

## **Oil & Gas Sector Discussion Paper: Feedback for Project Team**

The Discussion Paper presents a robust starting point for addressing the human rights impacts of oil & gas sector operations. The following feedback includes suggestions for additional detail around particular considerations and contextual factors.

### **2. Defining the Sector**

Either in this section or in the Contextual Factors section, operational characteristics of oil and gas could be highlighted. For example, off-shore drilling does not necessarily preclude the existence of human rights impacts related to surrounding pollution that may affect the local fishing industry or on-shore terminals that are connected to the rigs.

#### **3.1 Impacts on the Rights to Property and an Adequate Standard of Living**

Either in this section or a separate section, the right to reparation or compensation for the human rights impacts incurred by individuals and communities could be addressed, especially where operations and/or spills affect local livelihoods. Such reparation should include the responsibility for clean-up, timely and fair compensation for livelihoods affected by spills or other operational accidents, and the rehabilitation of land upon closure (wells can be left to leach oil into surrounding areas after operations have ceased).

#### **3.2 Impacts on the Rights to Free, Prior and Informed Consultation and/or Consent**

Suggest to include here or in the 'Contextual Factors' section, the difficulty of identifying the appropriate community representatives with whom to engage and ensuring that minority and vulnerable groups such as women, have the opportunity to participate as well. At the local level, payments made by Oil & Gas companies to individuals that the company has identified as representing "affected" communities has caused or exacerbated inter-communal conflicts.<sup>1</sup>

In addition, suggest to include the need for O&G companies to inform communities of potential and actual health risks. For example, communities may not be informed that a spill has occurred and continue to fish in polluted waters.

#### **3.4 Impacts on the Rights to Health, Clean Water, and Food**

Suggest to include the impacts of gas flaring as an industry-specific operation that has considerable effects on the right to health and the right to food. Gas flaring may have serious health impacts in the form of respiratory illnesses, asthma, blood disorders, cancer, painful breathing and chronic bronchitis.<sup>2</sup> Gas flaring has also been identified as a cause of acid rains that pollutes waterways and is detrimental to crops which can inhibit community livelihoods and affect public health.

In 2005, communities across the Niger Delta took oil companies operating in the region to court over gas flaring, which has been generally illegal under Nigerian law since 1984. In the case, the court ruled that

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<sup>1</sup> 'Rivers and Blood: Guns, Oil and Power in Nigeria's Rivers State', A Human Rights Watch Briefing Paper, February 2005: [www.hrw.org/legacy/backgrounder/africa/nigeria0205/nigeria0205.pdf](http://www.hrw.org/legacy/backgrounder/africa/nigeria0205/nigeria0205.pdf)

<sup>2</sup> 'Gas Flaring in Nigeria', Environmental Rights Action/Friends of the Earth Nigeria, June 2005: [www.foei.org/en/resources/publications/pdfs/2000-2007/gasnigeria.pdf](http://www.foei.org/en/resources/publications/pdfs/2000-2007/gasnigeria.pdf)

gas flaring is indeed a violation of human rights since the toxic flares contravene provisions of the Nigerian Constitution guaranteeing citizens the right to life and human dignity.<sup>3</sup>

### **3.5 Impacts on the Rights to Life, Security of Person and Freedom from Torture, Cruel, Inhuman or Degrading Treatment**

Suggest to include the risk of arbitrary arrest and detention, and extrajudicial, arbitrary or summary execution.

### **3.6 Impacts on Labour Rights**

Suggest to include health & safety impacts.<sup>4</sup> In addition, worker housing could be an area of O&G operations that affects labour rights.<sup>5</sup>

### **6.3 Existing Initiatives and Guidance**

Suggest to include Equitable Origin's EO100™ Standard. Equitable Origin is a social enterprise with a mission to promote best practices and continual improvement of responsible upstream oil and gas operations through a set of stakeholder-negotiated and internally recognised environmental, social, and good governance standards.<sup>6</sup>

#### **General Feedback:**

An overview of the human rights impacts of the O&G sector would be remiss without mentioning the issue of corruption. Corruption can directly and indirectly impact people's ability to realise their rights. O&G companies operating in governance-challenged countries are especially exposed to risks of corruption and bribery.<sup>7</sup> Furthermore, O&G companies should be responsible for fulfilling their fiduciary duties to ensure payment of fees, royalties, and taxes as legally required by the host country. The ability of a government to protect and fulfill the human rights of its constituents is affected by national resources and capacity to fund key infrastructure, judicial systems, and social programmes.

Regarding the form the guidance should take, given the lack of understanding among O&G companies regarding the definition of human rights due diligence and how it differs from social and environmental due diligence, the guidance could take the form of a detailed outline of how to undertake human rights due diligence in the O&G sector, along with examples of best practices.

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<sup>3</sup> 'Nigeria: Judge Orders Gas Flaring to Stop Immediately', Inter Press News Service, November 2005: [www.ipsnews.net/2005/11/nigeria-judge-orders-gas-flaring-to-stop-immediately/](http://www.ipsnews.net/2005/11/nigeria-judge-orders-gas-flaring-to-stop-immediately/)

<sup>4</sup> Universal Declaration of Human Rights, Article 3: Everyone has the right to life, liberty and security of person. International Covenant on Economic, Social and Cultural Rights, Article 7: The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (b) Safe and healthy working conditions;

<sup>5</sup> See for example, IFC/EBRD Guidance on Workers' Accommodation, 2009:

[www1.ifc.org/wps/wcm/connect/9839db00488557d1bdfcff6a6515bb18/workers\\_accomodation.pdf?MOD=AJPERES](http://www1.ifc.org/wps/wcm/connect/9839db00488557d1bdfcff6a6515bb18/workers_accomodation.pdf?MOD=AJPERES)

<sup>6</sup> Equitable Origin EO100™ Standard, 2011: [www.equitableorigin.com/eo100-standard/register/eo100en/](http://www.equitableorigin.com/eo100-standard/register/eo100en/)

<sup>7</sup> 'Corruption and Human Rights: Making the Connection', 2009, International Council on Human Rights Policy and Transparency International: [www.ichrp.org/files/reports/40/131\\_web.pdf](http://www.ichrp.org/files/reports/40/131_web.pdf)