ensuring these are verified and validated with those present during the negotiations; (OECD 2015: 50)
  - Timelines for implementation, the responsible team or person, and some detail on the agreed methods of implementation;
  - Current status of implementation;
  - Record of ongoing negotiations and issues for which agreement has not been reached yet, as well as implications for the project planning. (OECD 2015: 61)
- Provide an opportunity for stakeholders to express their satisfaction or dissatisfaction in the implementation of commitments. (OECD 2015: 62)
- When implementation differs from what was previously agreed, provide an explanation to stakeholders and give them a chance to react before final decisions are made. (OECD 2015: 62)

Establish a monitoring programme to assess the company's performance

- Track changes in stakeholder relationships and monitor stakeholder perceptions regarding the company as well as the project. (IA-ICMM: 10). Use an annual or semi-annual "perception" survey, independently administered, which repeats the same set of questions to monitor changes over time. By gauging changes in satisfaction levels and identifying the underlying causes, the survey information can be used by staff and managers to take actions, where necessary, to improve communications and get relationships back on track. (IFC: 108)

Public perception surveys qualitatively assess how people understand and feel about their situations or environments. They may be used to ascertain people's impressions of a company's performance or actions. Perception surveys are particularly useful to monitor and evaluate the implementation of good practices by a company, or to identify needs, problems and trends[8].

- Develop indicators that are measurable and gender-sensitive, including both positive and negative, and quantitative and qualitative indicators. Empirical data should be collected to monitor key impacts or control measures, a reduction or lack of complaints should not be used as an indicator of the actual situation (e.g. a lack of complaints may mean that the grievance mechanism is not being used or trusted).
- “Consider establishing a participatory or third-party monitoring programme.” “Involving project-affected stakeholders or outside third parties in monitoring (the) company’s performance can lend a great deal of credibility and accountability to a monitoring programme and the overall project. Affected parties can participate in scientific sampling, observations, group discussions, and assessments” of environmental and social performance. (IFC: 147)
- Where perceptions have become more negative, open a dialogue with stakeholders as to why, and how this can be addressed, involving third parties in the discussion if necessary.

GO BACK TO LIST OF CHALLENGES

B. Communities often comprise multiple sub-groups with different power structures, interests, needs and vulnerabilities. In these situations, inclusive community engagement can be particularly challenging and companies may face the risk of favouring or inadvertently excluding some sub-groups, thus creating or fuelling existing tensions.

GOOD PRACTICES*

Before commencing new projects, conduct a baseline assessment and an impact assessment (See Challenge 4.1.a.)

Conduct a stakeholder mapping exercise in the areas where the project will have an impact

- Determine the stakeholders both directly and indirectly affected by the project, as well as those with the power to affect operations.
  - Ensure that all vulnerable groups (e.g. women, youth, elders, migrants, indigenous peoples), and their characteristics, have been properly identified and understood.
  - Remember that certain stakeholder groups, such as indigenous peoples, might be pre-defined through regulatory requirements. (See Challenge 4.1.d.)
  - Take into account the fact that "communities lying just outside of the designated project impact area can 'perceive' impacts or feel they have been arbitrarily excluded from project benefits. For these reasons, defining stakeholders too narrowly should also be avoided." (IFC: 14)

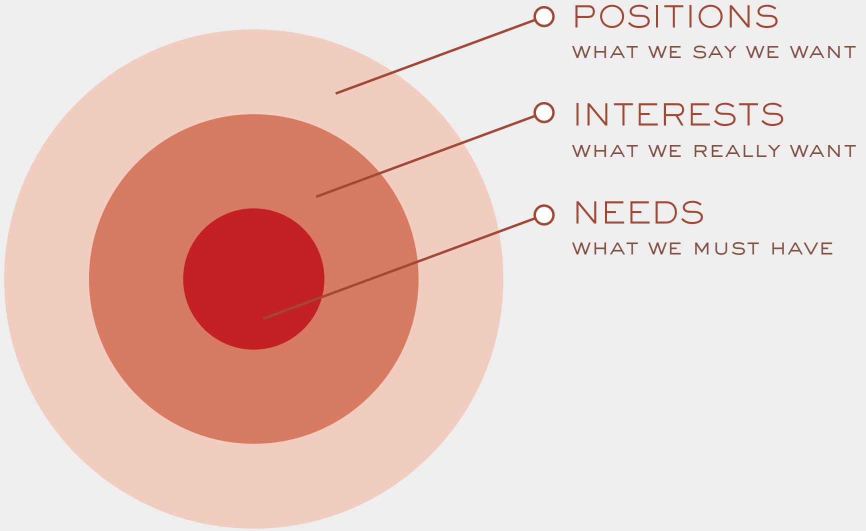
To understand gender roles consider the following aspects:

- "Women's and men's social roles and the gender division of labour"; (Oxfam: 4)
- "The differences between women's and men's access to and control of resources"; (Oxfam: 4)
- Factors that influence the above differences; (Oxfam: 4)
- "The influencing roles of state, market and community institutions and how they may perpetuate gender inequality"; (Oxfam: 4) and
- The diversity within men's and women's groups across socioeconomic, caste, ethnic, age and religious lines. (IFC: 60)

- Undertake a stakeholder analysis.
  - Consider pre-existing relationships within and between stakeholder groups and identify possible sources of conflicts between the stakeholders.
  - Use the "needs, positions and interests" model to understand "the complex set of motivations and agendas that actors may have" regarding the project. (IA-ICMM: 18)

Needs, positions and interests model

The 'needs, positions and interest' model assists companies to understand the dynamics in community (and other stakeholder) engagements through the identification of three layers: a) positions - what an actor expresses, b) interests - what an actor really wants, and c) needs - what is essential to the actor. Companies should be aware that the first layer, positions, does not necessarily accurately reflect interests and needs and that, while several stakeholders may hold the same position, the individual interests that drive their position may be very different. All three need to be analysed and understood for the company to be able to successfully approach community engagement. While interests can be subject to negotiations and compromise, needs are non-negotiable and must be fulfilled for stable community relations. (IA-ICMM: 18)



- "Develop and maintain a stakeholder database." (IFC: 103) Ideally, it should contain:
  - "Details of the various stakeholder groups (their representatives, interests and concerns)" (IFC: 103), identifying the most vulnerable groups;
  - Details of any consultations held, including location, participants and topics discussed; (IFC: 103)
  - Any commitments made by the company, including both those outstanding and those already delivered (IFC: 103); and
  - "A record of specific grievances lodged and the status of their resolution." (IFC: 103)
- Review and update the stakeholder map regularly, since "both stakeholders and their interests might change over time". (IFC: 16).

Develop a stakeholder engagement strategy

- "Develop a 'Do's and Don'ts' guidance note for community engagement and community entry", (PDAC-CDA: 7), as well as "talking points" so that messages are consistent and personnel are prepared to answer stakeholder questions regarding relevant issues such as land, compensation, and project phases.
- Hire people with good social and communication skills, including as much local staff as possible.

- ▶ Make stakeholder engagement a collective responsibility. (See Challenge 4.3.b.)
  - Review the project activities and timelines with relevant company departments to ensure early and meaningful consultation with communities is well integrated into the planning. (See Challenge 4.2.a.)
  - Ensure all staff and contractors are familiar with the local culture and are adequately trained to engage constructively (e.g. avoiding practices that might be considered offensive behaviour and ensuring communities are not treated as a threat, but as partners). Consider developing cross-cultural training programmes with the help of locals in the operations area to enable company personnel to understand the culture, values and practices of local communities. Such training could also help company personnel explain the company's culture and operations to communities and indigenous peoples. (CSBP, Flashpoint Issue 4: 7) (See Case Study: Human Rights Training in Cameroon)
  - Encourage informal interactions between company staff and local communities (e.g. stop over in the village to buy local products or have tea).

Ensure the stakeholder engagement strategy is inclusive

- ▶ Prioritise your stakeholders and reflect on the appropriate level of engagement for each stakeholder group.[9]
  - Prioritise impacted stakeholder groups, and especially individuals who are vulnerable and at risk of marginalisation. The more a stakeholder group is materially affected by a component of the project, the more important it is for them to be properly informed and encouraged to participate in matters that have direct bearing on them, including proposed mitigation measures, the sharing of development benefits and opportunities, and implementation or monitoring issues.
  - Consider that children are among the most vulnerable population groups and "usually less well placed to advocate for their own interests".[10]
  - Where appropriate include in the decision-making and consultation processes indigenous groups that have been displaced from their lands, either historically or by the project, but still maintain a connection to, and interest in, the area of operations. (ICMM 2011: 44) (See Challenge 4.1.d.)
  - Engage with those who oppose the project. Often their opposition may be rooted in legitimate concerns that should be taken into consideration and responded to. (PDAC-CDA: 25) (See Challenge 4.5.a.)
  - Be cautious in engaging with armed groups as this "may expose the company to allegations of bribery, corruption and illegality." (UNGC: 22) Take into account that the local community and the armed group may be inextricably linked through predatory or positive relationships of their own.
- ▶ Identify barriers to engagement such as social and cultural norms, socio-economic constraints, logistical constraints, legacy issues, violence and opposition. (OECD 2015: 24-27)
  - Arrange meetings at times and locations where the people who need to be there can come and "ensure that everyone in the community is informed about meeting times and content". (GIR: 126) To the extent possible, use multiple venues for engagement and make sure that some venues are public.
  - Where necessary, make special arrangements to enable the participation of vulnerable and marginalised groups and people living in remote or isolated areas (OECD 2015: 34), such as having separate meetings with the different vulnerable groups or providing transportation to the meeting venue.

- Take into account that, “in some instances, affected stakeholders may be unwilling or unable to engage directly with businesses (...) due to the presence of active conflict, intimidation or lack of trust.” Where direct engagement with stakeholders is not possible or might be dangerous for them, consult credible third parties who do have access to these stakeholders to gain insights into stakeholders’ views and concerns and for advice on how to proceed. (Shift: 16)
- Communicate in plain, non-technical language; provide explanatory materials, such as brochures, theatre, videos, pictures and maps.
- Invest in community capacity-building and engage local facilitators to enable communities to engage effectively in decision-making processes.

Start stakeholder engagement as soon as company staff or contractors set foot on the ground (PDAC-CDA: 8)

- ▶ When entering a new region or community, prepare “an official letter from the company to present to stakeholders in the field stating the company’s name, names of the employees”, a contact person and number, and some basic details of the work the company will be conducting over the next days. (PDAC-CDA: 11)
- ▶ Prior to starting any activities, hold an on-site meeting with representatives of local communities, to discuss the proposed location of activities (e.g. drill holes) (ICMM 2011: 48) and to explain what is going to happen (including the possibility that exploration activities do not lead to production).
- ▶ Agree with the community on the frequency, location, objectives and forms of engagement.
  - Agree on who represents the company, who represents communities and when and where the various forms of engagement take place.
  - Define the goals and desired outcomes in partnership with the stakeholders in advance of the consultation process itself. (UNGC: 23)
  - Ask stakeholders what level of consultation they desire: information, involvement in meetings, active contribution to planning and/or participation in monitoring activities.
- ▶ Use reputable advisors with a good knowledge of the communities’ culture, and who are respected by the communities, to support engagement.

“Successful engagement is based on some simple, practical principles that represent a blend of ethical considerations and common sense:

- **Respect:** Be respectful in your contact and communication; how you dress, speak, and act will determine the quality of the relationship you have with community members.
- **Honesty:** Ensure full, true and plain disclosure of information and your purpose, so as not to raise expectations.
- **Inclusion:** Be inclusive in the process, so that all parties feel they have an opportunity to share their perspectives. Otherwise, the community will perceive that the company only speaks to those who support the project or are easy to talk to.
- **Transparency:** Establish and maintain complete transparency in all aspects of the process, so that people trust the process that you are undertaking.
- **Communication:** Genuinely and actively listen to community members, rather than trying to sell them on the benefits of the project.” (PDAC-CDA: 9)

Invest time in consultations, to enable community consensus-building

- Listen carefully to concerns, including from those stakeholders that oppose a project (See Challenge 4.5.a.)
    - Visit the local community regularly and ask them simple questions to learn what they expect from the company and to demonstrate interest in the community. (PDAC-CDA: 12) Arrange for visits by senior staff to local communities to demonstrate that the company is genuinely interested in building a relationship and that engagement is a senior level priority. Building relationships with stakeholders early on can be instrumental in resolving crises if they arise. (Shift: 15)
    - "Be aware about what people are not talking about." Do not avoid difficult questions or discussions, because they are probably the most vital to be had (PDAC-CDA: 11), but ensure this is done in a culturally acceptable manner.
- Address concerns before they escalate, as well as any misalignments in expectations or differing perceptions on rights. In case of unfounded concerns by communities, do not dismiss them, but rather try to understand things from their perspective and open a dialogue to explain why the concerns are truly unfounded or to find a solution based on mutual agreement and trust. (ICMM 2009: 9)
- Note that communities and companies may have a very different concept of time. Seek to understand and accommodate the community's perspective on time.
- Where there are disagreements between or within groups, consider facilitating resolution by, for example, identifying a mutually acceptable mediator. (ICMM 2011: 44)

Take an inclusive and equitable approach to compensation and distribution of benefits

- Develop a corporate policy on compensation and distribution of benefits before starting any activities.
- Discuss compensation measures for project impacts jointly with communities and authorities.
    - Identify those individuals that should be compensated for a loss caused by the project.
    - Agree on collective compensation that benefits the community as a whole.
- Where possible, take a community-wide approach to distribution of benefits. Examples include educational and health trust funds, support to start up new enterprises, or technical/vocational training programmes. (GIR: 95)
    - Ensure policies generate equality in opportunities and processes as well as in outcomes. For example, if a process is open to both women and men it may seem to be equal, but if women are restricted in their participation because of barriers to access, in practice equality has not been achieved.[11]
    - Ensure that contractors use the same definition as the company for 'local', and comply with their obligations regarding local hiring and use of local suppliers.
    - Ensure financial oversight of local development funds and provide capacity-building of local people to prepare proposals and manage projects. (Swisspeace: 45)
- Ensure that individual and collective compensation and benefits from the company to communities are fair and seen to be fair. (GIR: 31) Be transparent about why certain groups (e.g. indigenous people) receive more benefits than others and what criteria are applied. (GIR: 33) Be careful, to the extent that there are differences, to ensure that the recipients do not themselves become targets for rights violations by other groups. Consider security measures in this regard if disparate payments create security risks.

Recommended Resources on Stakeholder Engagement

Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (OECD, 2016)
This document offers practical guidance for the extractive sector in line with the provisions of the OECD Guidelines on due diligence for stakeholder engagement. This guidance is less focused on 'how to' execute stakeholder engagement activities and instead provides a due diligence framework to identify and address risks with regard to stakeholder engagement activities. The recommendations and good practices included are aimed at ensuring that stakeholder engagement effectively serves its function of avoiding and managing adverse impacts.

Community Development Toolkit (ICMM, 2012)
The Community Development Toolkit consists of twenty tools for all stages of the community development process – divided into relationship, planning, assessment, management, and monitoring and evaluation tools. The five relationship tools provide detailed step-by-step guidance, checklists, tables and case studies on stakeholder engagement and grievance mechanisms.

Preventing Conflict in Exploration: A Toolkit for Explorers and Developers (PDAC, CDA Collaborative Learning Projects, World Vision Canada, 2012)
This Toolkit is a practical five-step guide that helps extractive companies prevent conflict through constructive community engagement. The step-by-step guidance assists field staff and management in understanding how the interaction between companies and communities creates sources of risk, as well as in developing engagement approaches to mitigate and address these risks.

Getting it Right: Making Corporate-Community Relations Work (Luc Zandvliet and Mary B. Anderson – Greenleaf Publishing, 2009)
This book is one of the most comprehensive and detailed analyses of company-community relations in complex environments. Based on extensive site visits at over 25 company operations around the world, the authors gathered numerous case studies and practical examples that not only identify a large range of good (and bad) engagement practices, but also allow for a detailed insight into the varied perceptions of companies and local communities. This resource is currently not freely available and must be purchased.

Stakeholder Engagement: A Good Practice Handbook for Companies Doing Business in Emerging Markets (IFC, 2007)
This handbook provides a comprehensive overview of stakeholder engagement with local communities, government authorities and non-governmental organisations. The first part of the handbook contains key concepts and principles of stakeholder engagement and identifies good practices and tools to facilitate a successful engagement. The second part illustrates how these practices and tools can be employed at the different phases of the project cycle.

GO BACK TO LIST OF CHALLENGES

C. Companies may at times engage with community members who take advantage of their positions to capture benefits without taking into account the interests and needs of the community.

GOOD PRACTICES*

Identify legitimate representatives of the different community sub-groups

- Allow stakeholders to choose their own representatives, but consider intervening in cases where the selection of representatives is clearly biased towards a specific segment of the community (e.g. men, old people, an ethnic group, a family, etc.).
- Ensure representatives reflect the diversity of stakeholder groups (OECD 2015: 35), as well as the diversity of interests that may be present. "It is important to keep in mind that not all stakeholders in a particular group or sub-group will necessarily share the same concerns or have unified opinions or priorities." (IFC: 13)
- "Be aware that the very act of establishing certain people as the "liaison" between the local population and the project confers upon them a certain degree of power and influence." (IFC: 20)

Legitimate stakeholder representatives could be, but are not limited to:

- Politicians and local government officials
- Elected representatives of regional, local, and village councils
- Traditional representatives, such as village headmen or tribal leaders
- Chairmen/directors of local cooperatives
- Leaders of community-based organisations or local NGOs
- Representatives of local women's, youth, and minority groups
- School teachers
- Religious leaders

Ensure transparency in processes for engagement with community representatives

- Monitor how representatives are selected to ensure they are chosen fairly and transparently. (GIR: 94)
- Gain a clear understanding of who must grant consent for operations to commence and for various decisions during the course of project operations under domestic and international law. Note that, even if the company is not legally required by law to obtain consent directly from local communities, seeking consent throughout a project lifecycle can nonetheless enhance the company's social license to operate and reduce risks to the investment. Be aware also of the conditions under which consent can be given and those under which it can be withdrawn. (OECD 2015: 50) Ensure that any consent that is accepted by the company is given on a voluntary and informed basis and sought in a timely manner. (OECD: 50)

- Ensure that the information reaches all levels of the community.
  - “Establish systems to ensure that representatives remain accountable to the broad community.” (GIR: 124) Agree with community representatives on a system for disseminating objectives and outcomes. (GIR: 125)
  - Broaden channels of communication and do not be overly reliant on a single source for intermediation. (IFC: 22)
  - Publicise the minutes of meetings and make any agreements transparent. (GIR: 94)
- Be “careful not to generate any perceptions of alliance or political alignment with a particular stakeholder, whether it is a community leader, a political party or a government agency”, as that can lead stakeholders to question the company’s objectivity or fairness. (IA-ICMM: 11)

Assess regularly the legitimacy of communities’ representatives

- Talk to local staff to identify community concerns regarding their representatives.
- Use surveys and engage informally with communities to assess “whether they feel their views are being adequately represented and to discuss how to proceed when it is believed that this is not the case.” (OECD 2015: 36)

Combine engagement with representatives with direct engagement with community members

- Follow local decision-making procedures, but, at the same time, make community involvement a condition for any agreements. (IA-ICMM: 12)
- “Engage with both formal and informal leaders”, (GIR: 124) and reach out to both men and women, youth and elders, all socioeconomic, caste, ethnic and religious groups.
- Consider also engaging with proxy representatives, i.e. “representatives that do not actually belong to a stakeholder group themselves but are in tune with the needs and wants of the group, such as civil society organisations or appointed neutral agents (...). This should only be the case where such representation is requested or authorised by the right-holders in question.” (OECD 2015: 36)

D. It may be difficult to determine an effective engagement strategy with indigenous peoples, particularly the division of responsibilities between the government and the company, to ensure that the special rights of indigenous peoples under international law are respected.

GOOD PRACTICES*

Key rights articulated in the main international instruments relating to Indigenous Peoples' rights at the international level "include the rights of Indigenous Peoples to:

- Self-determination,
- Their lands, territories and resources,
- Maintenance of their cultures, including their cultural heritage, and recognition of their distinct identities, and
- To be asked for their free, prior and informed consent in decisions that may affect them."

(ICMM 2011: 8)

Ensure that indigenous people are properly identified and prioritised

- Conduct due diligence, in collaboration with local experts (e.g. anthropologists), to determine the presence of indigenous communities and their status of land ownership. (ICMM 2011: 43)
- If a group identifies as indigenous, adopt a practice to proceed as if the group has been formally recognised as indigenous. (UNGC 2013: 19)
- Institute a policy (either as a stand-alone policy or as part of a human rights policy) that commits the company to respecting indigenous peoples' rights, in particular the right to participate in decision-making. Ensure that employees have a strong understanding of the policy.[12] Make this commitment public and communicate it to all relevant stakeholders. (EO100: 48)

Clarify legal obligations regarding engagement with indigenous peoples

- Consult technical staff, local sources and legal expertise to clarify legal obligations, both of the company and the government, both under national and international law.
- Clarify whether consent to begin operations from the local community is legally required. Where consent is required, do not proceed with activities until it has been granted. (OECD 2015: 79) Note that, even if the company is not legally required by law to obtain consent directly from indigenous communities, seeking consent throughout a project lifecycle can nonetheless enhance the company's social license to operate and reduce risks to the investment.
- Be aware that the customary land rights of indigenous people at times may not be recognised by national laws. Also, there may be difficulties in identifying original land owners because of legacies of conflict and displacement, so enhanced due diligence may be required to understand these complexities[13].

Seek to ensure that the government fulfils its responsibility regarding consultations and FPIC (See Challenge 4.2.a.)

Generally, free prior and informed consent (FPIC) is considered to be the responsibility of governments rather than companies. Nonetheless, "the company has a responsibility to do all it can to ensure that indigenous and local people's rights are respected."[14]

- Inform the government about the company's policy in relation to respecting indigenous peoples' rights and lands.
- Clarify the division of roles and responsibilities between the company and government and set out a plan for implementation of free prior and informed consent (FPIC).
- Ensure that any exploration or production contracts with the government clearly include requirements to recognize, respect and comply with the rights of indigenous peoples. (EO100: 48)

Article 30 of the UN Declaration on the Rights of Indigenous Peoples prohibits military activities taking place on indigenous lands without consent from the indigenous peoples. If the State has violated Article 30, companies must ensure that they do not contract with the State in such a way that would mean that the company would be supporting military activities on indigenous lands. A business should not benefit from military activities that discriminate against indigenous peoples. (UNGC 2013: 72)

Ensure that the correct process of obtaining FPIC is adhered to

- Ensure indigenous peoples are informed of their land rights under national law.[15]
- Agree with affected indigenous people on a process for FPIC that is based on good faith negotiation free of coercion, manipulation and intimidation and commit to such a process through a formal or legal agreement.[16]
- Consult on what constitutes appropriate consent for affected indigenous peoples in accordance with their governance institutions, customary laws and practices (for example, whether this is a majority vote from the community or approval of the council of elders). Whatever measure of consent is decided, it should reflect that the project has the broad consent of the community.
- Be completely transparent about the risks and benefits of the mining project, as well as the standards that the company has in place to prevent further damage. (ICMM 2011: 57) (See Challenge 4.2.b.)
- "Recognise that consent is not a static, one-off activity" (OECD 2015: 78) but an ongoing process that needs to be responsive to community needs.[17] Different conditions and requirements should be negotiated at each stage of the project cycle.[18]

- Where indigenous peoples refuse to engage or to give consent, try to consult directly with them or with reliable third parties to understand the reasons and whether concerns can be accommodated or addressed. (OECD 2015: 79)
- Take into account that many indigenous communities live in isolation from broader communities and may require additional support to be able to engage fully in company processes. (OECD 2015: 76) In some cases, communities in isolation may not wish to be involved at all. In such a case, develop buffer zones to protect these indigenous groups from business operations (UNGC 2013: 23) and/or reconsider the location of operations.

Ensure that engagement with indigenous peoples is effective and appropriate (See Challenge 4.1.b.)

- Respect the local entry protocols for accessing community lands. (ICMM 2011: 18)
- Train staff to understand and demonstrate respect for indigenous culture by learning local customs and language. "The ability to speak the local language, even at a 'courtesy' level, will be helpful." (OECD 2015: 76)
- When indigenous groups have been displaced from the lands where an operation is taking place, ensure they are still engaged in the decision-making and consultation processes of the company. (ICMM 2011: 44)
- Whether or not indigenous governance structures are legally recognised, take them into account in the security management of operations.
- Develop agreements with indigenous communities that increase goodwill and improve relationships, and provide a structured mechanism to facilitate dialogue and engagement.
    - Ensure agreements contain mechanisms for benefit sharing between a company and indigenous communities, as well as specific grievance mechanisms for redress of any violations committed.
    - Include a requirement for a regular review of the agreement.

Develop a risk and impact mitigation strategy that is adapted to the indigenous culture (See Challenge 4.4.a.)

- If indigenous groups are particularly marginalised, face discrimination, cultural ignorance, lack of a common language and/or experience high levels of poverty and social disadvantage, be aware that they may be less resilient to adverse impacts and more vulnerable to serious economic and social consequences from a project. Help to mitigate such vulnerability, for example by partnering with or funding civil society organisations, advocating against discrimination, (ICMM 2011: 93) or facilitating access to independent legal counsel for indigenous people.
- Consider supporting indigenous communities in their efforts to clarify surface rights, demarcate and title territories, (CSBP, Flashpoint Issue 4: 7) but take into account that some groups may be reluctant to rigidify territorial maps or to reveal certain sites and boundaries.
- Take into account that impacts related to land such as a lack of access or degradation of land may affect indigenous peoples more severely than other stakeholder groups if they have a special cultural connection with and rights to land, or if their livelihoods are linked to the land.
    - Build a safe pathway across company sites to allow indigenous peoples to travel to their communities, if their usual pathway has been closed due to operations. (UNGC 2013: 41)

  - Ensure that compensation for losses based on damage to or loss of land for indigenous people accounts for intangible value associated with sacred sites or areas of cultural significance.
  - Invest in programmes that will mitigate impacts related to a loss of social networks, cultural erosion and loss of language, or if the disruption is unavoidable, consider not carrying out the project.

- Be aware of the particular social dynamics between indigenous groups and non-indigenous community groups, and work to mitigate any negative impacts on these dynamics caused by company operations.

Useful resources relating to Indigenous Peoples

Indigenous Peoples and Mining Good Practice Guide (ICMM, 2015)
This is a thorough guide addressing good practices in engagement with indigenous peoples, including the development of agreements (such as benefit sharing agreements) and the establishment of grievance mechanisms. It also includes step-by-step tools to help companies deal with the challenges of engagement, as well as case studies.

Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas (OECD, 2015)
This guide provides comprehensive and clear techniques for effective stakeholder engagement, including a section with useful guidance specifically related to engagement with indigenous peoples.

FPIC and the Extractive Industries: A Guide to Applying the Spirit of Free, Prior and Informed Consent in Industrial Projects (Abbie Buxton and Emma Wilson - IIED, 2013)
This document provides accessible and practical guidance for companies trying to understand the business case for implementing FPIC and how to actually achieve compliance with FPIC in practice. It includes useful tools and case studies.

GO BACK TO LIST OF CHALLENGES

E. Communities may mistrust the company’s grievance mechanism.

GOOD PRACTICES*

Ensure that communities understand the grievance mechanism, how to access it, and their rights and potential remedies under it

Assess the effectiveness of the existing grievance mechanism regularly and seek to understand why it is not working

EFFECTIVENESS CRITERIA FOR NON-JUDICIAL GRIEVANCE MECHANISMS

UN Guiding Principle 31: “In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be”:

a. Legitimate
b. Accessible
c. Predictable
d. Equitable
e. Transparent
f. Rights-compatible
g. A source of continuous learning
h. Based on engagement and dialogue

- ▶ Review internally at regular times the type and trends of grievances.
  - Track whether there are recurring complaints about the same issues – this could be a sign that the grievance mechanism is not working effectively and that the company has not altered practices to address the concern.
  - Be aware that a lack of complaints might mean that the mechanism is either inaccessible or not trusted by communities, not that there is a lack of grievances.[19] (ICMM 2012: 77)
- ▶ Involve the local workforce and community representatives in the procedures for evaluating the effectiveness of the mechanism and ensuring it is culturally appropriate.
  - Consider how the mechanism addresses different kinds of grievances, ranging from easy-to-address project impacts to serious human rights abuses.
  - Assess the level of satisfaction with: (a) the process for resolving complaints (including whether the complainant felt like they were treated respectfully), and (b) how adverse impacts were addressed. (OECD 2015: 51)
  - Identify lessons for improving the mechanism and preventing future negative impacts.[20]

Re-design the grievance mechanism on the basis of findings from the assessment

- ▶ Ensure the grievance mechanism reinforces and complements, rather than replaces, existing state and non-state judicial and non-judicial grievance mechanisms, as well as indigenous or other local institutions and processes. (PDAC-CDA: 13)

- Engage with local communities and/or respected third parties to ensure the grievance mechanism is adapted to the local context and meets the needs of those communities.
  - If working with a third party, choose the party carefully and "select those who will be genuinely trusted locally". (ICMM 2009: 19)
- Appoint community relations personnel who can engage effectively with complainants: qualities of empathy, maturity and fair-mindedness are important. (ICMM 2009: 9) Ensure the team includes an expert on gender and cultural issues.
- Establish a permanent company-community committee that would help in managing the relationship throughout the project cycle and resolving conflict before it becomes exacerbated. Company-community committees should incorporate measures of both the company and the community's culture and provide an atmosphere of joint learning and trust. (CSBP, Flashpoint Issue 4: 7) The structure of the committee should be decided jointly between the members.
- Ensure the grievance mechanism is accessible by consulting with communities on the most helpful access points for them. Consider establishing some or all of the following access points:
  - A report abuse hotline, either via phone or SMS. (MIGA: III-16)
  - A secure e-mail address that is solely accessible by a trusted monitor. (MIGA: III-16)
  - Tip boxes, with clear instructions posted above them, located in areas where individuals have "unobserved access to the boxes and can drop in anonymous notes, tips or other information". (MIGA: III-16)
  - A community office where complainants can report their claims in person. Ensure that this is easily accessible to all potential claimants. If it is clear that certain members of the potentially affected community are not able to access the office, mobile teams should be sent to engage with the community and carry out the grievance process in their location.
- Develop a matrix that helps the company assess what sorts of complaints might have human rights implications.[21]
- Where there is a risk of serious human rights abuses, consider establishing a grievance mechanism which functions as a quasi-judicial process, monitored completely independently from the company (ICMM 2009: 18). The process should include fact-finding/investigation, response, recourse to appeal and follow-up. (For further guidance on how to set this up consult recommended resources on grievance mechanisms)
- "Define a clear process for resolving complaints involving regular updates for complainants" within a defined and reasonable timeframe. (ICMM 2009: 13)
  - Ensure the mechanism allows for "an immediate response to time-sensitive complaints, such as a fence being knocked down by a contractor, for example, and livestock getting out." One way of doing this is by giving company personnel receiving grievances the authority to resolve basic complaints themselves, as well as establishing "a direct reporting line to senior managers if the issue is more serious or costly to address." (IFC: 75)
  - Ensure that the decision making criteria and process in the remediation mechanism are transparent. (OECD 2015: 60)
- Ensure the complaints system allows for anonymity and confidentiality of complainants, and protects them from the risk of retaliation. (ICMM 2009: 13) Avoid requiring detailed personal data to register a grievance, unless required by authorities. (IFC: 76)
- Ensure the parties to a grievance process cannot interfere with its fair conduct. (GPs: 34)

- Offer complainants the possibility to appeal, by referring them to a national body or court, or another respected, independent body, such as a multi-stakeholder commission or an independent panel of experts. (ICMM 2009: 19)

Publicise improvements to the grievance mechanism and promote its use

- Make the grievance mechanism "known to, and trusted by, those stakeholders for whom it is intended". (UNIG: 65) This may be done by organising meetings with local communities, or by publishing details of the grievance mechanism in prominent places as well as on a publically accessible website.
- Provide information in a clear manner on the procedure, an indicative timeframe for each stage, clarity on the processes and types of outcome available.
- Publicly commit to a certain time frame in which all recorded complaints will be responded to (be it 48 hours, one week or 30 days) and ensure this response time is enforced. When it is not possible to respect agreed timelines, inform complainants and explain why.
- State explicitly that "all sorts of concerns can be raised through the mechanism, rather than restricting complaints to certain categories of issues." (ICMM 2009: 8) Whilst the grievance mechanism should be capable of responding to all types of complaints, be aware that in certain cases it may be appropriate to have a sub-set of the grievance mechanism that is specialised in dealing with a specific category of complaints. (UNIG: 69) If this is the approach taken, however, ensure that such complaints are not considered in isolation of other interlinking issues.[22]
- "Assure people that there will be neither costs nor retribution associated with lodging a grievance", (IFC: 70) and that the use of the grievance mechanism does not impede them to access to legal or judicial remedy processes. (ICMM 2009: 8)

Make sure the newly re-designed grievance mechanism addresses and resolves grievances through engagement and dialogue at as early a stage as possible

- Keep a written record of and investigate all complaints.
- Assess any complaint in relation to its actual or potential human rights impact and ensure the grievance mechanism addresses issues before they amount to alleged human rights abuses or breaches of other standards. (UNIG: 68)
    - Have information readily available on the victim referral system including hospitals, clinics and women's shelters.
    - Ensure that any security-related issues that come through the grievance mechanism are immediately flagged and escalated to senior management.
    - Consult with reputable third parties with the relevant local expertise and skills, for example in mediation, arbitration and remediation processes. Relevant partners can be local and international civil society organizations, development agencies, think tanks and universities. (UNGC: 11)
- Allow for complainants to choose how their grievances are addressed. (UNGC 2013: 33) Remediation can come in different forms, including restitution, rehabilitation, compensation, community development programmes and guarantees of non-repetition. (GPs: 27)
- Cooperate with investigations conducted by other legitimate actors (e.g. by ombudsman institutions, national human rights institutions, regional human rights commissions or multi-stakeholder initiatives).

"Report back periodically to communities and other stakeholder groups as to how the company has been responding to the grievances it has received" (IFC: 76)

- In case of unfounded concerns by communities, do not dismiss them, but engage in an open dialogue to explain why the concerns are truly unfounded or to find a solution based on mutual agreement and trust. (ICMM 2009: 9)
- If the mechanism is unable to resolve a complaint, facilitate access to external experts (e.g. public defenders, legal advisors, legal NGOs, or university staff) or establish a process for resolving issues which is in the hands of a respected, independent body, such as a multi-stakeholder commission or an independent panel of experts. (ICMM 2009: 18-19)

Ensure cases are only closed after the resolution has been implemented, and following formal pre-determined procedures[23]

Useful Resources on Grievance Mechanisms

Community Grievance Mechanisms in the Oil and Gas Industry (IPIECA, 2015)
The IPIECA Community Grievance Mechanism Guide provides highly detailed and thorough guidance on the various steps for understanding, establishing and implementing a grievance mechanism in the oil and gas industry, written from a company perspective.

Site-level Grievance and Community Response Mechanisms: A Practical Design and Implementation Guide for the Resource Development Industry (MAC, 2015)
This guide identifies common on-the-ground design and implementation challenges that companies face in trying to establish site-level grievance mechanisms, and advises on how to address these challenges. The document highlights the spectrum of response mechanisms and provides practical and granular site-level guidance, particularly for companies operating in complex environments.

Assessing the Effectiveness of Company Grievance Mechanisms (CSR Europe, 2013)
This report clarifies the meaning of the eight criteria for effective grievance mechanisms in UN Guiding Principle 31, providing examples and guidance to help companies establish grievance mechanisms that meet these criteria. It also provides companies with a methodology for assessing the effectiveness of their grievance mechanisms.

Piloting Principles for Effective Company-Stakeholder Grievance Mechanisms: A Report of Lessons Learned (Rees, 2011)
This report summarises the findings from a study conducted to test the practical applicability of principles (such as legitimacy, accessibility, etc.) that guide the establishment of effective grievance mechanisms. The report helps identify potential challenges and pitfalls that may be faced during the process of setting up an effective grievance mechanism, through analysis of piloted case studies.

Human Rights in the Mining & Metals Sector – Handling and Resolving Local Level Concerns & Grievances (ICMM, 2009)
This guidance aims to support companies resolve concerns and grievances at the operational level, understanding the handling and resolution of community complaints as a natural extension of a constructive engagement strategy. The publication focuses on the design of context-specific grievance mechanisms, exemplified through good practices, diagrams and numerous case studies.

GO BACK TO LIST OF CHALLENGES

4.2. Information sharing, consultation and consent

A. Where consultation with communities did not start early enough or was not conducted according to international standards, companies may lack the social license to operate.

GOOD PRACTICES*

Verify whether there are any legal or regulatory requirements regarding consultation and consent

- Identify which methods of engagement with indigenous peoples are required. (OECD 2015: 76) (See Challenge 4.1.d.)
- Clarify whether consent is legally required. (OECD 2015: 76) Where consent is required, do not proceed with activities until it has been granted. (OECD 2015: 79) Note that, even if companies are not required by law to obtain consent, seeking consent throughout a project lifecycle can nonetheless enhance a company's social license to operate.

Seek to ensure the government fulfils its responsibility regarding consultations

- Keep track of government-led consultations on issues related to the project, as they might have implications for future stakeholder relations.
  - Determine at what stages such engagement took place, what commitments and agreements were made, and what unresolved issues still exist that could impact the relationship with local communities. (IFC: 52)
  - Seek to participate in, or at least observe, government-led consultations with stakeholders, being careful not to create the perception of being on the government's side.
- Endeavour to bring the government on board, as convenor and guarantor of the process, to help define the scope of consultations and, where applicable, Free, Prior and Informed Consent (FPIC). (IA-ICMM: 8) (See Challenge 4.1.d.)
- Consider providing logistical support (such as travel expenses) to government entities to ensure they are present and able to lead the consultations. (IA-ICMM: 9) To reduce any risk of being perceived as supporting a government that is not operating in the community's interest, be transparent and clear in indicating to communities that the company is striving to improve the government's capacity to lead the process in good faith.

Revisit prior consultation processes and seek to understand what mistakes were made and why

- Review the project activities and timelines with relevant company departments to ensure ongoing and meaningful consultation with communities is well integrated into planning. (See Challenge 4.3.b.)

- "Pay particular attention to those stakeholders who were consulted by third parties prior to, or without, the involvement of the (...) company. Examples might include consultation over compensation for land acquisition carried out by government authorities, or previous consultation carried out by the owners of project-associated facilities, such as power generation, water supply, or road construction. If there is evidence of lingering grievances, it may be necessary to work with the third party to address outstanding concerns." (IFC: 124)
- Engage with other companies in the area to understand their past/current approach and avoid misunderstandings or legacy issues.

Where consultation did not start early enough, undertake an active consultation that can support joint analysis and decision-making from that moment on

- Support capacity development so that stakeholders with limited exposure to international corporate processes and structures are comfortable being actively involved in consultation processes and monitoring of the agreements made. (ICMM 2011: 71)
- If open consultations are difficult, adopt other strategies to maintain communication with the communities. (GIR: 121)
  - Consider negotiating with the government to allow the creation of elected village committees solely to discuss company-community affairs.
  - Work with independent third parties (e.g. ombudsman-type authorities, NGOs, academia) "that have the acceptance of all parties to accompany and support consultation or FPIC processes." (IA-ICMM: 9)

"Ideally, a good consultation process will be:

- **Targeted** at those most likely to be affected by the project
- **Early** enough to scope key issues and have an effect on the project decisions to which they relate
- **Informed** as a result of relevant information being disseminated in advance
- **Meaningful** to those consulted because the content is presented in a readily understandable format and the techniques used are culturally appropriate
- **Two-way** so that both sides have the opportunity to exchange views and information, to listen, and to have their issues addressed
- **Gender-inclusive** through awareness that men and women often have differing views and needs
- **Localized** to reflect appropriate timeframes, context, and local languages
- **Free** from manipulation or coercion
- **Documented** to keep track of who has been consulted and the key issues raised
- **Reported back** in a timely way to those consulted, with clarification of next steps
- **Ongoing** as required during the life of the project"

(IFC: 38)

GO BACK TO LIST OF CHALLENGES

B. Local communities may give their consent to corporate operations on the basis of unrealistic expectations or unknown impacts.

GOOD PRACTICES*

Be transparent and upfront about decisions, policies and plans for the project

- ▶ Provide relevant information to targeted stakeholders in advance of decision-making.
  - Communicate the process and results of the baseline assessment and impact assessment to relevant stakeholders through public consultation in order to get feedback on findings. Disclose actual and expected, direct or indirect environmental, operational and social impacts. (See Challenge 4.1.a.)
  - Make technical and environmental information about the project available to the communities.
  - Disclose objective information. Avoid overselling the benefits of a project and minimising the negative impacts. Be very clear about what the company can and cannot provide. This can help address potential tensions (for example, resulting from the inability of companies to provide enough jobs for everyone) "by managing expectations through a better understanding of project requirements as well as the opportunities and constraints companies may face throughout the project cycle." (IA-ICMM: 10)
  - Explain next steps and "be clear about which project elements are fixed and which can be changed or improved upon". (IFC: 28)
- ▶ Share information in a timely manner, in a language that communities are able to understand and in a format that makes sense to the local population.
- ▶ "Remember that a lack of information can lead to the spread of misinformation about a project that can be both damaging to a company's reputation and undermine efforts to engage in an informed dialogue with stakeholders." (IFC: 28) (See Challenge 4.2.c.)
- ▶ Communicate important information several times and in a variety of media to ensure that the message is received and absorbed. (OECD 2015: 54)
- ▶ Communicate the company's expectations and encourage stakeholders to share their expectations, "to identify any misalignment and to ensure that all sides understand one another's positions." (OECD 2015: 57)

Clarify company and government responsibilities

- ▶ Agree on the respective responsibilities regarding social investment and compensation with host government authorities at the national and local level (See Challenge 1.2.d.), and communicate this agreement to local communities, explaining what the company can and cannot provide.

Build understanding with the community on the issues at stake

- ▶ Improve communities' understanding of the business, so that they have realistic expectations of the benefits that are available to them. In particular, explain the different phases of a project, what are the consequences and opportunities related to each stage of operations, and the timelines involved. Also explain the problems that may arise and how the company will work to mitigate them.

- Ensure communities fully understand their rights in relation to the company's operations and impacts under both local and international law (including, for example, land, environmental, human rights, etc.), as well as the responsibilities of the company, government and other stakeholders.
- Use a variety of channels to deliver information, including booklets, videos, radio, theatre shows, bulletin boards, a public information office established in a nearby village, and visits to each community, to show how operations will look when complete. It is also useful to create a to-scale model to show how the site will look after closure. (CSBP, Flashpoint Issue 1: 6)
- Consider taking land-owners to other sites of operations to gain insights on company operations and better understand their implications.
- Develop the technical expertise of the community by providing the support required to facilitate the communities' capacity to engage in decision-making. This might mean, for example, providing access to independent expert advice, training, or mediation. (ICMM 2011: 21)
- Establish a community office where community members can easily go obtain more information about the project.

Establish a company-community committee that would help in managing the relationship throughout the project cycle and resolving conflict before it is exacerbated (CSBP, Flashpoint Issue 4: 7)

Negotiate in good faith

- Ensure the terms of negotiations are mutually agreed in advance and conform to legal obligations (OECD 2015: 49), including the requirement of renegotiation when circumstances change.
- Gain a clear understanding of who must grant consent for operations to commence and for various decisions during the course of project operations under domestic and international law. Note that, even if the company is not legally required by law to obtain consent directly from local communities, seeking consent throughout a project lifecycle can nonetheless enhance the company's social license to operate and reduce risks to the investment. Be aware also of the conditions under which consent can be given and those under which it can be withdrawn. (OECD 2015: 50) Ensure that any consent that is accepted by the company is given on a voluntary and informed basis and sought in a timely manner. (OECD 2015: 50)
- Make it very clear to the community who has the authority to make commitments on behalf of the company to ensure coherence in communications and avoid misunderstandings. (MIGA: V-11)
- Verify, validate and record all final agreements with those present during the negotiations. (OECD 2015: 50)
  - When relevant and possible, support agreements with the use of pictures.
  - Make sure that agreements reached are then translated into the local language and made available to the relevant communities.
  - Publish minutes of meetings.

  - Remain at all times sensitive to literacy challenges, and find other accessible ways of making information available to community members.

- Clarify precisely next steps after the negotiations or dialogue, and agree on who is responsible for implementation and follow up. (CSBP, Flashpoint Issue 1: 5)

GO BACK TO LIST OF CHALLENGES

C. Companies may find it challenging to determine which information to share and how to engage communities on security arrangements.

GOOD PRACTICES*

Determine as early as possible the types of information that will be shared with communities

- Pre-define clear criteria jointly among company departments for deciding what, when and with whom to communicate.
- Provide relevant information to stakeholders early on, regularly and in a timely manner, ensuring consistency in messages. (See Challenge 4.1.b. and Challenge 4.2.b.)

Important issues for community communication and consultation

- Company's policies, protocols and plans on safety, security and human rights
- Relevant findings of the risk assessment and how they relate to security arrangements
- Composition of security provision
- Changes to security arrangements
- Applicable rules for public security forces and private security providers (e.g. codes of conduct and rules of engagement)
- Rights and responsibilities of security personnel
- Rights and responsibilities of communities under international law and standards
- Security concerns that have arisen in the past and how the company is dealing with them
- Mechanisms available to stakeholders for the resolution of security-related issues

Build capacity within the communities on the issues at stake (See Challenge 4.2.b.)

- Use the appropriate language and methods to facilitate communities' understanding (e.g. illustrations, real-life examples). (See Case Study: Human Rights Training in Cameroon)
- Engage with independent third parties, such as NGOs, national human rights institutions or academia that can educate communities on security and human rights issues and act as intermediaries to facilitate communication. It is important that local communities understand their rights and responsibilities, as well as the rights and responsibilities of security personnel, which include the right of self-defence.

Establish regular meetings to discuss security-related issues with communities

- Organise different kinds of meetings for different purposes, including:
  - Large open meetings for information-sharing purposes. (See Challenge 4.1.b.)
  - Smaller meetings with community representatives to discuss security arrangements, and find joint solutions to address related concerns and impacts. (See Challenge 4.1.c.)

- Joint sports or leisure events, such as soccer tournaments, between company security and community teams, or occasional open houses when community members are invited to come into company compounds, (GIR: 45) to develop trust and provide an informal setting for communities to learn about company operations, meet staff or bring forward grievances.
- A multi-stakeholder forum to develop a standardised approach to discussing security and human rights issues with the community. (See Case Study: Monthly Security and Human Rights Meetings in Lubumbashi)

▶ Determine the process to be followed and who is to be involved in the dialogue prior to embarking upon substantial consultations. (UNGC 2013: 23) Jointly agree on a set of principles to guide the discussions and ensure a constructive and effective exchange, such as the need to focus on security related issues or to speak one at a time.

▶ Encourage the participation of representatives of public and private security in community consultations, provided the community feels comfortable discussing security issues in their presence.

▶ In situations where community consultation is not possible, consider relevant alternatives such as consulting credible, independent experts, including human rights defenders and others from civil society. (GPs: 20)

Listen carefully and provide feedback on inquiries (See Challenge 4.1.b.)

▶ Ask stakeholders what type of information they want and need, and in what type of format. (IFC: 30)

▶ Allow communities to voice their concerns on security arrangements. However, remember that in certain circumstances, being involved in these kinds of discussions may represent a risk for local community members and they may be not willing to talk. If that is the case, consult with credible third parties that may provide some insights into communities' concerns.

Disclosure vs. non-disclosure of information

- Adopt a 'presumption in favour of disclosure', which "means being forthcoming with information whenever possible, especially if there is no compelling reason not to share it." (IFC: 28) However, beware of providing so many details that it becomes difficult for communities to discern critical information.
- Ensure that the provision of information does not violate privacy or put stakeholders at risk. (OECD 2015: 49) Discuss with communities whether there is information that they want to remain confidential. (EO100: 49)
- Weigh considerations for non-disclosure "against the need for stakeholder groups to be informed in order to protect their interests." (IFC: 30) "Remember that a lack of information can lead to the spread of misinformation about a project that can be both damaging to a company's reputation", lead to security risks, "and undermine efforts to engage in an informed dialogue with stakeholders." (IFC: 28)
- Where full transparency is deemed imprudent, "provide a valid explanation or justification for why the information has not been shared." (OECD 2015: 40)

GO BACK TO LIST OF CHALLENGES

4.3. Internal alignment and coordination on stakeholder engagement

A. Senior management may not recognise the importance of or time and resources required for engaging constructively with communities.

GOOD PRACTICES*

Develop a shared understanding internally of the value of stakeholder engagement

- Ensure senior management understand the risks of not putting in place a long-term sustainable stakeholder engagement strategy (e.g. commercial risks, investor-related risks, reputational risks and legal risks). (Shift: 10-11) (See Introduction)
  - "Translate" social performance issues into other "languages" spoken in the company: the languages of business risk, of costs or of technical business processes.[24]
  - Present data about costs of community conflicts (e.g. percentage of staff time invested in managing conflict, lost productivity due to delays).
  - Provide case studies on the consequences of poor stakeholder engagement. (OECD 2015: 42)

Promote greater involvement of senior management in social issues

- "Ensure a commitment to meaningful stakeholder engagement features in corporate policy" and is visibly endorsed by senior leadership within the company. (OECD 2015: 16)
- Create senior, cross-departamental, decision-making platforms when operating in high risk environments. (Shift: 12)
- Establish a system that promotes the integration of stakeholder views into decision-making at managerial level. (OECD 2015: 18)
- Create opportunities for senior management to interact directly with communities, ensuring that company leaders are educated on how to engage in a culturally appropriate way. This is the best way for senior management to understand community concerns, and to make decisions that are mutually beneficial to the company and communities.
- Ensure potentially serious risks are escalated to senior level. (Shift: 12)

Integrate social performance into the bonus structure and career paths for all staff, in particular for senior management (GIR: 203)

- Develop Key Performance Indicators related to community engagement and include these in the performance reviews of all managers.
- Ensure that work to establish good community relationships is rewarded through the payment and bonus systems of the company.

- "Use contracts to enforce standardisation." Attach a code of behaviour for community engagement as an annex to employees' contracts. (GIR: 204)
- Integrate community issues in company staff career paths, by ensuring that all up-and-coming company leaders are assigned a job in the community relations department sometime in their career. (GIR: 203)

GO BACK TO LIST OF CHALLENGES

B. Inadequate coordination between company departments (in particular between security and community relations departments) on stakeholder engagement may result in conflicting policies and processes.

GOOD PRACTICES*

Make stakeholder relations a collective responsibility (IFC: 103)

- Develop a shared understanding of the value of stakeholder engagement. (See Challenge 4.3.a.)
- Communicate the stakeholder engagement strategy internally. Every business unit needs to be aware of the strategy and understand why the company is committing time and resources to this endeavor.
- Provide training to all staff on social performance and community relations issues and related corporate policies and processes.
    - Develop "an induction module on community affairs for every new staff member. Such modules raise awareness about how every employee affects community relations, set out some do's and don'ts for staff and company behaviour and explain the types of services external relations staff can provide to support other departments." (GIR: 202)
    - Train security officers "to ensure that the company's approach to security is based on approaching communities as partners, rather than treating them as risks, to the company." (GIR: 202)
- Involve technical teams and security personnel in dialogue with communities as a way to ensure that community concerns are properly addressed and incorporated into programme design and decision making, as well as in security arrangements. (IA-ICMM: 21)
- Ensure that good community relationships are rewarded through the payment and bonus systems of the company. (See Challenge 4.3.a.)

Promote alignment and coordination across the business in all decisions and activities that concern or impact on stakeholders (See Challenge 4.3.a. and Challenge 4.3.c.)

- Review policies and processes throughout the company and integrate emerging stakeholder engagement good practice, to ensure effective respect for human rights and international humanitarian law.
    - Ensure corporate policies meet the needs of specific country operations and respect national laws.
    - Review potential legal, regulatory, and contractual requirements for stakeholder engagement in close consultation with relevant departments (e.g. legal, public/government affairs). "It is important to compare any formal or informal company policies on consultation, transparency, and information sharing against requirements by regulatory bodies and lenders, to ensure that (the) engagement strategy will meet all the necessary obligations." (IFC: 114)

  - Review policies and processes through a community lens "to identify 'low hanging fruit' ideas for how operational activities can improve company-community relations" (e.g. procurement process). (GIR: 203)

- Manage stakeholder engagement as a business function. Develop a single well-defined strategy for stakeholder engagement with "a clear set of objectives, timetable, budget, and allocation of responsibilities." (IFC: 8) (See Challenge 4.1.b.)
  - "Identify critical points in the life of the project where stakeholder engagement will be needed, and determine who will deliver these actions and how they can be integrated with core business functions." (IFC: 99)
  - Ensure consistency in company communications to external stakeholders.
  - Establish a system for recording and tracking information relevant to stakeholder engagement.
  - Develop and maintain a commitments register. It should contain timeframes for action and assign responsibility to the appropriate individuals, business units or implementing third party (which in some cases may be the contractor, an NGO or local government agency).

- Ensure that internal decision-making, budget allocations and oversight processes enable effective responses to future impacts. (GPs: 21) This should include the establishment of direct reporting lines to senior management. (See Challenge 4.3.a.)

- Institute a human rights working group that oversees the day-to-day implementation of the human rights policy, including a grievance mechanism and remedy system.

- Develop indicators in consultation with human rights experts "to enable ongoing monitoring of human rights risks and of the effectiveness of business processes for identifying and managing those risks." (Shift: 9)

- Hold routine 'risk and opportunities' analysis meetings between project managers, geologists, community relations personnel and security personnel. (PDAC-CDA: 7) On the basis of this process,
  - Produce a crisis management plan and an emergency response plan.
  - Build a systematic approach to integrate the findings of the impact assessment and act upon them to prevent and mitigate negative impacts.[25]

- Ensure that those company departments that impact human rights are held accountable for their actions.

Give prominence to the community relations function

- Transform the community relations function "from firefighter to internal service provider." Organise meetings where community relations managers "explain the types of services they can provide to each department." (GIR: 201)

- Develop a policy to ensure that all new projects are reviewed by the community relations department before they can be implemented. (GIR: 202)

- Develop coordination procedures between the community relations and the security departments within the company, with the community relations department as the focal point for any interactions with local communities.
  - Ensure that the community relations team is constantly kept appraised of the company security assessments and is involved in the design of new security measures, in particular if the latter are likely to have an impact on communities.

- Ensure the community relations team engages with communities to explain security arrangements and the company's human rights policies, as well as how to report in case of security-related concerns or grievances. (See Challenge 4.2.c.)

- ▶ Establish community liaison offices and ensure liaison officers are known and available to the community. The community relations team should include a mix of locals and non-locals, since sometimes community members may prefer to talk to an 'outsider'.
  - Involve communities in the selection of local liaison officers.
  - Sponsor training on cultural understanding, dialogue and mediation skills for community liaison officers. (IA-ICMM: 21)
  - Ensure community liaison officers "have the authority to negotiate on behalf of the company. This requires a clear reporting structure and clarification as to which decisions they can take unilaterally, and which are to be passed on to higher levels within the company." (IFC: 102)
  - Require liaison officers to report all relevant information back to the company.

- ▶ Ensure the community relations budget is realistic. Establish a budget that covers at least the basic systems and protocols, such as "a local content policy, a community-monitoring mechanism, regular (quarterly) public meetings in communities, an effective grievance procedure, etc." (GIR: 203)

GO BACK TO LIST OF CHALLENGES

C. Companies may risk conflict with communities if their contractors do not follow the company's policies on stakeholder engagement.

GOOD PRACTICES*

Consider the contractor's role and activities as part of the risk and impact assessments (See Challenge 4.1.a.)

In the Request for Proposals (RFP) require that applicants (i.e. contractors) provide the following information (based on SCG 3-4) (See Challenge 3.2.a.):

- Company policies, including any human rights policy and codes of conduct.
- Community engagement strategy, including complaints and grievance procedures.
- Information about subcontractors that may be engaged in the delivery of the requested service.
- Extent of pre-employment screening for employees and management staff, including proof of qualifications, background and work experience.
- A list of principal services provided for similar projects in the last three years, including references from clients.
- Track record, including information on any human rights incidents or complaints relevant to the operating environment and/or tasks to be performed, and any remedial action taken.
- Plan for service delivery which incorporates measures to effectively deal with security and human rights challenges.

Consider the set of criteria in Challenge 3.2.a. for the evaluation of proposals and ensure the community relations team participates in this process

- ▶ Ensure that contractors' financial proposals include a sufficient budget for community engagement, impact management, and other activities considered as part of the contractors' responsibility. "This will help to ensure that contractors do not use poor social performance as a source of cost savings once tenders have been awarded."[26]

Develop a binding contract with the contractor that includes clear clauses on (See Challenge 3.2.c.):

- Respect for national laws, international humanitarian law and human rights law;
- Company human rights standards and policies, including the Voluntary Principles on Security and Human Rights (VPs);
- Performance requirements on stakeholder engagement;
- Clarity on roles and responsibilities between the company and the contractor, including the contractors' shared responsibility for dispute resolution with local communities when they have contributed to tensions.

As part of the contract negotiation, agree on "client-contractor 'partnering principles' to:

a) Provide clarity on the proponent's social performance objectives;

b) Negotiate workable contractor incentive schemes for social performance; and

c) Identify engineering design opportunities that integrate the project proponent's own programmes on community investment and local business development with the contractor's management of construction and procurement."[27]

Develop a coherent stakeholder engagement strategy that considers the role of contractors (See Challenge 4.1.b.)

- Speak with one voice to the local communities, ensuring consistency in messages.
- Agree on a procedure for managing community grievances that avoids confusion between the role of the project proponent and the main contractors.[28] Where appropriate, integrate the contractor's grievance mechanism into existing mechanisms. However, there may be instances in which the contractor should have its own functioning grievance mechanism, especially when it is the only face on site. (See Challenge 4.1.e)
- "Inform local communities about the details of contracts with local contractors", explaining their roles and responsibilities, and how to report on related grievances. (GIR: 102)

Offer support to the contractor to enhance their capacity to deliver services in compliance with company standards

- Train the contractor so that they have the adequate knowledge and skills to operate with effective security and community engagement practices.
- Share best practices and guidelines as well as information identified in risk and impact assessments.

Monitor contractors' implementation of social commitments in accordance with the contract

- Designate a company representative who is responsible for monitoring and ensuring compliance by the contractor with agreed requirements.
- Hold regular meetings with the contractor to discuss community relations and consider inviting community representatives to participate in these meetings.
- Agree on systematic and regular reporting requirements.

If the contractor fails to comply with clauses in the contract, consider the following options (IGTs: 57):

- Negotiate a timeline for compliance.
- Withhold payments as established in the contract until the issue is satisfactorily addressed.
- Condition ongoing relationship on performance and provide further, detailed guidance and training, together with regular performance review.
- Terminate the relationship with the contractor.

GO BACK TO LIST OF CHALLENGES

4.4. Security impacts of operations on communities

A. The company's operations may create unintended consequences, such as increased presence of armed groups, a rise in criminal activity, or greater security risks. As a result, communities, and in particular vulnerable populations, may be left without adequate protection or law enforcement provision.

GOOD PRACTICES*

Analyse the context and assess risks and impacts regularly (See Challenge 2.1.b. and Challenge 4.1.a.)

Develop a risk and impact mitigation strategy in consultation with local communities and other relevant stakeholders

- Prioritise the most serious risks and impacts. Where risks or potential impacts are high or extreme, do not start the project or activity until the risks have been reduced or mitigated. (PDAC-CDA: 18) "A company's inability to operate in ways that do not, at a minimum, 'avoid harm' should prompt serious consideration of withdrawal from the context."[29]
- Conduct a mapping of different security needs in the host communities, adopting a gendered perspective and taking into account the needs of groups that are particularly at high risk.
- Ensure the strategy is proportionate to the identified risks and impacts and tailored to the company's involvement in particular risks or impacts. That is, involvement that "causes or contributes to" a certain outcome necessitates a different response to involvement that is "indirectly linked to" the outcome.
- Exercise due diligence to deal with negative legacies. Acknowledge poor practices in the past, apologise publicly for them on behalf of the industry, and seek, as far as possible, to remedy past damage (eg. revegetating damaged environments). (ICMM 2011: 34)
- Be aware that" there are no quick fixes for (pre-existing) conflicts, and a company neither can, nor should, try to address them on its own." (PDAC-CDA: 4)
- Coordinate with competent authorities to strengthen their ability to respond to increased risks, ensuring that security measures adopted are appropriate to the risks.
- Develop joint approaches with other companies in the region to address increases in crime, violence or presence of armed groups.
- Support non-governmental actors in conducting programmes that prevent and address sexual exploitation and violence against women and children.
- Work with key stakeholders through existing multi-stakeholder platforms or develop a multi-stakeholder security forum if none exists. (See Case Study: Monthly Security and Human Rights Meetings in Lubumbashi)

4.4. Security impacts of operations on communities

Gender Sensitive Tools

Corporate operations may cause gender-specific impacts related to the company's activities, its security arrangements or the surrounding socio-economic realities. In order to identify and address these diverse security needs appropriately, companies must conduct a holistic security assessment.

This box identifies five documents containing gender-sensitive tools that together account for different gender dimensions of local security needs and offer a starting point for a comprehensive security arrangement.

1. A Women's Guide to Security Sector Reform (Inclusive Security and DCAF, 2013)
While this guide is aimed to engage women from civil society in transforming the security sector in their communities and countries, company representatives can benefit from the document's holistic approach to the security sector. The guide addresses a wide range of gender-sensitive security issues commonly overlooked by business and human rights publications and identifies concrete ways in which different stakeholders can get involved in and benefit from security sector reform processes. It further provides a wide range of tools, templates, action plans and examples companies can build on to address gender and security issues.

2. Gender Dimensions of Artisanal and Small-Scale Mining - A Rapid Assessment Toolkit (World Bank and Gender Action Plan, 2012)
This toolkit recognises that local security needs are also often related to artisanal and small-scale mining (ASM). The toolkit aims to highlight the importance and insecurities of ASM activities and provides gender-sensitive analytical frameworks and instructional models to address them.

3. Private Military and Security Companies and Gender – Tool 10 (DCAF, OSCE/ODIHR, UNINSTRAW, 2008)
This tool directly addresses the gender-specific issues companies should consider in relation to their operations' security arrangements. The document provides principles, good practices, brief case studies, sample policies and codes of conduct to address gender issues when engaging private security companies (PSCs). The guidance includes a specific section on integrating gender into the practices of PSCs operating in complex environments.

4. Why Gender Matters - A Resource Guide for Integrating Gender Considerations into Communities Work at Rio Tinto (Rio Tinto, 2009)
This guide offers a unique company perspective on how gender principles can be integrated into a range of operational areas, such as community, safety and environment. Most importantly the guide includes ten case studies highlighting why gender considerations are essential to extractive operations and how they can be applied on the ground in various operational stages and contexts.

5. Women, Communities and Mining: The Gender Impacts of Mining and the Role of Gender Impact Assessment (Oxfam Australia, 2009)
This report by Oxfam Australia provides tools and good practices that companies can use to conduct a gender impact assessment. The report takes a broad approach identifying negative social and economic consequences for women in surrounding communities and provides recommendations to address them. While the tools and guidance are not directly related to companies' security arrangements, the report highlights the significance of indirect consequences and how they can cause gender-specific insecurities.

- Where prevention and mitigation measures are insufficient, consider voluntary resettlement of communities to avoid them being exposed to negative security and safety impacts of operations. Explain the reasoning and justification behind the dislocation as well as providing information on the available options for the affected stakeholders. (OECD 2015: 92) Ensure that a thorough assessment is carried out with all relevant stakeholders to ensure that resettlement will improve the security and safety of affected communities.

Monitor carefully the company's business relations, transactions and flows of funds

- "Do not enter into or condone protection arrangements with any illegitimate armed actors, particularly in conflict areas or regions with poor human rights records." (HRT: 12)
- Carefully analyse whether the company's operations, supply chain, social investments, local community engagement, etc. might benefit and facilitate the activities of armed groups.
- Regularly discuss the company's expectations and contractual standards with suppliers and contractors. (UNGC: 15) Include clauses in contracts prohibiting human rights violations and illicit payments. (See Challenge 4.3.c.)
- "Develop a rigorous supply chain management system to assess and monitor if and how (…) suppliers obtain resources and raw materials in conflict-affected and high-risk areas." (UNGC: 14)

Establish an effective grievance mechanism (See Challenge 4.1.e.)

GO BACK TO LIST OF CHALLENGES

B. In-migration to an area as a result of new job and business opportunities created by the presence of a company may create tensions with and within local communities and result in negative impacts.

GOOD PRACTICES*

Conduct a risk and impact assessment and update them regularly in consultation with local communities (See Challenge 4.1.a.)

Develop a risk and impact mitigation strategy that is adapted to the local context (See Challenge 4.4.a.)

Develop a local content strategy

- Define 'local'. Agree with local communities on the definition of who should be considered local and who are outsiders" and ensure this information is publicly available. (GIR: 79)
- Maximise short-term employment opportunities for local people
  - Establish a minimum quota of local staff for the company, as well as for its contractors and security providers.
  - Be clear about the number and type of jobs available in the company.
  - Be transparent about hiring criteria and "publicly commit to hiring local community members for all jobs for which they are qualified." (GIR: 79)
- Support training of local population to increase their long-term job opportunities
  - At early stages of operations perform a survey of the trades industry within the region to determine where gaps exist in vocational skills and potential partner organisations with which to collaborate in the development of skills training.
  - Begin vocational skills training at an early stage of investment.
  - "Help local people get officially certified" for their existing skills and training. (GIR: 80)
  - Provide scholarships and apprenticeships for relevant fields to youth. (GIR: 80)
- Develop or support programmes to "help local people take advantage of business opportunities." This could include establishing business development centres, setting up microcredit programmes, or serving as guarantors with local banks to help local entrepreneurs get access to cash. (GIR: 81)
- Consider establishing programmes where company representatives teach some specific skills (such as business administration, accounting, business development plans, human resources management, etc.) to emerging small local businesses.

Institute an in-migration management plan at an early stage of investment (GIR: 54)

- Involve representatives of all stakeholder groups, such as representatives of the national, regional and local authorities, local communities, and civil society organisations, in the development of the in-migration management plan.

- "Develop programmes and support discussions that help communities anticipate and prepare mentally for the changes they will experience from the influx of outsiders and money." (GIR: 54)
- Avoid practices that may attract excessive numbers of people to the area of operations (e.g. avoid hiring people at the company gate). (GIR: 54)
- Mitigate the impact of non-local jobseekers on the host community, by, for example, ensuring local infrastructure is strengthened as part of the in-migration management plan. (GIR: 54)
- Support non-governmental actors in conducting programmes that prevent and address sexual exploitation and violence against women and children.
- On the basis of the risk and impact assessment, look for appropriate ways to strengthen and support community security mechanisms, whether that is in collaboration with the police or other community-based entities.

GO BACK TO LIST OF CHALLENGES

C. Company safety and security measures and protocols may be perceived by communities as a deliberate barrier to engagement and a signal that the company sees communities as a security threat.

GOOD PRACTICES*

Ensure that security arrangements convey openness and accessibility (GIR: 45)

- "Keep protection and symbols of protection to a minimum" (e.g. avoid cars with blackened windows, or convoys, that drive fast through populated areas, never stopping). (GIR: 45)
- Explore all possible ways to lessen the impact of security measures (e.g. build a safe pathway across the company site if the usual pathway has been closed due to operations).
- Before contracting with private security providers, determine whether there are cultural or ethnic sensitivities associated with their deployment in the area of operations. (IGTs 50) (See Challenge 3.1.a. and Challenge 3.2.a.)
- Where possible, employ women as security guards to facilitate women's access to the company, as well as people from the local communities that speak the local language.
- Ensure that all company staff, including contractors and private security providers, are trained in human rights (and international humanitarian law in situations of armed conflict), as well as in aspects regarding the culture, traditions and values of the local community. (See Section 3.6.)
- Consider inviting community members to see a training session for public or private security.
- Encourage security personnel to attend community meetings to gain a better understanding of community issues (provided this does not deter community members from attending).

Ensure alignment between the company's stakeholder engagement strategy and security policies and practices

- Educate personnel across all company departments on the stakeholder engagement strategy. (See Challenge 4.1.b.)
  - Ensure communities are not treated as a threat, but as partners.
  - Make all company staff understand that the company is hosted by the communities and that they should be treated respectfully at all times.
- Develop coordination procedures between the community relations and the security departments within the company, with the community relations department as the focal point for any interactions with local communities. (See Challenge 4.3.b.)

Discuss security measures regularly with local communities and work together to address any related impacts (See Challenge 4.2.c. and Challenge 4.4.a.)

- Share information in a timely manner, in a language that communities are able to understand and in a format that makes sense to the local population.
- Assure people that the information they provide will be treated confidentially to protect their privacy, unless they want it to be shared publically. (OECD 2015: 53)

GO BACK TO LIST OF CHALLENGES

D. Local communities often have the perception that public security forces work for the benefit of the company rather than the community, in particular where the presence of public security forces increases with the arrival of the company.

GOOD PRACTICES*

Key factors that can feed perceptions

1. Physical location of public security barracks/station (i.e. where these are very close to a project site)
2. MoU/security agreement or regular interaction with public security forces (i.e. an agreement or close relationship between the company and public security may create misunderstandings regarding the mandate of public security)
3. Resource allocation (i.e. logistical, financial and/or in-kind support provided by the company to public security forces)

Ensure public security forces understand their mandate (See Challenge 2.2.a.)

In community areas where there is insufficient public security presence, work with public security management to strengthen law enforcement

- Agree with public security on security measures that are appropriate to respond to local risks. (IGTs: 38) Take into account that "security measures that are viewed as 'heavy-handed' may end up creating, rather than reducing security risks by endangering parallel efforts to develop community trust." (IGTs: 20)
- Encourage public security forces to appoint their own community liaison.

Publicly condemn violence against civilians in the region where the company operates (Swisspeace: 33)

Discuss security arrangements with communities (See Challenge 4.2.c. and Challenge 4.4.c.)

- Explain the purpose of security arrangements to communities and engage communities in discussions about how to improve security practices.
- Encourage the participation of a representative of public security forces in community consultations. (IGTs: 41)
- Encourage social interaction between public security, company staff and local communities, such as regular fairs or sports tournaments, development of joint exercises, etc.
- Work with key stakeholders through existing multi-stakeholder platforms or develop a multi-stakeholder security forum if none exists. (See Case Study: Monthly Security and Human Rights Meetings in Lubumbashi)

Monitor stakeholder perceptions regarding the project

- Use "an annual or semi-annual 'perception' survey, independently administered, which uses the same set of questions over time to achieve continuity." (IFC: 108) (See Challenge 4.1.a.)
- Use the grievance mechanism to address concerns before they escalate. (See Challenge 4.1.e.)
- Consult with credible and knowledgeable third parties to gain insights into communities' concerns.
- Where perceptions have become more negative, open a dialogue with stakeholders as to why, and how this can be addressed.

GO BACK TO LIST OF CHALLENGES

E. Company operations may threaten or render illegal the livelihood of local communities (e.g. artisanal mining, hunting, fishing, farming) as a result of restricted access to land or environmental changes. This creates tensions and conflict between the company and the community.

GOOD PRACTICES*

Before commencing new projects, conduct a baseline assessment (See Challenge 4.1.a.)

- Ensure the study reflects seasonal activities that may vary throughout the year.

Conduct a stakeholder mapping exercise in the area of operations (See Challenge 4.1.b.)

Conduct an impact assessment and update it regularly (See Challenge 4.1.a.)

Consider developing the following measures in collaboration with affected stakeholders to address impacts on livelihoods

- Engage with the host government to ensure community interests and needs are taken into account when developing a resettlement action plan for affected stakeholders. This should include finding alternative hunting, fishing and/or farming areas nearby to minimise the impact on livelihoods.
- Establish an alternative livelihoods programme, including scholarships or training, that facilitates access to other employment opportunities. Initiate the process of developing the programme at early stages of investment, in consultation with development agencies, government agencies, NGOs, and civil society organisations.
- Employ affected stakeholders that qualify for jobs at the company (e.g. artisanal miners).
- Procure goods and services locally and help local companies qualify for tenders.
- Cooperate with efforts to formalise the artisanal and small-scale mining (ASM) sector.
  - Support any efforts by the host government to professionalise and formalise the artisanal mining sector, through the establishment of cooperatives, associations or other membership structures.
  - Engage with ASM associations and explore the possibility of reserving an area of the company's concession for artisanal mining, whereby portions of the concession are subleased to small scale miners who operate as subcontractors to the company.
- Engage with other companies operating in the area to develop an impact mitigation plan that addresses the loss of livelihoods.

Ensure that public and private security are trained on how to deal with the unauthorised presence of community members in the company's concession (See Section 2.5. and Section 3.6.)

GO BACK TO LIST OF CHALLENGES

4.5. Community impacts on company security

A. Local communities may obstruct or threaten company operations to express frustration regarding their socioeconomic, cultural and political rights, even when the cause is not directly related to the company. Some stakeholders may also benefit from conflict and may fuel tensions between the company and the community rather than trying to find peaceful solutions.

GOOD PRACTICES*

Conduct a social baseline study and a risk and impact assessment and update them regularly (See Challenge 4.1.a.)

Undertake a stakeholder mapping and analysis (See Challenge 4.1.b.)

- Clearly identify each stakeholder's interest and perspective regarding the project to identify potential ways of reducing tensions.
- Identify possible conflicts of interests between the stakeholders, including dividers and connectors. (GIR: 26)

Develop a stakeholder engagement strategy (See Challenge 4.1.b.) and build community support for the project without raising unrealistic expectations

- Optimize benefits of the project for the local population, so that they view a successful operation as more lucrative than actions against the company.
- Develop a long-term social investment plan together with local communities.
- Consider making contributions to the local or regional development fund tied to production, to build a sense of ownership over the project.

Engage constructively with people opposing the project

- Reach out to those opposing the project and renew invitations to engage in good faith. "Avoid making public statements questioning the work of such groups or blaming them for any supposed delays or other disruptions to the project." (OECD 2015: 56)
- Adopt an approach of rewarding peace rather than violence. (CSBP, Flashpoint Issue 1: 6) Identify constructive leaders who advocate for non-violent approaches and engage them early on to identify community needs and the proper way to address the impacts of operations.
- Do not treat communities as a threat, or they will become a threat. Be aware that "taking legal actions against community members (...) could result in further exacerbating the situation and contribute to the criminalisation of non-violent rights defenders." (OECD 2015: 56)

- Ask the community whether they would be interested in developing a community consultative committee with whom the company can meet on a regular basis in each community.
- Where necessary, identify reliable independent third parties who are trusted by the community, to act as mediators.

Engage with national and local authorities to address communities' needs (See Challenge 1.2.d.)

- "Discuss the different roles of the state and the company in building, providing and maintaining basic services, and inform the beneficiaries in the local community" about the division of responsibilities. (Swisspeace: 36)
- Encourage and support programmes led by the government and/or development agencies to support economic development in the country and the region where the operations are taking place.
- Coordinate with the authorities to ensure that social investment programmes led by the company are aligned with the objectives of broader national or regional development programmes.

Monitor changes in the quality of stakeholder relationships (IFC: 107)

- Use "an annual or semi-annual 'perception' survey, independently administered, which uses the same set of questions over time to achieve continuity." (IFC: 108) (See Challenge 4.1.a.)
- Use the grievance mechanism to identify concerns early on. (See Challenge 4.1.e.)
- Consult with credible and knowledgeable third parties to gain insights into communities' concerns.
- Where perceptions have become more negative, open a dialogue with stakeholders as to why, and how this can be addressed.

GO BACK TO LIST OF CHALLENGES

B. Trespassers and thieves may gain access to a company's grounds to conduct illegal activities. In certain situations, this can result in violent attacks on security guards.

GOOD PRACTICES*

Conduct a socioeconomic baseline study and a risk assessment and update them regularly (See Challenge 4.1.a.)

- Consult local staff on trends regarding illegal activities.
- Understand why trespassers want to gain access since this may help in finding a way to mitigate this risk. For example, in the case of illegal miners it is important to understand whether they are local artisanal miners that, after the company's acquisition of the land, no longer have an area to operate (See Challenge 4.4.e.), or whether they are individuals who came for the purpose of illegal activities.
- Assess the different risks faced by men and women as guards, considering in particular the risk of gender-based violence.

Adjust security arrangements to prevent and mitigate security risks

- Discuss security arrangements with public security management (e.g. agree on appropriate rotation of public security forces) and support government efforts to strengthen law enforcement in alignment with the VPs. (See Section 2.1. Security Arrangements)
- Employ well trained and equipped private security providers, that are prepared to respond to threats effectively with the minimal possible use of force. (See Section 3.6. Training, Section 3.7. Equipment and Section 3.8. Security Equipment and Use of Force)
- Reduce the range of scenarios where security personnel operate individually and equip guards with 'emergency buttons'.
- Ensure security arrangements are proportionate to risks/threats.
- Monitor security personnel through a variety of means to avoid collusion between security personnel and trespassers. Consider using radio networks, CCTV visual monitoring, daily inspections and unannounced physical site inspections. (See Challenge 3.9.a.)
- Conduct a lessons learned exercise after an incident has taken place and, if appropriate, use the incident for practical exercises in future trainings.

Discuss security issues with communities on a regular basis (See Challenge 4.2.c.)

- Reach out to groups opposing the project and "renew invitations to engage in good faith." (OECD 2015: 92) (See Challenge 4.5.a.)
- Work with key local stakeholders to develop a multi-stakeholder security forum. (See Case Study: Monthly Security and Human Rights Meetings in Lubumbashi)
- Consider whether and how to engage local communities in the after-incident assessment and in developing a risk mitigation plan. (See Challenge 4.4.a.)

4.5. Community impacts on company security

- Work with CSOs to help raise awareness among communities of their own responsibilities with respect to the presence of company operations.

Review the company's social investment strategy

- Optimize benefits for the local population, so that they view a successful operation as more lucrative than illegal activities directed against the company.
- Work with the national, regional and/or local authorities to address the social and economic incentives of illegal activities in or around the company's grounds.

GO BACK TO LIST OF CHALLENGES

* These good practices are not meant to be prescriptive. It is up to the user to evaluate whether they could be feasible, useful and appropriate to the local context in a specific situation on the ground.

[1] See Davis, Rachel and Daniel M. Franks. 2014. "Costs of Company-Community Conflict in the Extractive Sector." Corporate Social Responsibility Initiative Report No. 66. Cambridge, MA: Harvard Kennedy School.

[2] The social license to operate refers to the level of acceptance or approval by local communities and stakeholders of companies and their operations. It is based on the idea that companies need not only government permission (or permits) but also 'social permission' to conduct their business.

[3] Challenges related to the role of the host government are addressed in Chapter 1 of this Toolkit.

[4] Community Development Toolkit (ICMM, 2012), p. 129-130.

[5] Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law (ICRC, 2206), p.20.

[6] Community Grievance Mechanisms in the Oil and Gas Industry (IPIECA, 2015), p. 23.

[7] Engaging Stakeholders on Children's Rights - A Tool for Companies (UNICEF, 2014), p. 13.

[8] See: http://www.predictivesolutions.com/blog/safetycary/culture/perception-surveys-their-importance-and-role-in-safety-performance/

[9] Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights (IHRB and Shift, 2013), p. 36.

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Annex 1

Record of Transfer Register

NAME:	**DATE**

CONSIDERATIONS		YES	NO	N/A	NOTES
		✓			
1	Which type of equipment has been transferred?				
2	What quantity has been transferred?				
3	What has been the rationale for the transfer? (Has there been a specific request?)				
4	Who is the recipient of the equipment?				
5	Has a written agreement on the use and storage of the equipment been obtained?				
6	Has the recipient received training ensuring the correct application of the equipment?				
7	Has the Security Department been consulted prior to the transfer?				
8	Has the Community Relations Department been consulted prior to the transfer?				
9	Have all the company's transfer procedures been followed?				
10	Have monitoring mechanisms been established to ensure the correct use of the equipment?				
11	Has it been an ad hoc transfer in response to an urgent request?				
12	Is further maintenance/support necessary for the transferred equipment? (Fuel, rubber bullets, etc.)				
13	Has a signature been obtained by a person with responsibility for the transferred equipment?				