

Colloquium on Policy, Law, Contracts, and Sustainable Investments

**Co-Hosted by the Columbia Center on Sustainable Investment (CCSI) and the
Institute for Human Rights and Business (IHRB)**

New York, New York

November 14, 2014

Meeting Summary*

**This meeting was held under the Chatham House Rule*

In November 2014, CCSI and IHRB co-convened a colloquium on policy, law, contracts, and sustainable development, with a particular focus on large-scale investments in the extractive industries and the agriculture sector. The colloquium provided an opportunity for practitioners to share information on their related work, as well as to reflect on current practices and remaining gaps regarding efforts to embed sustainability and human rights into large-scale deals.

Topic 1: Mapping the Landscape of Current Work

In the first session, participants shared their respective programs, initiatives, and tools encompassing efforts to embed sustainability, human rights, good governance, or transparency principles into contracts, law, and policy related to extractive industry or large-scale agricultural investments. These efforts are summarized in the Annex.

Topic 2: The State of Practice

In examining current practices, colloquium participants reflected on the following discussion questions:

- What kinds of specific provisions are being requested (by companies, communities, or governments), offered, included, or explicitly avoided in extractive industry contracts, large-scale agricultural contracts, and infrastructure contracts to foster sustainability and the protection of human rights?

- How in practice are contractual provisions focused on sustainability or human rights applied and implemented?
- What kinds of policies, laws, and regulations are already available or needed to reduce reliance on these ad hoc contractual provisions?
- What is the right balance between contractual provisions and policies, laws, and regulations?
- What innovative practices and programs seek to address these questions?

At the outset of the discussion, the facilitator observed that existing extractive industry contracts with governments tend to contain some sustainability provisions, although ideally, there should be a proper hierarchy between policy, law, and contracts, with domestic legislation covering most issues, and only limited and specific provisions tailored to local conditions included in contracts. But it was also recognized that the articulation of law is in varying stages of development in different countries, and, for the time being, the use of contracts to supplement gaps in law was unavoidable.

Given the continued significance of contracts in many countries, participants structured their discussion on the state of practice around the life cycle of contracts. The contracting life cycle may be broadly divided into the following stages:

1. Bidding and Licensing;
2. Contracts;
3. Post-contracts, including Disputes; and
4. Monitoring/Contract termination.

The group discussed these life cycle stages in turn.

1. Bidding and Licensing

Even before bidding, licensing, or contract negotiation processes commence, countries exemplifying best practices may strive to make systematic decisions about where to allocate large-scale projects prior to any national decisions to grant licenses, begin a bidding process, or undertake specific negotiations for concessions. For instance, participants provided examples of a national allocation strategy in Liberia, where a national vision identified key projects in the public-private partnership space. Another example is from Belize, where the government carried out a thorough planning exercise to look at which areas were (i) open for exploration; (ii) open for exploration under strict conditions; and (iii) “no-go” zones. Their planning of national space involved community participation through public hearings held in an open and transparent manner.

Yet no participants had seen such a systematic process within national development plans or in sectoral plans, although the World Bank’s funding and technical support for Kenya’s strategic environmental and social impact assessment for the oil and gas sector may be one such example to the extent its findings are used to inform the development of the Kenyan national strategic petroleum master plan. But all too often, such processes take place too late. For example, El Salvador had a national debate regarding whether the

country wanted open-pit mining – after the relevant environmental licenses had been granted to the investor. The investor subsequently sued the government through investor-state arbitration. On the whole, participants agreed that such strategic analyses and national debates are often conducted in a reactive and retroactive manner. Low- and middle-income countries have so many priorities that they are frequently reacting and playing catch up.

Participants considered whether there were tools that countries could use to be more proactive in preparing for large-scale natural resource investments. This could include, for example, tools to monetize upfront the full suite of costs, including social and environmental costs, of such investments. Participants suggested that it would be useful to have hard numbers on how much countries lose from displacement and other human rights harms. Participants also pointed to an initiative on natural capital accounting,¹ through which a number of African countries, with the assistance of the World Bank, incorporate accounting and biological research expertise to tally non-fiscal wealth in the country. Despite the various tools that exist, however, a country's capacity to use them may be an issue; for example, it is challenging to even calculate royalties from mining companies in many countries.

There is a need for reputational assessments of investors during the bidding stage. As part of a pre-qualification process, and before any engagement or contracting process begins, a country should track company performance in terms of corporate social responsibility (CSR), human rights, and all liabilities and relevant problems. At least one study, however, has indicated that corporate reputational issues have not had an effect to date on whether a country is willing to negotiate with a company.² If governments do not initiate such an assessment, perhaps lenders could. Yet participants noted that lenders typically do not carry out a know-your-customer evaluation at this early stage of a project. The group then discussed the sequencing problem with impact assessments more generally. One suggestion was that some of the representations and warranties that companies make in contracts could be moved up to this pre-qualification stage, while countries could simultaneously seek information about the company's past activities. Whether arbitration tribunals would uphold such representations in the event of a dispute, however, is unclear.

Finally, a national action plan can serve as a “one-stop-shop” that enables stakeholders to understand the relevant policies in a given country.

2. *Contracts*

Participants then reflected on the sustainability commitments that governments ask of companies, and that companies ask of governments. What do communities ask for and how? And what commitments are reflected in contracts between the government and the company, or in community development agreements?

¹ For more information, visit <https://www.wavespartnership.org/en>.

² Tina Zuzek and Dan English, “Playing Hardball: Corporate reputation and its impact on negotiations – ExxonMobil and its hardline strategy,” Working Paper: Harvard Business School (May 2013).

Associated Infrastructure: The group first discussed the issue of shared infrastructure. A participant observed that large mines have associated infrastructure, which raises the question of whether third parties can have access to them and when; this, in turn, has implications for sustainable development. CCSI has studied this issue,³ although one problem is that information related to associated infrastructure is usually kept confidential in separate undisclosed contracts. Communities may fail to benefit from associated infrastructure when infrastructure services are uneven or not shared. The flip side, however, is that, in some situations, a sustainability perspective would suggest that associated infrastructure should not be shared, and should even be required to be destroyed, as in the case of the Chad-Cameroon pipeline's associated infrastructure, which provided previously unavailable access to forests. This raises the question of the extent to which such sharing of infrastructure should be required, as well as whether this action affects the government's duty to provide basic services. Participants noted that, although companies are often asked to provide benefits such as schools and clinics, doing so should not result in the government's disengagement. Thus, even if companies agree to provide some access to associated infrastructure or other services, they should carry out their responsibilities in coordination with local authorities. Furthermore, to ensure sustainability of these infrastructure projects, companies may also need to provide training to local governments to assist them in maintaining services.

Do companies pressure governments to provide services? One participant provided the example of a company that tries to direct government focus to provide services to local communities rather than to share project benefits with the community directly. Other participants shared examples of companies initially providing private services that later expanded to benefit the public. A participant stated that social projects have much corruption risk, because funds come in the form of in-kind payments or other types of payments that may not be accounted for under the Extractive Industries Transparency Initiative (EITI) or home country reporting requirements for extractive industry payments to governments. Some companies may provide these benefits to avoid paying full taxes.

In general, participants agreed that host governments include too many sustainability issues in investor-state contracts, rather than developing more comprehensive laws and policies that address the issues. Some participants asserted that such practice should be discouraged. To do so requires greater capacity-building efforts for governments focused on developing more robust policies and legislation. One participant queried whether the Africa Mining Vision could help countries in deciding what goes in a contract versus in law.

Community Benefits and Community Development Agreements (CDAs): The participants then turned to the question of whether community benefits, local content, compulsory CSR spending or social investment, provision of infrastructure, personnel training, and similar topics are incorporated into contracts between investors and

³ Columbia Center on Sustainable Investment, "Leveraging Mining-Related Infrastructure Investments for Development," available at: <http://ccsi.columbia.edu/work/projects/leveraging-infrastructure-investments-for-development/>.

governments, addressed in agreements between investors and communities, or otherwise required by domestic legislation.

The Guinean mining code, for example, requires the negotiation of CDAs with local communities, as well as a certain percentage of turnover to be paid into a local development fund. Similar laws exist elsewhere. But such laws do not always provide sufficient details regarding how funds will be managed or who constitutes the legitimate recipients. These details are important, as they can shape how CDAs or local development funds are structured. Moreover, such arrangements should be handled carefully, as they could potentially cause rifts between neighboring communities.

Another participant mentioned that, in some cases, governments block negotiations between communities and companies, because the government already has an agreement with the company. In these cases, how can communities get involved and ensure that they benefit from nearby projects? If everything relevant to communities is fully and finally covered in agreements with governments, there is no room left for communities to negotiate. Mechanisms that ensure fair allocation of funds to communities, combined with approaches that assure adequate community representation, particularly over time as demographics change, are generally necessary. Other participants noted that some community agreements are tripartite, involving local government officials as well as the company and the affected community. Such tripartite agreements could potentially be used to record the free, prior, and informed consent (FPIC) of communities concerned, although the actual FPIC should be obtained much earlier, before investment projects are approved. In addition, participants noted that community paralegal programs can assist communities by providing locally informed legal help in their dealings with companies.

3. Post-contracts, including Contract Disputes

After contracts have been signed and operations have commenced, disputes may arise between the company and the government, the company and the community, or the company and its employees. Such disputes are addressed in various ways. The group first discussed the role of operational-level grievance mechanisms for non-contracting parties. Such mechanisms are rarely written into CDAs or even investor-state contracts. Yet the UN Principles for Responsible Contracts urge that investor-state contracts provide for operational-level grievance mechanisms for third parties,⁴ while the IFC Performance Standards require IFC clients to establish grievance mechanisms for affected communities. The latter have more generally become accepted as best practice for environmental and social sustainability issues in investment projects.⁵

⁴ U.N. Human Rights Council, “Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators,” (25 May 2011), available at: <http://www.ohchr.org/Documents/Issues/Business/A.HRC.17.31.Add.3.pdf>.

⁵ International Finance Corporation, “Performance standards on environmental and social sustainability,” available at: http://www.ifc.org/wps/wcm/connect/c8f524004a73daeca09afd998895a12/IFC_Performance_Standards.pdf?MOD=AJPERES.

Investors sometimes raise disputes with governments through treaty-based investor-state arbitration or contract-based commercial arbitration, while governments can also raise contractual disputes through commercial arbitration as provided in the investor-state contract. But what happens in dispute procedures if a company is not performing its community development obligations as required by the agreement with the government – is this the same as other contractual breaches, such as polluting a river? Can a CDA provision be enforced? This, of course, depends in part on how the contractual obligation was drafted. Some participants, however, noted that enforcement is difficult, as breaches may occur in remote areas and thus cannot be detected immediately; moreover, even if information is collected, it is often not sufficient to be used in courts. Other participants noted that the use of technology makes detection easier and faster than before.

The discussion turned to the need for contracts that are sufficiently flexible to adjust to changed circumstances over time. More lengthy adjustment processes, for example, by giving the power of amendment to Parliament, can be time consuming and can bring a project to a standstill.

The group also discussed how to ensure contracting parties' performance of environmental or social requirements, and the proper allocation of responsibilities and liabilities for those issues in contracts, going beyond compliance with local law. One participant noted that the use of IFC's Performance Standards gives the "hook" that is needed to include references to environmental and social issues within a contract, although one problem is how the contractual obligations are enforced. In one case, a preliminary Memorandum of Understanding was used to allocate responsibilities on environmental and social issues, prior to the issuance of licenses or contracts. Countries could also use model laws to allocate various environmental or social responsibilities (such as for resettlement), but the real problem is enforcement.

4. Monitoring/Contract Termination

Participants agreed on the importance of monitoring investments to ensure that investors and government entities comply with domestic law and their contractual obligations. Yet governments do not always have the capacity to undertake robust monitoring, raising the question of the extent to which monitoring should be outsourced and paid for in advance if the government lacks capacity to effectively monitor the implementation of the investment. At a minimum, governments must ensure that project payments are received, and to this end fiscal audits are necessary. This is where fiscal and the human rights issues overlap, as failure to monitor project payments may mean that the government is not in compliance with its economic and social human rights obligations. In respect of fiscal audits, it is not simply a binary question of whether to outsource them or not – there are different roles that different parties should play, and governments should carefully allocate responsibility for such audits. Moreover, governments must grapple with a fundamental question related to investment and the use of resources, as there is frequently an imbalance between the resources dedicated to completing an investment deal and the resources dedicated to subsequent monitoring and enforcement of investor obligations and payments. Political leaders should remember to prioritize long-term follow-up.

There is also the problem of communities not being able to access remedies if they are not part of the investor-state contract. And although monitoring by community members can be a useful supplement to government efforts, if a community is not involved in the design or negotiation of a deal, community members may be reluctant to participate in monitoring.

5. Additional Considerations

Coming back to the balance between policy, law, and contracts, participants also explored the role of regional cooperation. For example, it was noted that the Economic Community of West African States (ECOWAS) is drafting a regional mining code that could help address competition between countries and builds on earlier regional cooperation in West Africa, including a shared mining directive and a more general mining policy. Although it is not yet clear which countries will adopt the code, its adoption could help harmonize mining policies that help support sustainable practices and promote rights. Regional initiatives only make sense, however, if countries agree to have certain fixed terms and are willing to forego negotiation of particular issues.

Participants also briefly considered home country policies, which can be used to supplement host country efforts to regulate or monitor large-scale investments. The U.S. Foreign Corrupt Practices Act provides one example, although there are many extraterritorial efforts that have been made.⁶ Future advocacy activities, for example, may be directed at increased requirements for supply chain due diligence, building on the modest successes in the conflict mineral area.

Topic 3: Looking Ahead

The participants agreed that a short summary of the meeting with an annex on specific initiatives, reports, tools, and other resource documents discussed in this Colloquium would be useful. In addition, the group brainstormed on possible next steps. The ideas raised included:

ACTORS TO WORK WITH

- **Law schools and business schools:** A module on project finance and how these issues are addressed in the field might be a useful addition to law school or business school curricula. Such a module could include key elements and best practices in terms of embedding rights and sustainability into project design. There may be both international and interdisciplinary interest in this.
- **Private equity firms and institutional investors:** Some companies receive funding from private equity firms. Ensuring that private equity firms are equipped to understand sustainability and rights issues, and to ask the right questions of general

⁶ See, for example, Columbia Center on Sustainable Investment, “Raising the bar: Home country efforts to regulate foreign investment for sustainable development,” Conference Background Note (November 2014), available at <http://ccsi.columbia.edu/files/2014/01/CIIC-Background-Paper-Nov-6.pdf>.

partner investors, may be one avenue to improve investor conduct. Aside from the Principles for Responsible Investment, which has a private equity workstream,⁷ participants considered other ways to make progress with regard to private equity firms, as well as institutional investors such as pension funds and hedge funds. In addition, a participant noted that there is an increasing trend where investors simply pull out of certain sectors entirely. It is a challenge to find investors that will stay in those sectors and try to change them.

- **Industry:** Some industry associations could prove to be willing partners in promoting sustainability and rights efforts focused on large-scale investments. For example, one participant noted that the Mining Association of Canada might welcome many of the initiatives discussed during the colloquium, particularly given that Canadian companies are used to working in heavily regulated atmospheres and would not lose their competitive advantages with higher regulation. Other associations have a specific focus on contract negotiations, such as the Association of International Petroleum Negotiators, and thus might be interested in exploring some of the issues addressed during the colloquium. Participants also noted that agricultural commodity associations might want to engage more deeply in this type of work.

- **Lawyers:** Some law firms are currently tackling how to implement the UN Guiding Principles.⁸ The American Bar Association has endorsed the Guiding Principles, and the International Bar Association has drafted guidance for bar associations and business lawyers on applying the Guiding Principles. This move to improve the understanding of the Guiding Principles might encourage lawyers to integrate human rights standards more frequently in their work. Participants noted, however, that there has been pushback from some in-house lawyers regarding the implementation of the Guiding Principles.

Law firms also provide support for negotiations of investor-state contracts, although there often is no space within negotiations for community involvement. Even though communities may never be fully involved during the negotiation stage, lawyers could perhaps encourage such involvement in certain parts of the process.

- **Academic community:** More quantitative research that focuses on developing the business case for better integration of various sustainability, rights, transparency, or good governance efforts in large-scale investments would be useful. One participant noted that economists should think more about quantifying such benefits. The IFC has a financial evaluation tool, developed jointly with Deloitte that does this to a certain extent: it can help assess how the human rights or environmental steps that companies did not take affect the amount of money that companies eventually spend. The tool is public, but

⁷ Principles for Responsible Investment, “Private equity,” available at: <http://www.unpri.org/areas-of-work/implementation-support/private-equity/>.

⁸ UN Guiding Principles on Business and Human Rights, available at: http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

very difficult to run independently.⁹ Another participant noted that greater familiarity on the part of practitioners with the literature on evaluating social and environmental costs would also be beneficial to the governments with which practitioners work.

CONTRACTUAL TERMS

- **What we want in contracts:** Participants agreed that contract provisions should be enforceable, and questioned what the standards should be in terms of sustainability and rights issues. One participant suggested that a forum might be useful to discuss this question in detail. Another participant noted the problem that governments sometimes request assistance after having already negotiated for 1-2 years. At that point, there is only so much that a negotiation support provider can do, and the focus ends up being on damage control. This is one reason why it is important to restrict stabilization clauses and ensure a flexible amendment procedure in contracts. Doing so means that everything does not have to be right at the start, as long as things can evolve and take into account changes in circumstances over time. The authority to make changes in law should remain with governments, which allows public interest matters to be addressed between governments and citizens, rather than governments and investors.

- **What we do not want in contracts:** Certain clauses or drafting styles may be particularly problematic. For example, equitable treatment clauses can cause significant problems for governments. Similarly, broad contract terms that allow Ministers to waive royalties or other investor obligations are problematic. In addition, clauses that allow for automatic renewal of long leases on the same terms may be problematic, as are contracts that are longer than forty years. For additional resources, the London School of Economics (LSE) Investment and Human Rights Project has a learning hub¹⁰ that pulls together numerous tools related to contracts and human rights. CCSI's Negotiation Support Portal also provides resources on the whole investment process, including the contract negotiation stage.¹¹

CONTRACT TRANSPARENCY

- What are the implications of increased contract transparency, and who will use the information resulting from transparency? One participant noted that greater contract transparency might sometimes benefit investors rather than other stakeholders. This points to the need to ensure that contract transparency can also benefit government and community stakeholders. Training for such stakeholders, which several groups undertake, can assist them in better understanding contracts that have been disclosed. Some companies and governments are still reticent about contract disclosure, however, and participants suggested that exploring commercial confidentiality might be useful in order to better understand the concerns of contracting parties and how to address them.

⁹ International Finance Corporation, "Financial Evaluation Tool for sustainability investments," available at: <https://www.fvtool.com/index.php>.

¹⁰ London School of Economics Investment and Human Rights Learning Hub, available at: <http://blogs.lse.ac.uk/investment-and-human-rights/>.

¹¹ Negotiation Support Portal, available at: <http://www.negotiationsupport.org>.

Annex: Mapping the Landscape

Examples of legal, policy, and technical efforts to embed sustainability, human rights, good governance, or transparency principles into contracts, law, and policy related to extractive industry or large-scale agricultural investments

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| <p>Columbia Center on Sustainable Investment (CCSI)</p> | <ol style="list-style-type: none"> 1. Online repositories of publicly available extractive industry and land contracts: <ul style="list-style-type: none"> • Extractive industries: A searchable online repository of oil, gas, and mining contracts has been developed by CCSI in partnership with the Natural Resource Governance Institute (formerly Revenue Watch) and the World Bank. The repository includes annotations of the key social, environmental, human rights, fiscal, and operational provisions in contracts, and will be updated to provide greater search and comparison functions. Guidance documents are also available to help read and understand these contracts. The repository can be found at http://www.resourcecontracts.org. • Land, agriculture, and forestry: A searchable database of commercial agriculture and forestry contracts is being developed by CCSI in partnership with the World Bank, and will be launched in 2015. It will be accessible at www.openlandcontracts.org. A guide on land contracts terminology is being developed in partnership with the International Senior Lawyers Project. 2. Tool to assess the human rights and environmental implications of large-scale contracts: <ul style="list-style-type: none"> • CCSI is currently developing tools to assess the human rights and environmental implications of land contracts, which will be released in early 2015. These tools, which will be provided as a guidance note and also as an online tool, will support stakeholders in conducting their own assessment of contracts. They explain common human rights and environmental issues that may arise, identify relevant international law and best practices, and describe when this information may be included in contracts. • Similar tools will be developed to help stakeholders assess the human rights and environmental implications of extractive industries contracts. 3. Negotiation support for governments in relation to large-scale investments: <ul style="list-style-type: none"> • CCSI has developed an online portal to support resource-rich low- and middle-income countries with preparing for, negotiating, monitoring, and implementing large-scale investment projects. The information is relevant to extractive industry, land, and infrastructure investments. The portal includes a roadmap on the different stages of the investment process, a repository of useful tools and resources relevant to each stage, a list of support providers that provide technical assistance to host governments in relation to such investment projects, and information on relevant capacity building courses. It can be found at www.negotiationsupport.org. |
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| | <p>4. Global mapping of mandatory requirements in mining laws in relation to community development:</p> <ul style="list-style-type: none"> • CCSI has compiled information on mandatory requirements related to community development codified in mining laws. The mapping is available at http://ccsi.columbia.edu/files/2015/01/Community-Development-Requirements-in-Mining-Laws-Matrix-November-2014-.pdf. <p>5. Database of publicly available Community Development Agreements (CDAs):</p> <ul style="list-style-type: none"> • CCSI has created a depository of publicly available CDAs: http://ccsi.columbia.edu/work/projects/community-development-agreements-frameworks-and-tools/ • In early 2015, CCSI will publish a brief analyzing how to ensure CDAs work for citizens by providing an overview of the issues at stake throughout the pre-negotiation, negotiation, and monitoring stages. This research draws on a review of relevant literature and on CCSI’s depository of CDAs. • CCSI is also expanding its research in relation to CDAs by comparing mandatory and voluntary mechanisms. In addition, CCSI is collaborating with the International Senior Lawyers Project (ISLP) to develop an annotated database of CDAs, inspired by www.ResourceContracts.org and www.OpenLandContracts.org. <p>6. Improving the understanding of stabilization clauses:</p> <ul style="list-style-type: none"> • CCSI is engaged in ongoing work to better understand when stabilization clauses focused on fiscal terms are justified, as well as the length of time that a stabilization clause should be in effect. <p>7. Research, trainings, and workshops on investment treaties and investor-state arbitration, including with respect to investment contracts and domestic legislation:</p> <ul style="list-style-type: none"> • CCSI is analyzing the practices of arbitration tribunals, including in relation to stabilization clauses, estoppel-like principles, and access to justice. • CCSI is also studying issues surrounding how investment disputes address the re-negotiation of contracts and performance requirements. • CCSI offers trainings and workshops for governments, lawyers, and arbitrators regarding investment treaties and investor-state arbitration, and their impact on investments, contracts, and legislation. |
| <p>Danish Institute for Human Rights (DIHR)</p> | <p>1. Guide to assist companies with considering human rights in state-investor contracts and negotiations:</p> <ul style="list-style-type: none"> • DIHR has developed a guide that provides practical information and guidance to companies on respecting human rights in state-investor negotiations and in investment contracts. The guide spans both the negotiating process and the content of contracts. It is based on the Principles for Responsible Contracts. The guide includes information on why human rights are important, a checklist targeted at negotiators |

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| | <p>that comprises matters to consider while negotiating, and a compliance model. It can be found at http://www.humanrights.dk/files/media/dokumenter/udgivelser/human_rights_and_stateinvestor_contracts_2014.pdf.</p> <p>2. Guide for integration of human rights into environmental, social, and health impact assessments:</p> <ul style="list-style-type: none"> • In collaboration with IPIECA, DIHR has developed a practical guide for the oil and gas sector focused on integrating human rights into ESHIAs. It can be found at http://www.humanrights.dk/files/media/dokumenter/tools/integrating_hr_into_eshia.pdf. <p>3. Partnerships with other national human rights institutions (NHRIs):</p> <ul style="list-style-type: none"> • DIHR is a national human rights institution, and works with other NHRIs on issues related to contracts, policy, and law. For example, with support from the Irish Human Rights Commission and UNDP, DIHR recently worked with the Sierra Leone Human Rights Commission to develop the Guidelines for Monitoring Business and Human Rights in Sierra Leone. |
| <p>Global Witness</p> | <p>1. Report on oil contracts in Uganda:</p> <ul style="list-style-type: none"> • Global Witness recently released a report analyzing contracts between oil companies and the government of Uganda. The report contains a detailed analysis of the fiscal, environmental, and social aspects of the contracts. It can be found at http://www.globalwitness.org/ugandaoilcontracts/files/Report_A_good_deal_better_high_res.pdf. <p>2. Advocacy for transparency around contracts, investments, and supply chain due diligence:</p> <ul style="list-style-type: none"> • Supply chains: Global Witness is advocating for the U.S. Securities and Exchange Commission to focus on due diligence and transparency in supply chains in order to determine whether minerals purchases have benefited abusive armed groups in eastern DRC, as discussed in Section 1502 of the Dodd-Frank legislation. The organization is also advocating for the passage of legislation in the European Union (EU) that will place mandatory supply chain due diligence requirements on EU-based companies that source natural resources from conflict-affected and high-risk areas. More information can be found at http://www.globalwitness.org/campaigns/conflict/conflict-minerals/legislation. • Extractive industries: Global Witness is on the international board of the Extractive Industries Transparency Initiative (EITI), which is a global coalition of governments, companies, and civil society working together to promote improved openness and accountable management of revenues from natural resources. More information about the initiative can be found at https://eiti.org/. |

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| | <p>3. Work around land grabbing:</p> <ul style="list-style-type: none"> • Partnership between Norway and Liberia: Global Witness helped facilitate a contract between Norway and Liberia, pursuant to which Norway pays Liberia to preserve Liberia’s forests. More information can be found at http://www.globalwitness.org/library/us150-million-partnership-between-norway-and-liberia-stop-logging-could-signal-bold-new. • International Criminal Court (ICC): Global Witness is supporting a complaint that has been brought before the International Criminal Court regarding land grabbing in Cambodia. The complaint asserts that land grabs in Cambodia constitute a crime against humanity. |
| <p>Herbert Smith Freehills LLP (HSF)</p> | <p>1. Efforts to train clients on business and human rights:</p> <ul style="list-style-type: none"> • HSF has sought to educate clients and prospective clients on human rights issues, including those relevant to natural resource investments. <p>2. Taxonomy on home country measures to regulate the overseas activities of individuals and corporations:</p> <ul style="list-style-type: none"> • This taxonomy is available at http://ccsi.columbia.edu/files/2014/01/CCSI-Taxonomy- -Nov-10.pdf. |
| <p>Institute for Human Rights and Business (IHRB)</p> | <p>1. Developing methodology for sector-wide impact assessments:</p> <ul style="list-style-type: none"> • Myanmar: IHRB and the Danish Institute for Human Rights developed a methodology for sector-wide impact assessments. These assessments facilitate comprehensive evaluations of policy, law, contracts, and operations in a sector through the lens of the UN Protect, Respect, Remedy Framework. In Myanmar, where the two Institutes founded the Myanmar Centre for Responsible Business, the assessments focus on four sectors: oil and gas, tourism, information and communications, and agriculture. More information and completed assessments can be found at http://www.myanmar-responsiblebusiness.org/news/swia/. • Colombia: IHRB is conducting a similar sector-wide impact assessment on the mining sector in Colombia. <p>2. Guide on implementation of the UN Guiding Principles on Business and Human Rights in the oil and gas sector:</p> <ul style="list-style-type: none"> • IHRB has developed a Guide that summarizes what the UN Guiding Principles on Business and Human Rights expect for oil and gas companies, offers ideas and examples for how to put them into practice in the oil and gas sector, and links to additional resources. It can be found at http://www.ihrb.org/pdf/eu-sector-guidance/EC-Guides/O&G/EC-Guide_O&G.pdf. |
| <p>International Corporate Accountability Roundtable (ICAR)</p> | <p>1. National Actions Plans (NAPs) on business and human rights:</p> <ul style="list-style-type: none"> • A toolkit for the development, implementation, and review of National Action Plans (NAPs) on business and human rights has been developed by ICAR in partnership with DIHR. The toolkit provides ready-to-use tools to assist governments and civil societies in understanding the Guiding Principles on Business and Human Rights and the state of |

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| | <p>implementation of the Guiding Principles in specific countries. Civil society groups, governments, and national human rights institutions in various countries, including the United States, Mexico, Chile, Colombia, South Africa, Tanzania, Kazakhstan, and several European States, are using the tool. It can be found at http://accountabilityroundtable.org/analysis/napsreport/.</p> <ul style="list-style-type: none"> • President Obama committed the U.S. government to developing a NAP on responsible business conduct in September 2014. A series of regional consultations are taking place from December 2014 to April 2015, with the first being hosted by NYU Stern's Center on Business and Human Rights on December 15 and the last being hosted by ICAR and the Global Business Initiative (GBI) in Washington, DC on April 16. ICAR encourages all stakeholders to engage in the consultation process and has created an online portal for recommendations, resources, and news relating to the U.S. NAP: http://nationalactionplan.us/ <p>2. Government procurement:</p> <ul style="list-style-type: none"> • ICAR released a report on the U.S. federal government's procurement practices and their human rights implications. It can be found at: http://accountabilityroundtable.org/initiatives/procurement/. <p>3. Access to judicial remedy:</p> <ul style="list-style-type: none"> • In partnership with the European Coalition for Corporate Justice (ECCJ) and the Corporate Responsibility Coalition (CORE), ICAR released a report on barriers in accessing judicial remedy for corporate-related human rights abuses in home States. The report, entitled "The Third Pillar," can be found at http://accountabilityroundtable.org/initiatives/remedy/. |
| <p>International Institute for Environment and Development</p> | <p>1. Legal Tools for Citizen Empowerment: A collaborative initiative to strengthen local rights and voices in natural resource investments through developing analysis, testing approaches, and sharing lessons from innovation. As part of the Legal Tools initiative, IIED:</p> <ul style="list-style-type: none"> • Promotes public scrutiny of investor-state contracts, for example through high-impact reports on contracts for "land grabbing" and on agricultural commercialization contracts. These reports can be found at http://pubs.iied.org/12568IIED.html and http://pubs.iied.org/17260IIED.html, respectively. • Publishes learning materials and handbooks on investment law and contracts, targeting government and CSOs. Two examples are <i>Foreign investment, law and sustainable development: A handbook on agriculture and extractive industries</i> (available at http://pubs.iied.org/17513IIED.html) and <i>Investment contracts and sustainable development – How to make contracts for fairer and more sustainable natural resource investments</i> (available at http://pubs.iied.org/17507IIED.html). Over the years, the learning materials have been used at training events for government, parliamentarians and CSOs. • Promotes international lesson-sharing on ways for CSOs to scrutinize |

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| | <p>investment treaties, laws, and contracts through practitioner publications and international webinars. For instance, Indonesian social movements and civil society recently shared lessons from challenging the constitutionality of the Investment Code, and civil society from Africa and the Americas shared experiences with making CSO submissions to investor-state arbitration.</p> <ul style="list-style-type: none"> • In collaboration with an extensive network of partner organizations in Africa and Asia, develops and implements legal empowerment tools to strengthen capacity to claim rights and influence decisions, for example through “legal caravans” in Mali’s mining areas, or through grassroots and media capacity support in Tanzania. More information can be found at http://pubs.iied.org/G03762.html and http://www.iied.org/helping-communities-push-back-making-better-use-law. • Develops analyses on technical issues to contribute to academic and policy debate on investment treaties, law, and contracts. For example, IIED has published recent journal articles on <i>Do investment treaties unduly constrain regulatory space?</i>, and <i>Reconfiguring investment contracts to promote sustainable development</i>. • More information on IIED’s work on investment treaties, laws, and contracts can be found at http://www.iied.org/rethinking-investment-treaties-laws-contracts. |
| <p>International Institute for Sustainable Development (IISD)</p> | <ol style="list-style-type: none"> 1. Assistance to host governments with regard to investments: <ul style="list-style-type: none"> • IISD provides direct assistance to governments in relation to legislation, contracts, and treaties in the realm of investments. IISD also provides training for government employees. 2. Model investment treaties: <ul style="list-style-type: none"> • A model international agreement on investment for sustainable development was published in 2005 by IISD. It can be found at http://www.iisd.org/pdf/2005/investment_model_int_handbook.pdf. • IISD assisted with the development of a model bilateral investment treaty for the Southern African Development Community. It can be found at http://www.iisd.org/itn/wp-content/uploads/2012/10/sadc-model-bit-template-final.pdf. 3. Model mining contract: <ul style="list-style-type: none"> • IISD assisted with the development of the International Bar Association’s Model Mining Development Agreement. It can be found at http://www.iisd.org/pdf/2013/mmda_transparency_report.pdf. 4. Guide to negotiating investment contracts for farmland and water: <ul style="list-style-type: none"> • IISD has published a guide with information on preparing for contract negotiations and a model investment contract for farmland and water resources. The guide can serve as a useful checklist of what should be considered and included in contracts. It can be found at http://www.iisd.org/sites/default/files/publications/iisd-guide-negotiating-investment-contracts-farmland-water_1.pdf. |

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| | <p>5. Work with African Parliamentarians on land grabbing:</p> <ul style="list-style-type: none"> • IISD is assisting the Pan-African Parliament to address concerns around land grabbing. IISD initially focused on raising awareness amongst Parliamentarians, and is now working with them and the regional African Parliaments to develop model laws for the region and specific countries. |
| <p>International Senior Lawyers Project (ISLP)</p> | <p>1. Assistance to host governments:</p> <ul style="list-style-type: none"> • ISLP provides direct legal assistance to host government clients around the negotiation or renegotiation of specific resource contracts. To ensure that these contracts support sustainable development, contracts negotiated by ISLP are generally public, have very limited stabilization clauses (both in terms of being focused on specific fiscal matters and being time limited), include the voluntary principles on security and human rights, preserve local policy space, and limit the scope of dispute settlements. • ISLP also assists host governments with efforts to adopt laws that reflect best practices in natural resource management and builds the capacity of government officials to effectively implement those laws. More information can be found at http://www.islp.org/content/economic-development. <p>2. Support to vulnerable communities facing large-scale investment and extractive industry projects:</p> <ul style="list-style-type: none"> • Direct practical assistance to communities: ISLP provides direct assistance to communities in a number of ways, including by offering tactical advice and by supporting contract (re)negotiation and mediation efforts. For example, in Kerio Valley, Kenya—where potentially vast oil reserves have recently been discovered—ISLP is providing communities with information on best practices in respect to large-scale extractive industry investments. ISLP is also supporting local lawyers as they attempt to engage the oil developer and craft a fair, robust community benefits package. • Capacity building and skills transfer to grassroots CSOs working with local communities: ISLP also provides training, skills building, and strategic assistance to local organizations working on behalf of communities affected by development projects. In Liberia, for instance, ISLP works closely with the Sustainable Development Institute (SDI) to support forest- and farming-dependent communities who face major logging and agricultural operations. Last year, SDI began offering direct legal support to communities through its Legal Aid for Communities and the Environment (LACE) program. ISLP supports LACE’s efforts by assessing its existing capacity, helping to train staff, and assisting in developing strategies for growing a sustainable and effective legal department. • Litigation support: Additionally, ISLP supports transnational litigation efforts against corporations and governments charged with violating rights in connection with major investment projects. In Cambodia, ISLP |

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| | <p>recently worked with villagers to develop a creative international litigation strategy in relation to land grabbing, and has supported a lawsuit in Britain against the sugar conglomerate Tate & Lyle Sugars on the matter. The lawsuit, which calls for the value of the sugarcane produced on community land to be returned to the villagers under a conversion theory, has since been transferred to UK law firm Leigh Day as part of a broader legal and advocacy strategy. More information can be found at http://www.islp.org/content/impact-field-strategic-defense-cambodia-0.</p> |
| <p>Natural Resource Governance Institute (NRGI)</p> | <p>1. Assistance to host governments:</p> <ul style="list-style-type: none"> • Negotiations, legislative development, licensing, and awarding contracts: NRGI provides policy advice in support of more transparent, accountable, and effective management of oil and mineral resources. The organization has provided technical assistance around legislative reform to governments in a range of countries, including Ghana, Guinea, Nigeria, Tanzania, Peru, Iraq, Libya, Tunisia, Iraq, Indonesia, and Mongolia. NRGI has provided direct support to contract review and negotiation processes in Guinea and Sierra Leone. • Enforcement and monitoring: NRGI assists with the development of regulations and associated internal procedures to enforce the legal frameworks in contracts and laws. • NRGI provides training to government officials on natural resource legislation, contract negotiation, and content, fiscal policy, and accountability mechanisms. The government-facing training activities include courses at global universities such as Oxford’s Blavatnik School of Governance and in targeted in-country workshops with government officials. <p>2. Training civil society, parliamentarians, and journalists:</p> <ul style="list-style-type: none"> • NRGI facilitates capacity-building activities for oversight actors throughout the world, which cover contract negotiation, contract analysis and monitoring, and natural resource sector legislation and policy. The organization organizes regional knowledge hubs in partnership with leading research institutions in Peru, Indonesia, Azerbaijan, Ghana, Lebanon, and Cameroon (learn more here: http://www.resourcegovernance.org/issues/regional-hubs). It also conducts country-specific training courses with civil society groups to help increase local expertise. • NRGI has developed special programs to help increase expertise around extractive industry laws and contracts among parliamentarians and journalists. More information, as well as links to briefings, can be found at http://www.resourcegovernance.org/issues/parliaments and http://www.resourcegovernance.org/issues/media-training. • In partnership with the World Bank’s Global Governance Practice, NRGI has devoted special attention to helping civil society groups monitor the implementation of extractive industry contracts. <p>3. Submissions to legislative drafting bodies and public commentary on</p> |

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| | <p>contracts and proposed legislation:</p> <ul style="list-style-type: none"> • NRGi conducts analyses of draft legislation for the consideration of legislatures and executive drafting bodies, and to influence the public debate and benefit from lessons learned internationally on legislation. • NRGi publishes commentary on vibrant public debates surrounding natural resource contracts within resource-rich countries, such as <i>Tanzania and Statoil: What does the Leaked Agreement Mean for Citizens?</i>, which can be found at http://www.resourcegovernance.org/sites/default/files/Tanzania_Stat_oil_20140808.pdf. <p>4. Campaigns to increase contract transparency:</p> <ul style="list-style-type: none"> • NRGi has participated in national and global campaigns in support of contract transparency. The organization participates actively in the Open Contracting Partnership and participates on the board of the Extractive Industries Transparency Initiative, where it seeks to promote vigorous application of the encouragement of contract publication included in the new EITI standard. Within individual countries, NRGi works with government officials and civil society groups to facilitate the publication of contracts. <p>5. Online repositories of publicly available extractive industry contracts:</p> <ul style="list-style-type: none"> • In partnership with CCSI and the World Bank, NRGi has supported the development of a searchable online repository of oil, gas, and mining contracts. For more information, see the description under CCSI. The repository can be found at http://www.resourcecontracts.org. <p>6. Research and production of documents to share international experiences on contract processes, including:</p> <ul style="list-style-type: none"> • <i>The Natural Resource Charter</i> (http://www.resourcegovernance.org/publications/natural-resource-charter-second-edition) • <i>Contracts Confidential</i> (http://www.resourcegovernance.org/publications/contracts-confidential-ending-secret-deals-extractive-industries) • <i>Enforcing the Rules</i> (http://www.resourcegovernance.org/publications/enforcing-rules) • <i>Mining Contracts: How to Read and Understand Them</i> (developed in partnership with the World Bank, CCSI, AusAid, GIZ, OpenOil, and ISLP; available at http://www.resourcecontracts.org/blog/guides-to-contract-terminology.html) |
| Open Society Foundation (OSF) | 1. Support for transparency, good governance, and human rights work through funding allocated by local offices, regional offices, and thematic programs. |
| Oxfam America | 1. Transparency initiatives: <ul style="list-style-type: none"> • Oxfam has been involved with a number of initiatives related to transparency of large-scale investments, including the Extractive |

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| | <p>Industries Transparency Initiative (EITI) and the Open Contracting project.</p> <ul style="list-style-type: none"> • Oxfam has been advocating for the International Finance Corporation’s Performance Standards to include thorough contract disclosure requirements. <p>2. Range of work in numerous countries in relation to contract analysis, contract monitoring, and contract disclosure, and advocacy in support of related legislation. Examples include:</p> <ul style="list-style-type: none"> • Ghana: Oxfam has arranged for lawyers to perform contract analysis examining stabilization clauses and other provisions in extractive industry contracts in Ghana. Oxfam is also involved with work related to contract monitoring, contract implementation, and laws related to licensing and competition. • Kenya: Oxfam is working on contract analysis and disclosure initiatives. • Cambodia: Oxfam is examining oil contracts and conducting economic modeling based on contractual fiscal terms. • Mali: Oxfam is also examining contracts and conducting modeling in Mali. • Burkina Faso: Oxfam is engaged in advocacy to get 1% of mining profits into locally affected communities. <p>3. Work on free, prior, and informed consent (FPIC):</p> <ul style="list-style-type: none"> • Oxfam is advocating for the inclusion of FPIC clauses into more contracts and exploring different ways in which this can be done. <p>4. Community Consent Index project:</p> <ul style="list-style-type: none"> • Oxfam will release a report in 2015 about the policies of oil, gas, and mining exploration and production companies in respect of community consultation and consent. A previous publication of the report can be found at http://www.oxfamamerica.org/explore/research-publications/community-consent-index/. <p>5. “GROW” campaign and “Beyond the Brands” campaigns:</p> <ul style="list-style-type: none"> • The campaigns focus on food justice and target the top ten agriculture and beverage companies. Among other things, Oxfam encourages these companies to incorporate free, prior, and informed consent (FPIC) policies, including with regards to their suppliers. <p>6. Policy recommendations for National Human Rights Institutes (NHRIs):</p> <ul style="list-style-type: none"> • A report proposing a framework for evaluating NHRIs in countries with significant human rights abuses associated with oil, gas, and mining projects was released by Oxfam in 2013. It can be found at http://www.oxfamamerica.org/static/media/files/nhri-background.pdf. |
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