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Multinational Enterprises in Situations of Violent Conflict and Widespread Human Rights Abuses

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**Multinational Enterprises in Situations of
Violent Conflict and Widespread Human Rights Abuses**

May 2002

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Multinational Enterprises in Situations of Violent Conflict and Widespread Human Rights Abuses*

Executive Summary

1. In response to enquiries about foreign investment in Myanmar, the Committee for International Investment and Multinational Enterprises (CIME) asked the Secretariat to prepare a paper, under the responsibility of the latter, that would provide background information to interested parties. This paper was not only to shed light on business activity in Myanmar, but also to consider the broader challenges of conducting business responsibly in countries characterised by civil strife and extensive human rights violations. The present paper responds to this request and focuses on issues that are of particular relevance to extractive industries. This sector's share of global investment is quite small, but its significance for particular host societies is large and the underlying issues for corporate responsibility affect the welfare of millions of people. While not ignoring the problems that have arisen in connection with multinational enterprise activity in troubled host countries, this paper also seeks to promote and highlight the positive roles that some companies have played in the search for solutions to these countries' very complex problems.

2. The paper draws on three sources of information: the economics and business literature; a Secretariat survey of public statements by a group of multinational enterprises; and studies and information produced by governments and international organisations. Based on these sources, it explores two issues that pose particular challenges for multinational enterprises operating in severely troubled societies.

3. The first issue concerns violence and human rights abuses in the immediate vicinity of company operations. Serious problems in this area have been documented, especially in extractive industries (in managing security and relations with local communities). The paper also notes that, working individually and through industry associations, some companies are trying to improve their practices in this area. A growing body of management practice and of conceptual guidelines is slowly emerging, though not all companies are involved in these efforts.

4. The second issue concerns the factors underpinning the dynamics of civil strife and human rights violations. A growing empirical literature supports the view that civil strife tends to be correlated with the level and structure of income and with the degree of development of political institutions. In particular, these findings identify strong primary resource orientation for the economy as being a significant factor contributing to the probability that a country will experience civil strife.

5. In economies heavily dependent on extractive industries, multinational enterprises operating in this sector typically provide large revenues to governments in the form of taxes, royalties and other payments. In countries with severe public governance and fiscal control problems, these payments can

* This paper was prepared by Kathryn Gordon, Senior Economist, Capital Movements, International Investment and Services Division, OECD. It has benefited from comments by government delegates to the CIME, by representatives of the Business and Industry Advisory Committee to the OECD and of the Trade Union Advisory Committee to the OECD, and by William Witherell, Rainer Geiger, Pierre Poret and other OECD Secretariat members.

contribute to both the means for violence -- by providing funding for the organisational and material requirements of conflict -- and the motive -- by providing financial stakes for conflict. In addition, OECD-based companies have occasionally agreed to refrain from disclosing the amounts of money they pay to governments in these countries. The paper also discusses the positive role of some leading companies, working with international organisations, in trying to improve transparency and accountability in the budget processes in some countries.

6. It is recognised that the influence of multinational enterprises in troubled societies, while often significant, does have limits. The search for solutions will not be an easy one and it will be prudent for companies to act in partnership with one another, with host and home governments and with international organisations.

I. Introduction

The official and clear aim of the Guidelines is to improve the climate for foreign direct investment and to promote the positive contribution that multinational enterprises can bring... Companies cannot be required to solve all the world's problems -- they have neither the mandate nor the organisation to do so...

*BIAC statement
First Annual Meeting of National Contact Points of the OECD Guidelines
June 2001*

It is not our role to solve the world's economic problems. At the same time we recognise that it is in our interest to contribute to the search for solutions.

Public statement by a major petroleum company, 2001

7. Many economists have become accustomed to thinking of resource allocation as an orderly, peaceful process governed by market prices and formal contracting. However, in many parts of the world violence and coercion are important factors not only in social and political discourse, but also in the control of economic resources. In the countries experiencing the worst problems, abuses of human rights involve such crimes as summary execution, ethnic cleansing, torture, forced relocations and forced labour¹.

8. The CIME has received enquiries about multinational enterprises operating in Myanmar². It asked the Secretariat to prepare a paper, under the Secretariat's responsibility, that provides background information to interested parties. It also asked the Secretariat to avoid overlaps with the International Labour Organisation's (ILO's) enquiries into the issue of forced labour in Myanmar (see Box 1) and to go

1 This paper will treat human rights abuses and violent internal conflict as closely related issues. In countries such as Myanmar, this is justified because widespread conflict and human rights violations are parts of the same, deeply embedded problems. For example, the problems occurring in the vicinity of the Yadana gas pipeline involved both conflict and human rights violations. The Myanmar military committed human rights violations within the context of its ongoing conflict with the Karen insurgency movement. In countries such as Angola, Nigeria and Sudan, the juxtaposition of civil conflict and human rights violations also seems appropriate.

2 Some of these requests are in the form of enquiries made to the National Contact Points (NCPs), which are charged with the promotion and implementation of the OECD Guidelines for Multinational Enterprises in their national contexts. Some NCPs are considering or have considered "specific instances" in relation to the activities of a few OECD-based multinational enterprises.

beyond the particular situation in Myanmar to consider the more general question of multinational enterprise investment in troubled societies. The ILO presented the findings of its enquiries to the December, 2001 meeting of the CIME. The issue of forced labour has been brought up on several occasions in connection with the OECD Guidelines for Multinational Enterprises. In June 2001, TUAC asked the CIME to discuss a range of issues relating to the June 2000 ILO resolution on Myanmar, including how the OECD Guidelines can be used to contribute to the elimination of forced labour in that country. In response, the CIME “emphasised the important contribution that observance of the Guidelines recommendations by MNEs can make to the elimination to all forms of forced or compulsory labour in Myanmar and elsewhere”. For example, the French National Contact Point was asked to consider the question of forced labour in Myanmar and recently issued recommendations to French companies with operations there (Annex 1). The trade union movement -- including the Trade Union Advisory Committee to the OECD -- has invited companies with activities in Myanmar to withdraw (Annex 2). The current paper seeks to provide information and analysis for government officials involved with OECD Guidelines, as well as other interested parties, in order to assist their consideration of the broader corporate responsibility issues that emerge in connection with multinational enterprise activities in troubled countries such as Myanmar.

9. This work reinforces activities being undertaken in other contexts. The UN Global Compact chose “zones in conflict” as the theme for its first round of policy dialogue and much of the associated analytical material. The OECD Development Assistance Committee has an active programme on conflict prevention, including an exploration of the role of private actors (see Box 2). Development Ministers issued a statement in April 2001 on *Helping Prevent Violent Conflict: Orientations for External Partners*. Ministers refer in this Statement to the potential role of the OECD Guidelines for Multinational Enterprises in enlisting the help of private actors in combating “illicit trafficking, corrupt resource deals, rent seeking and the flow of economic resources that can stoke or be the aim of violent conflicts”. As discussed later in this paper, Member governments, companies, business associations, trade unions and NGOs have also tried to contribute to progress in this area.

10. The question of investment in troubled countries is one of the most sensitive international investment issues of the early 21st century. Most 21st century investment issues are underpinned by what is basically a positive, optimistic agenda -- progress on this agenda will provide the impetus for improving the living standards and welfare of a broad cross section of the world’s population. Given appropriate political and institutional frameworks, the benefits of foreign direct investment are both demonstrable and large. This paper will be looking at investment in countries that “have not been able to integrate successfully into global markets and to participate in the growth-inducing benefits of FDI³” and that are far from having appropriate political and institutional frameworks. These societies are suffering from more than just poverty and economic stagnation. They are in the grip of violent forces and there are few signs of progress toward peace – Figure 1a shows that the frequency of civil strife⁴ in a sample of 61 “conflict” countries has increased markedly over the post-war period. While Myanmar has been characterised by a high and slightly increasing (since 1963) frequency of strife, some of the troubled countries in Africa (e.g. Sudan and Angola) have seen dramatic increases in the frequency of civil strife (Figure 1b). In these countries, not only is economic progress absent, but levels of conflict are high and often increasing.

11. Multinational enterprises are active in sectors ranging from high technology, tourism, manufacturing, retail distribution and construction. The present paper focuses on the activities of a

3 DAFFE/IME(2001)21; page 21.

4 These statistics use 1000 “deaths related directly to combat” as the threshold for defining civil strife. See footnotes of Table 1 for more detailed definition and background on numbers. Other measures of civil strife using intensity of conflict (number of combat-related deaths) show similar trends (Elbadawi and Sambanis 2000).

particular group of companies -- those operating in extractive industries. This sector accounts for most of the stock of inward investment in Myanmar⁵. While the sector's share of global investment flows is quite small, its importance for particular host economies can be large and the underlying issues affect the welfare of millions of people. In the words of a large extractive industry company, the exploration, extraction and distribution of mineral and petroleum resources takes companies to some of the "most difficult operating environments in the world." The company's statement refers to environments posing significant business risks stemming from pervasive corruption and human rights abuses or from the lack of a well-developed systems of regulation, law enforcement, social services and other government functions. In some cases, the host country environment is perceived to be so risky that foreign direct investors other than mining and petroleum companies -- whose activities are tied to natural resource availability -- largely, stay away. Extractive industry companies themselves are acutely aware of these risks. This is why they have participated in discussions on conflict prevention in the context of the UN Global Compact and have launched industry initiatives to help them to manage these risks more effectively (see below).

5. Extractive industry investment includes a multi-billion dollar project in natural gas development and distribution as well as an investment in a copper mine. Other investments are in the hotel industry, retail distribution and light manufacturing.

Figure 1a. **Frequency of violent, internal conflict -- total sample**
(For each period, index is calculated as the total years of conflict for 61 countries divided by 61 times the number of years in period)

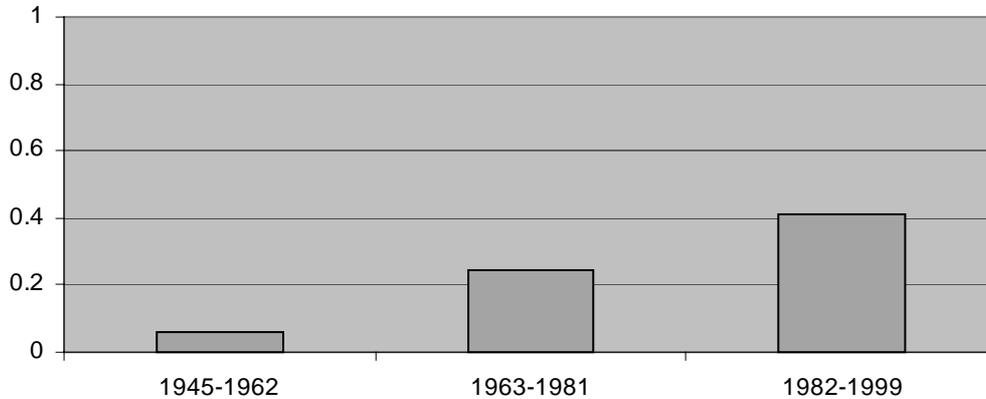
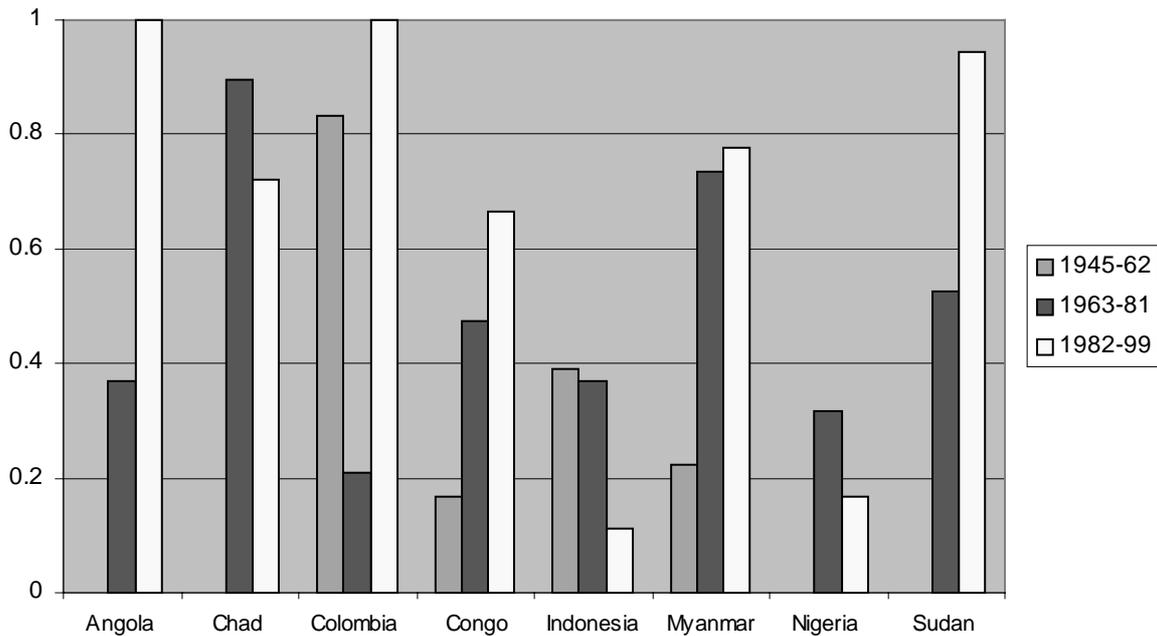


Figure 1b. **Frequency of violent, internal conflict -- selected countries**
(For each period, index is calculated as number of years of conflict divided by the number of years in period)



Notes:

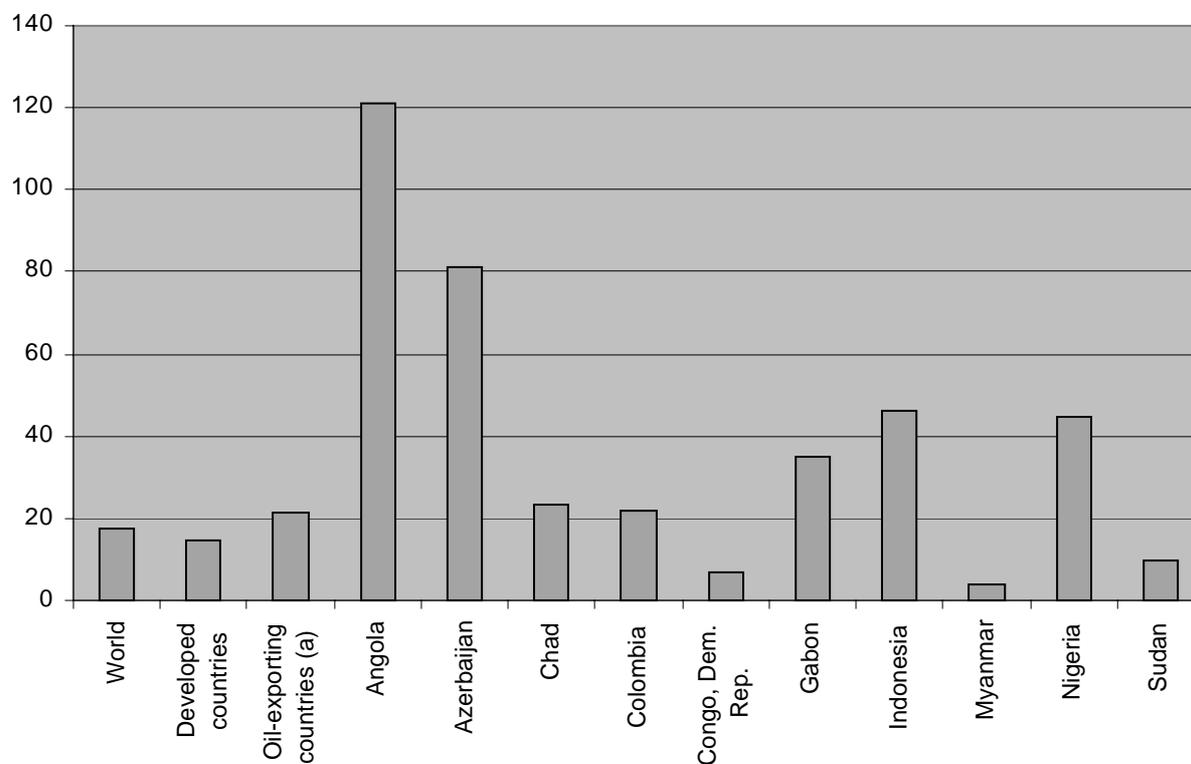
- Communist bloc countries not in sample; countries with two simultaneous civil wars (e.g. Philippines) are counted twice
- Beginning and ending years are counted as one
- Korean and Vietnamese Wars, Yugoslav/Bosnian War and Israeli/Palestinian conflict excluded from sample
- Definition of conflict: More than 1000 battle deaths in total; Conflict challenged sovereignty of internationally recognised state; Conflict involved the state as one of the principal combatants; Rebels were able to mount an organised military opposition to the state and to inflict significant casualties on the state

Source : OECD calculation using data from Nicolas Sambanis, 2000, "Partition as a Solution to Ethnic War: An Empirical Critique of the Theoretical Literature", World Politics, v52, July 2000, pages 437-83. From www.worldbank.org.

12. Box 3 presents the results of a Secretariat survey of how a group of OECD-based multinational enterprises in extractive industries view their roles and contributions in host societies. This survey covers the range of OECD based extractive industry companies, including very large, visible companies and medium-sized firms with little public visibility. The survey suggests that large companies are much more involved in developing positions on their relations with host governments than the smaller, less visible companies. Perhaps the most striking finding is the heavy emphasis placed by these companies on the social services they provide in host countries -- community development is commonly mentioned, with education and medical services/infrastructure being the most frequently cited activities. The prominence of activities in the area of social services -- not normally considered to be a core competence of extractive industry firms -- suggests that these companies feel a need to play different roles in some host societies than they would in their home countries. Payments to governments -- taxes, royalties and other payments - - are also recognised by many companies as being among their most important contributions. Only a few of the largest companies in the survey address a concern that will be developed in this paper -- that, in some host countries, little of this money makes its way to the broader population. Finally, some companies publish their views and practices in relation to two other issues addressed in this paper -- management of security forces and resettlement of local people. These statements range from brief acknowledgements of the issues to detailed descriptions of particular activities undertaken in particular local contexts (Nigeria is the country most often discussed in this way).

13. OECD-based multinational enterprises often have significant influence in troubled societies, but this influence does have limits. Figure 2 shows, for example, that, while the weight of international investment (relative to GDP) is large in some troubled countries (e.g. Angola), it is quite small in others (e.g. Myanmar). As the quotes from BIAC and a large oil company above indicate, the business community does not feel comfortable being asked to solve “all the world’s problems”. In addition, public governance problems in these countries are sometimes so severe that trying to act responsibly can be a serious competitive handicap (especially in such areas as corruption). Yet, many multinational enterprises with operations in these countries recognise that it is in their interest to contribute to the search for solutions. This paper suggests that the search will not be an easy one and that it will be prudent for companies to act in partnership with each other, with host and home governments and with international organisations. It will be necessary to join forces in trying to help these countries establish a sound institutional basis for sustainable growth.

Figure 2. **Stock of Inward Foreign Direct Investment -- Selected Countries and Regions**
(as a per cent of GDP, in 1999)



(a) Oil-exporting countries include: Algeria, Angola, Bahrain, Brunei Darussalam, Congo, Ecuador, Gabon, Indonesia, Iran, Islamic Republic of Iraq, Kuwait, Libyan Arab Jamahiriya, Nigeria, Oman, Qatar, Saudi Arabia, Syrian Arab Republic, Trinidad and Tobago, United Arab Emirates and Venezuela.

Source: UNCTAD, FDI/TNC database. World Investment Report 2001, United Nations, Annex table B.6, Page 325.

14. Two main issues for corporate responsibility are addressed in this paper:

- *Security management and safeguarding local populations.* The first has to do with violence and human rights abuses in the immediate vicinity of a company's operation. These management issues are clearly among the core functions of any business, especially managing the physical security of company assets and employees. These issues are discussed in section II.
- *Multinational enterprises in the broader logic of civil strife.* Multinational enterprises, through the payments they make to troubled countries, can play an inadvertent role in their problems by providing funding and stakes for conflict. This is a particularly challenging issue for corporate responsibility because most of the problems arise from lack of "government responsibility" in these host countries and, in particular, from poor public governance (budget systems, government transparency and accountability, protections of civil and political rights). As a result, the question of appropriate "roles" in this area is a difficult one. These issues are discussed in section III.

15. Section IV discusses the positive steps taken by some OECD-based multinational enterprises in the search for solutions to these problems. It is also worth briefly noting what is not covered in this paper:

- *Engagement versus disengagement.* This paper leaves aside the question of whether companies should invest in severely troubled countries (though it does provide some analysis that is relevant to it).
- *Country coverage.* A study done for the U.S. armed forces estimates that 38 countries are currently "conflict countries". The present paper looks at a small subset of these countries -- ones where OECD-based multinational enterprises have reportedly been involved, directly or indirectly, in conflict. Without establishing a list of problem countries, the study seeks to provide some background and institutional detail that will clarify the nature and the complexity of the roles played by multinational enterprises in these societies. The themes developed here reinforce those already being addressed by multinational enterprises (working individually and in industry associations) as well as by anti-corruption practitioners and international organisations such as the World Bank and the IMF.

II. Conflict and Human Rights Violations in the Vicinity of Company Operations

In 2000, 18 countries experienced severe security incidents. There was war or civil unrest (including five bomb attacks) in 10 countries and we evacuated staff in four. Employees were kidnapped in one country and in at least 11 countries there were murders, shootings and/or armed robberies at or around retail forecourts or sites...

*Description of security incidents experienced during a period of one year
From the social performance report of a major petroleum company, 2001*

16. As the quote above implies, security is a major issue for multinational enterprises and security problems take many forms. Multinational enterprises often find that they are unable to insulate their operations from conflict in the immediate vicinity of their operations. This is a particular issue in extractive industries, where companies have been involved (directly or indirectly) in episodes ranging from minor skirmishes to embroilment in full-scale civil wars.

17. Companies tend to become involved in these situations for two reasons. First, they need to protect their assets and employees. This function can be difficult anywhere and it is particularly challenging when the surrounding society is in the throes of conflict and the government and its rivals are violent. Second, business relations with local communities can deteriorate as a result of resettlement programmes or externalities (e.g. water pollution, destruction of hunting or fishing grounds). Problems facing companies in the immediate vicinity of operations involve the following issues:

18. *Protecting employees and assets.* Most societies permit, under various circumstances and to various degrees, the use of force for the protection of property. The appropriate management of this function is among the most serious issues of corporate responsibility that any business is asked to address. Generally, the use of force for the protection of property is closely controlled by governments. One of the main difficulties for multinational enterprises working in countries with poor governance resides in controlling this function closely enough that they themselves do not become party to human rights violations.

19. *Resettlement and impact mitigation.* OECD-based multinational enterprises may find themselves in conflict with local populations when their operations force people off the land or cause large social and economic disruptions. Investment projects that displace people involuntarily may give rise to severe economic, social, and environmental problems: production systems are dismantled; productive assets and income sources are lost; people are relocated to environments where their productive skills may be less applicable and the competition for resources greater; community structures and social networks are weakened; kin groups are dispersed; and cultural identity, traditional authority, and the potential for mutual help are diminished⁶.

20. *Lack of fiscal mechanisms for “buying” local support.* In a theme that will be taken up in the next section, fiscal arrangements may be such that little is done to “buy” the support of local people for an investment project (especially a disruptive one). One way that this is done in some OECD oil producing countries (e.g. Canada and the United States) is to allow regional or state governments to retain large portions of the public revenues from oil developments. Extractive industry companies recognise that inadequate revenue sharing with local communities can pose significant problems for them and they have occasionally sought to influence revenue sharing arrangements.

21. The Yadana project -- involving the development of offshore natural gas fields and the construction of a pipeline through a remote area in south-east Myanmar to a facility in Thailand – illustrates some of these problems. In a move that is common in extractive industries, the army provided security for the project. Serious acts of violence are alleged to have occurred on the part of the army in connection with the provision of security and the relocation of villages in the path of the pipeline, for which the project participants are alleged to share responsibility. The project participants deny that they ignored the activities of the army in relation to the pipeline, that village relocations were in furtherance of the project, and that they had knowledge of any violent activity by the military in furtherance of the pipeline. It is not the task of this paper to determine the validity of any of these allegations and some of them are the subject of court cases.

22. It should be stressed that the human rights violations that may have occurred in the vicinity of the Yadana natural gas project are not unprecedented. Similar problems have occurred in connection with oil and gas developments in Colombia, Congo-Brazzaville, Indonesia, Nigeria and Sudan. A report funded by the mining industry cites similar problems in that sector (Pye-Smith and Lee, 2001). The question of how companies manage relations with security forces of violent or repressive regimes is a complex one. The

6 The material on resettlement in this paragraph is taken from the World Bank website (www.worldbank.org/institutional/manuals), November 2001.

challenge for responsible businesses and for home and host societies is to define principles and concepts for appropriate management of security. Is a hands-off approach to management of security and resettlement operations appropriate when dealing with violent or repressive governments and military. If not, then what practices can and should companies follow in these circumstances? Is there a transparency issue? Should companies disclose special information they might have about serious human rights violations associated with their operations? If so, to whom? How would disclosure interact with any legal liabilities they might face in relation to these violations?

23. Many companies are aware that the business logic for trying to diffuse local violence is compelling. In a 2001 survey of the mining industry companies, a major consulting and audit firm found that political instability and especially armed conflict was a key reason given for withdrawing from operations by 78 per cent of the companies surveyed⁷. Diffusing local conflicts lowers security costs and allows companies to avoid damage to infrastructure and facilities. It also allows them to avoid harm to reputation and to reduce exposure to legal risks in their home countries⁸. Some extractive industry companies have set up industry initiatives designed to help them improve their performance in this area. These will be discussed below in section IV.

III. Means and Motives -- Multinational Enterprises and the Broader Logic of Violent Conflict and Human Rights Abuses

24. This section seeks to shed light on the root causes of violence in order to clarify the extent to which risks of violence can, in fact, be lowered by political or corporate action. It suggests that multinational enterprises can play indirect (and inadvertent) roles in the logic of violence and human rights as the taxes and royalties they pay enter extremely weak frameworks for public governance. Thus, unlike the security management and resettlement operations (which are well-identified fields of corporate responsibility, especially in extractive industries) discussed in the previous section, the issues discussed in section III take the debate on corporate responsibility into largely uncharted territory. Here, answers to questions about the nature of responsibility and about appropriate roles are far from clear. As will be documented in Section IV, some companies have tried to contribute to the search for solutions to the serious public governance problems that exist in some host countries, while others believe that these matters are none of their business.

25. Violence is a feature of all societies, but its prevalence varies. Some societies show relatively high levels of what might be called “random” violence. Organised violence, at least in its modern forms, requires considerable capital equipment, specialised personnel and significant organisational, technological and financial capabilities. In most countries, governments are generally effective in securing both *de facto* and *de jure* control of the use of force by armies and police forces⁹. Thus, recourse to force in many countries tends to be focused on law enforcement and defence. It is also reasonably subject to accountability and control through political and social processes. In contrast, in the troubled societies that are the subject of this paper, large scale, organised violence and coercion -- directed by governments or by tribes or ethnic or religious groups -- is used for many political and economic purposes (to eliminate or silence dissent, to force people to work, to obtain access to goods, services or assets).

7 Study cited in Pye-Smith and Lee, 2001

8 Several legal cases have been brought against OECD-based companies in relation to alleged human rights violations involving security forces in Myanmar, Congo Brazzaville, Nigeria and Indonesia.

9 In some countries, governments are the only organisations that are legally allowed to deploy deadly force. Some countries allow private security forces to operate under heavily regulated conditions.

Means and motives for conflict

26. Part of the economics literature seeks to understand violence and conflict as an aspect of the competition for economic resources¹⁰. Some economists have noted that the concept of rational self-interest that underpins much economic thinking implies that actors who believe that the use of force is in their own interest will be inclined to use it. The economic view of violence or coercion as being an option in any system of allocation raises the following questions -- Why is it that, in some societies, recourse to violence is common, while in others it is highly unusual? What social, institutional or economic factors heighten recourse to violence or, on the contrary, contribute to making violence an unattractive option that is infrequently resorted to?

27. Some empirical studies offer insights into the causes of internal conflict and war. One study published by the World Bank (Collier and Hoeffler, 2001) looks at two alternative views of the motives of civil war or other forms of violent internal conflict. The first views civil strife as arising out of grievances or hatreds associated with ethnic, religious or other forms of social division. The second, economic view regards civil strife as being motivated by a desire to alter the allocation of economic resources. The findings of this study are as follows:

- Despite the attention given to ethnic and religious fragmentation as sources of conflict, these variables do not have statistically significant effects, once economic variables are accounted for. In other words, the presence of ethnic or religious divisions within a country is not found to be an independent risk factor that increases the probability of civil strife.
- The level, growth and structure of income are all significant factors in conflict risk. Higher income is associated with lower conflict risk and a “particularly powerful risk factor is dependence upon primary commodities¹¹” (page 2).

These conclusions do not imply that ethnic, tribal or religious tensions are irrelevant to conflict, but they do underscore the importance of the role of economic forces -- which may interact with social factors -- in heightening the risk of conflict.

28. The result reported above on the importance of primary commodity orientation as a risk factor for conflict reinforces a growing number of other findings. Elbadawi and Sambanis (2000), looking at a global sample of countries, conclude that “[c]ontrary to popular belief, Africa’s civil wars are not due to its ethnic and religious diversity. ... but rather to high levels of poverty, failed political institutions and economic dependence on natural resources” (page 244). An empirical study by Leite and Weidmann (1999) finds that high endowments of “fuel and ore” resources tends to be associated with higher levels of corruption¹² (page 23). The study includes controls for such variables as rule of law (which decreases corruption), trade openness (decreases corruption) and ethnic fragmentation (no effect). Bayart *et al.* (1997) develop arguments in support of the same idea for a number of African states.

29. These studies underscore the need for countries with high natural resource endowments to have particularly strong institutions for public governance. As is shown in the next section, many of the

10 See, for example, Garfinkel and Skaperdas (2000), McGuire and Olson (1996), Umbeck (1981), Neary (1997), Skaperdas (1992) and Grossman and Kim (1995).

11 The primary commodity dependence is measured as primary commodity exports as a percentage of total exports.

12 In contrast to this result, a high “food and agriculture” orientation reduces corruption, as measured by the corruption perceptions index published by Transparency International.

troubled countries – including Myanmar – do not have such institutions. The challenge for these societies is to establish institutions for public governance that will allow public revenues to be used in support of economic development and social cohesion, rather than as stakes and funding for violent conflict.

Weak public financial institutions -- creating stakes for political violence and civil conflict

Natural resources can be a source of great good... or dreadful ill. The key element is not the resource itself, but how it is exploited. An orderly mining regime, operating within a transparent and predictable legislative and fiscal framework, can be a major source of prosperity for governments and people. Without it, mineral wealth... will be a magnet for the greedy and corrupt to line their own pockets at the expense of the people.

*Nicky Oppenheimer, Chairman, De Beers
Address at the Commonwealth Business Forum, November 1999
Diamonds Working for Africa*

30. The growing focus on institutional issues in the analysis of conflict has given rise to a relatively new concern about the roles that OECD-based multinational enterprises -- especially those in extractive industries -- may play in countries with high levels of conflict. According to this view, multinational enterprises may inadvertently and indirectly help to provide both the means and the motive for violence by providing revenues that are channelled through weak fiscal institutions. Extractive industry companies have been a particular focus of attention¹³. This does not imply that natural resource revenues provide stronger inducements for violence and corruption than other revenue sources. Indeed, any type of financial flow to governments could potentially provide the same inducements and pose the same problems. But as Nicky Oppenheimer points out in the quote above, natural resource revenues merit special attention because they tend to be large enough¹⁴ to create powerful stakes for particularly destructive forms of rent seeking¹⁵.

31. Fiscal policy -- who gets what out of government spending and who has to pay for it -- is an important mechanism through which societies seek to maintain internal cohesion and harmony. It provides a way of directing conflict through political channels rather than through more coercive channels. Many societies have elaborate fiscal mechanisms for implementing their models of social justice and for

13 See, for example, and a World Bank-sponsored study by Collier and Hoeffler (2001), Global Witness 1999 and 2000; Elbadawi and Sambanis 2000.

14 The Yadana pipeline is expected to provide sizeable revenues to the Myanmar government. Although financial details for the project are not public, low estimates place annual government revenues at US\$ 100 million (Bray 2001) while high estimates place it at US\$ 450 million (Impe 2001). The Chad-Cameroon pipeline is expected to generate US\$ 2-3 billion in revenues over its 25-year life. Ninety percent of Nigeria's public revenue is oil-related and, for Angola, this percentage is estimated at between 70 and 90 per cent.

15 Further complicating the issue of payments by business to governments is the fact that, in many conflict zones, recognised governments do not in fact control all of their territory. Other collective organisations -- tribes, political groups or drug cartels -- may be operating within these regions and assuming some or all of the functions of governments in these regions. Revenue flows to these informal governments are sometimes significant. Global Witness, an NGO that has campaigned for a system of certification which will discriminate against the trade in conflict diamonds (those used to support the activities of various rebel movements in Africa) estimates that UNITA, the rebel movement in Angola, earned US\$ 3.7 billion from the sale of diamonds over the 1992-97 period. Its profits for 1999 were estimated at US\$ 150-200 million and they may have been as high as US\$ 300 million in the year 2000.

maintaining internal harmony -- inter-regional transfers, regional spending programmes, income redistribution and social insurance policies. These programmes have given rise to their own distinctive rent seeking activities and have contributed to fiscal imbalances at various periods in the OECD area. However, they are also widely recognised to have been reasonably successful in helping to create just and peaceful societies.

32. Fiscal institutions generally include various transparency and accountability mechanisms that are designed to protect the integrity of government finances (to make sure funds are used for agreed purposes and to prevent embezzlement) and to promote political control and accountability. The fiscal practices that promote integrity and accountability have been the subject of considerable discussion in recent years and there has been much progress in defining appropriate practices. Both the OECD and the International Monetary Fund have developed frameworks for good practice that are relevant for fiscal institutions in both developed and developing countries¹⁶. However, in troubled countries, fiscal frameworks may not incorporate even the most rudimentary principles for effective public management for both revenues and expenditures. The presence of state owned enterprises further obscures the fiscal picture. Finally and perhaps most importantly, civil and political rights -- which permit broader scrutiny of fiscal outcomes (e.g. by the press or by opposition parties) -- are also wholly or partially suppressed. Table 1 provides a summary of the key fiscal characteristics relevant to understanding how oil revenues are used in selected oil producing countries and regions from both the OECD and the non-OECD areas.

16 See OECD (2000) and the IMF Code of Good Practice on Fiscal Transparency: www.imf.org/external/np/fad/trans/code.htm.

Table 1. **Fiscal Practices in Selected Oil and Gas Producing Countries and Regions**

	Non-disclosure of payments to government required of oil and gas companies? ¹	Are state-owned enterprises a joint venture partner in domestic oil and gas development?	Are systems for promoting the integrity of the use of public revenues in place? ²	Civil liberties and political rights -- 1971-2001 ³
OECD				
Alaska, USA	No	No	Yes	No ranking
Alberta, Canada	No	No	Yes	No ranking
Norway	No	Yes (mixed ownership with some private capital)	Yes	Free (entire period)
United Kingdom	No	No	Yes	Free (entire period)
Non-OECD				
Angola	Yes	Yes	No (“more than 2/3 of expenditures carried out outside the formal budgetary systems and without adequate accounting records” IMF 1997, page 7)	Not free (entire period)
Myanmar	Yes	Yes	No (extra-budgetary flows important enough to cast doubt on validity of official spending accounts; IMF 1999, page 17)	Not free (entire period)
Nigeria	Yes	Yes	Expenditure controls remain weak, but are the subject of ongoing attempts at reform (IMF 2001; page 23-24)	Free (1979-84) not free for rest of period except for recent improvement to “partially free” (1999-2001)

1. Source: OECD Secretariat contacts with World Bank for non-OECD area and with national and regional Treasury officials in the OECD area.
2. Source: For countries Various IMF country reports; see bibliography. OECD countries are scored “yes” because there is no mention in their IMF reports of problems of “budget integrity” or of extra-budgetary expenditures. For regional governments, source is regional treasury.
3. Freedom House rankings based on about twenty characteristics of civil and political institutions, as seen by potential users of these institutions. 1972-2001. <http://www.freedomhouse.org/ratings/index.html>

33. *Revenue generation and control.* Many developing countries are characterised by low general tax revenues and, especially, by a low ability to levy household income or consumption taxes (see, for example, IMF reports on Angola (1997), Myanmar (1999) and Nigeria (2001a))¹⁷. Tax enforcement practitioners recognise that taxpayers, if they choose to, can undermine most decentralised tax bases by taking steps that raise the costs of enforcement to levels that are high relative to the tax revenues that can be gained from enforcement (Slemrod, 1992). Tax compliance problems in troubled countries stem from the fact that the government is repressive and provides few public services likely to build support among potential taxpayers. Therefore, the absence of "culture of compliance" of taxpayers that is noted in the IMF survey of Myanmar is not surprising. Governments in many developing countries, including Myanmar, tend to rely on more easily controllable revenue sources (e.g. customs duties or the granting of competitive advantages to state owned enterprises for fiscal purposes¹⁸). In some countries (Myanmar in particular), governments and other parties have been accused of using their armed services for drug trafficking (which can also provide considerable revenues).

34. Multinational enterprises that can operate profitably in difficult environments like Myanmar (or Angola, Sudan and others) offer potentially large and viable funding sources for governments that might otherwise have trouble generating revenues. Extractive industry companies face serious problems when doing business in troubled countries, but these do not necessarily prevent them from running highly profitable operations. This is presumably because the high natural resource rents¹⁹ that are built into petroleum and mineral prices provide a margin of profit that can be used to offset the extra costs and risks of doing business in these countries as well as to make large tax and royalty payments.

35. Once these revenues are paid into the treasuries of countries such as Angola, Nigeria, or Myanmar, they enter exceedingly weak fiscal frameworks. An IMF report on Nigeria states the following about revenue accountability:

Fiscal analysis in Nigeria is hampered by the lack of reliable and comprehensive data... At the level of the federal government, revenue data are fragmented among collection agencies, the Nigerian National Petroleum Company or NNCP (government oil-marketing company) and the Central Bank of Nigeria... Revenue monitoring is further complicated by the operations of many accounts opened abroad and locally by the [Central Bank Nigeria] for the federal government.

Similar problems exist in Myanmar, Angola and Democratic Republic of Congo, according to recent IMF reports for those countries²⁰.

17 The IMF report on Myanmar notes that tax revenue generation is a particular problem for the military regime there: it reports that the average level of tax revenue has been 3.5 per cent of GDP in recent years, as compared with 15 per cent other countries in the structural adjustment and enhanced structural adjustment facilities. The report adds: "The low level of tax revenue in Myanmar can be explained in terms of both a narrow tax base and an apparently poor culture of compliance" page 16. IMF November 1999.

18 They often impose "hidden" consumption taxes in certain markets (for example, Myanmar does this in agriculture via a state owned enterprise with a protected position in food distribution). The IMF report notes that agricultural policies squeeze Myanmar agriculture and tax consumers, generating substantial implicit tax revenues that are estimated to have been about equal in value to formal tax revenues in recent years.

19 Natural resource rents are a feature of prices in efficient markets for non-renewable resources. They are a reflection of the inherent scarcity of the natural resource (due to the fact that it cannot be produced).

20 See bibliography under International Monetary Fund for references.

36. In some instances, this fiscal control problem is aggravated by confidentiality arrangements in which host governments require companies to not make public their payments to them (see Table 1, first column). Although confidentiality clauses are a feature of many competitive bidding and contracting situations, this particular type of non-disclosure agreement is not a feature of contractual agreements in OECD oil-producing countries and regions. Secretariat contacts with officials from the treasuries of Alaska (USA), Alberta (Canada), Norway and the United Kingdom confirm that confidentiality agreements preventing disclosure by companies of payments to governments are not a feature of their contracting arrangements with major petroleum companies. This suggests that there are ways of protecting the legitimate interests of both business and governments while not compromising revenue transparency and accountability.

37. *Expenditure control.* Recent IMF reports for Myanmar, Nigeria and Angola mention extra-budgetary expenditure and poor assurance of the integrity of use of public funds as being serious problems for those countries. The following text from the IMF review of the Democratic Republic of Congo provides a succinct description of that country's expenditure control problems and of the particular mechanisms used to thwart control (International Monetary Fund 2001a):

...it is estimated that only a marginal proportion of expenditure (less than 2 per cent, according to some estimates) was executed through normal procedures. Most expenditure was paid either (i) from diverted revenue sources without any control, or (ii) through direct payment orders to the central bank without the prior knowledge of the treasury; (iii) through fast-track procedures. In any event, these procedures strongly differ from the country's formal and rather orthodox budget practices...Overall, the proliferation of parallel channels deprived the Ministry of Finance of its capacity to record and control expenditure.

38. While the Democratic Republic of Congo may have unusually poor budget controls, the practices identified in this text -- lack of formal tracking of expenditure, payment orders to central banks, and executive authorisations for extra-budgetary spending -- appear to be common in quite a few countries (see IMF reports for Myanmar, Nigeria and Angola). What distinguishes economies with high resource endowments from those not having such wealth is the large volume of fiscal flows that are sent through these channels.

39. *State-owned enterprise.* Many OECD-based multinational enterprises operate in joint venture partnerships with state-owned enterprises (e.g. in the oil and gas sectors of Angola, Myanmar and Nigeria; see Table 1)²¹. The presence of state owned enterprise as recipients of joint venture revenues further complicates the task of improving fiscal transparency since, as OECD experience shows, state owned enterprises enlarge the scope for non-transparency in public accounts.

40. These conditions -- weak fiscal controls, the presence of state owned enterprise and suppression of political and civic liberties -- undermine effective political control of budget processes and confer great power on the political elites in these countries. Under such arrangements, elites have extensive discretion over the use of public money -- they are free to divert money to their own favourite spending programmes or to unrecorded military spending (as is pointed out in the IMF report on Myanmar). Alternatively, there is little to stop them from "privatising" the funds -- through perquisite consumption, for example, or through outright embezzlement. Thus, these arrangements set the scene for the some of the crudest and most destructive forms of "rent seeking".

21 Norway also has (partially) state-owned companies in energy, as discussed in the IMF report on Norway (2001).

Implications of these problems for host societies

41. There has been awareness of these problems in vague terms for many years. However, suspicions have largely been confined to the realm of innuendo and gossip -- until recently, it has been impossible to get a firm handle on the size of the phenomenon. Due to the efforts of international organisations and anti-money laundering authorities in two OECD countries, the public has recently had its first glimpses of the possible magnitude of such corruption.

42. Money laundering authorities in Switzerland reported in 2000 that banks had reported receiving SF 800 million (about US\$ 480 million) moved there by Nigeria's former president (General Abacha) and his entourage²². Following on from the Swiss investigation, the Financial Services Authority of the United Kingdom found that US\$ 1.3 billion from Nigeria had been "siphoned through" London banks. Nigeria claims that a total of US\$ 4.2 billion is missing from its Treasury. The fate of some of this money is now being determined in Swiss and UK courts. A second set of figures concerns Angola. Fiscal analysts now believe that between US\$ 500 million and US\$ 1.4 billion is "missing" from the Angolan treasury²³. These are large amounts of money relative to the sizes of the Nigerian and Angolan economies²⁴ and would seem to constitute credible stakes for internal conflict.

43. This is obviously a problem for countries whose wealth is being misused or illegally "privatised". The problems may be summarised as follows:

- *Subversion of government mission and absence of government services.* Public funds that could be spent on education, health care, clean water systems, law enforcement or better judicial systems are used in other ways. A more subtle concern is that these funds are not spent on programmes that bind groups or regions into a harmonious national whole and that move ethnic, social class or regional conflicts out of the domain of physical strife and into the political domain. Furthermore, the incentives created by these arrangements tend to attract people into government who are motivated by something other than a vocation for public service (as the quote above from Nicky Oppenheimer suggests; see also Hibou (1997)).
- *High-level resistance to reform.* There is a need to help developing countries acquire the expertise needed to control their fiscal processes. However, the design of the fiscal arrangements described above could be viewed as emerging not so much from a lack of expertise as from a conscious attempt to thwart effective financial or political control. Indeed, these arrangements appear to be well suited to enhancing the discretionary power of political elites and enlarging their scope for engaging in personal rent seeking activities. Likewise, human rights abuses and the suppression of political and civil rights are quite "functional" in these contexts inasmuch as they also thwart the broader contestability of political control.

22 Money Laundering Reporting Office of Switzerland (1999/2000) page 3.

23 The source of this information is IMF/World bank. A correspondence from a World Bank official for Angola states: "Successive IMF/WB missions during the last few years worked with data supplied by the authorities and found large unexplained outlays equivalent to between one third and one-half of total reported fiscal revenues. Unfortunately, these problems have not yet been resolved, and the staff of the IMF are awaiting explanation of the disposition of about US\$ 1.4 billion in fiscal revenues and external loans in 2001. These calculations are solely derived from government data. The information on current payments made by oil companies is still scant, since some companies claim confidentiality clauses and no framework has been established for an ongoing reporting of oil-related payments."

24 Nigerian 1999 GDP in current dollars was US\$ 43.3 billion and Angola's was US\$ 5.9 billion in 1999 (GDP data from World Bank).

- *Coercive allocation systems chase away non-coercive systems.* Market based economies use a variety of allocation systems, the most important ones being market prices and contracting. In a properly functioning market system, price and contract formation is underpinned by a measured and contained threat of force in order to protect property and enforce contracts. The problem with generalised conflict or uncontrolled government-sponsored violence is that it makes coercion a viable way to influence resource allocation. Once coercion becomes a viable alternative, it tends to take over as market competition is replaced by competition in the use of force and as economic power coalesces around groups that deploy force most effectively (Umbeck 1981). The widespread use of force in troubled countries -- whether by formal governments or by other organised groups -- is antithetical to the effective functioning of a market economy.

44. These features make political and economic reform a highly intractable problem. How can these societies start down the path of reform in the face of high level political resistance and of (sometimes-violent) suppression of competing economic and political power bases? The next section describes positive efforts by some OECD-based multinational enterprises to contribute to the search for solutions.

IV. The Positive Role of OECD-based Multinational Enterprises in the Search for Solutions

45. The serious problems in Myanmar and in other countries are widely recognised by the international community. Everyone would like to find a solution to these problems. The real controversy concerns how best to go about this.

46. This section looks at what some OECD-based multinational enterprises are doing to contribute to the resolution of these problems. It focuses on the areas identified earlier -- fiscal transparency, security forces and safeguarding local populations.

Fiscal initiatives by extractive industry companies and the fight against money laundering

47. The preceding section has shown that the fiscal and political frameworks in some countries are not well suited to channelling government revenues toward uses that promote sustainable development. Box 3 shows that companies recognise that their payments to governments are among their most important contributions to host societies, but it also suggests that they are less likely to discuss the fact that these funds might be misused or diverted. This might reflect the fact that reform of government budget processes is not normally an issue that is of direct concern to companies -- indeed some companies explicitly state that they view themselves as having little or no role in these matters. Yet, other companies have sought to play a constructive role in improving fiscal institutions and practices. This section describes their actions in favour of fiscal transparency as examples of positive initiatives being taken by multinational enterprises to help their host societies get onto the path of sustainable development. However, the long-term solution to these problems lies in the establishment of a broad framework for public governance – including fiscal, political and civic institutions. This will require sustained efforts by host societies, working in co-operation with enterprises, other governments and international organisations.

48. *Promoting revenue transparency.* In early 2001, an OECD-based petroleum company published its payments to the Angolan government. The Angolan government expressed its dissatisfaction with this move. A second OECD-based petroleum company then made “precise technical and financial information available to the IMF and the World Bank²⁵” in relation to its payments to the Angolan government. Both

25 Quote from the company’s press release issued in early 2001.

companies had to work around the non-disclosure agreements they had signed with the Angolan government (see footnote 22 and Table 1).

49. These actions raised awareness among companies, NGOs and international organisations of issues relating to disclosure and transparency in contracting between oil companies and host governments. These organisations have recently begun to work in partnership in looking for ways to improve contracting. One of the lessons drawn from these experiences is that, when engaging in transparency initiatives of this sort, it is “safer” and probably more effective to act through an industry-wide initiative than to act as an individual company. Recently, there have been calls for various extractive industries to engage in transparency operations through their industry associations, while working in co-operation with international organisations²⁶. However, the complication lies in getting a critical mass of companies involved in an industry that includes large and mid-sized firms based in the OECD as well as several larger firms based in such countries as China, Russia and Malaysia. The potential role of international organisations, such as the IMF and the World Bank, in collecting and using the information resources of multinational enterprises as a way of improving fiscal management is also noteworthy.

50. *Trust funds.* Another major OECD-based petroleum company, working in co-operation with the World Bank, has tried to improve the distribution of the fiscal benefits from its investments in Chad. This initiative, described in more detail in Box 4, involves the revenues from the Chad-Cameroon pipeline, an infrastructure project with development costs of some US\$ 3.7 billion. The project is expected to generate US\$ 2-3 billion in oil revenues for Chad's government over the next 25 years. The initiative involves the creation of a “future generations” trust fund into which certain oil revenues are to be deposited²⁷. Government officials, parliamentary representatives, NGOs, trade union officials, administer the trust fund and try to ensure that funds go to priority sectors such as education, health care and rural development. It remains to be seen whether this initiative can work, given the problems in the broader institutions of public governance in Chad²⁸. The initial *tranche* of US\$ 25 million paid to the Chadian government from the fund in late 2000 posed some problems (that is, these funds appear not to have been used for designated purposes). A newspaper report states that funds were released and then “according to government sources, the money began disappearing...”²⁹ President Deby later disclosed that he had spent US\$ 4.5 million of it on arms. “It is patently obvious that without security there can be no development,” he stated in defending the purchases.

51. *Regional fiscal flows.* Companies have also been active in the area of inter-regional fiscal flows. One company with operations in Nigeria noted that conflict in that country's oil producing region might be reduced if that region received more of the oil revenues and successfully lobbied (along with host country partners) for a redistribution of the revenues between central and regional governments. Nigeria is now

26 Several speakers at the Global Forum on International Investment Conference on International Investment and Mining mentioned corruption issues (e.g. Oxfam). The Project on Mining Minerals and Sustainable Development has also been working on corruption issues. One of the keynote speakers and numerous special sessions addressed transparency issues in relation to extractive industries at the International Anti-Corruption Conference, Prague, October 2001.

27 . This idea is similar in spirit to Norway's State Petroleum Fund (SPF). Established in 1990, the SPF was designed to help “avoid excessive spending of petroleum revenues and promote a gradual transformation of oil wealth into foreign financial assets.” IMF (2001e) page 9. However, the two funds' other institutional characteristics (notably how money is released from the funds) are quite different.

28 A Freedom House analysis points to serious problems in the protection of political and civic liberties in Chad.

29 From Washington Post article, December 5, 2000. “World Bank Reassesses Chad Pipeline Deal”, by Douglas Farah and David Ottaway.

engaged in a process of fiscal decentralisation³⁰. An OECD-based mining company with operations in a region of Indonesia decided to divulge the amount of money that it had paid to Jakarta. In doing so, it hoped to make it easier for the people in the region to ascertain whether the full amount due to them from Jakarta was actually being paid. The disclosure operation had the intended effect, but it also resulted in unintended adverse consequences for the company. Specifically, as local actors realised how rich the company was, it became more of a target for extortion attempts.

52. *Anti-corruption initiatives in industry associations.* Finally, companies have been working through their industry associations to address this issue. For example, a mining industry group -- the Mining Minerals and Sustainable Development Project -- is working with Transparency International (an anti-corruption NGO) on increasing the transparency of mining companies' agreements with governments³¹. The idea is also now being taken up in gatherings of the oil industry (such as the International Oil and Gas Producers Association and at an ongoing series of meetings on this subject at the Royal Institute of International Affairs)³². These initiatives will be seeking host government support as well³³.

53. *Anti-money laundering initiatives.* Other approaches to these issues focus on the financial flows coming out of troubled countries. As the story about General Abacha illustrates, anti-money laundering initiatives can help keep track of funds that might leave these countries under suspicious circumstances. Effective anti-money campaigns can lower the incentives for high level corruption by reducing the odds that such money can successfully be removed from host countries and hidden. Indeed, the successful prosecution of the fight against money laundering could bring major development benefits for countries that are subject to this type of corruption. Various public initiatives (such as the Financial Action Task Force) as well as private initiatives by major banks (such as the Wolfsberg AML principles -- global anti-money laundering guidelines for private banking developed by a group of international banks) are essential components of a broad response to this problem.

54. *Socially responsible investment funds.* Socially responsible investment (SRI) funds are active in monitoring and influencing business activity in troubled countries such as Myanmar. They adopt a variety of investment strategies. Some seek to have a positive influence on companies' contribution to these countries. For example, a group of SRI funds representing some 400 billion pounds of investment states that it "does not call for divestment, but urges companies to be aware of the risks and to establish effective policies for managing them." Other funds avoid investing in companies that invest in countries like Myanmar.

Due care in the management of security forces and in safeguarding local populations

55. As noted above, the management of security forces -- and especially the deployment of deadly force -- is among the most serious issues of corporate responsibility that any company is asked to face.

30 . See IMF 2001c for a discussion of the successes and problems associated with this move toward fiscal decentralisation.

31 . Based on Secretariat correspondence with the project director from Mining and Minerals for Sustainable development.

32 . Based on Secretariat correspondence with the officials of the Oil, Gas and Chemicals Department of the World Bank.

33 . For example, the idea may fit with the Organisation of African States' Millennium Initiative promoted by President Obasango of Nigeria and others. Based on Secretariat correspondence with the officials of the Oil, Gas and Chemicals Department of the World Bank.

There have been problems in this area, particularly in extractive industries. Some extractive industry companies recognise this and are working on it in co-operation with governments, with NGOs and with host governments. This recognition itself represents progress relative to the situation that existed 10 or 15 years ago.

56. One initiative in this area was undertaken by a group of large, extractive industry companies in co-operation with the UK and US governments to develop what guidelines defining due care in the exercise of this crucial function. Also involved were the International Federation of Chemical, Energy, Mine and General Workers' Unions and two human rights NGOs. The result is the Voluntary Principles on Security and Human Rights, which provides guidelines for the management of security operations by business. The guidelines cover risk assessment, as well as relations between companies and host government security providers and private security firms. Companies are advised to consult regularly with host governments and local communities about the impact of their security arrangements. The Voluntary Principles also recommend that companies "record and report any credible allegations of human rights abuses by public security in their areas of operation to host government authorities".

57. The development of guidelines and practice in this area is underpinned by basic principles developed within the United Nations system. These include the Code of Conduct for Law Enforcement Officers and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (adopted by the United Nations General Assembly in 1979 and 1990, respectively).

58. Resettlement is another activity that has prompted allegations of human rights violations in the vicinity of multinational enterprise operations. Involuntary resettlement may cause severe long-term hardship, impoverishment, and environmental damage unless measures are carefully planned and carried out. Resettlement or rehabilitation is a process by which those adversely affected by an investment project are assisted in their efforts to improve, or at least to restore, their incomes and living standards. Some companies, working with NGOs and development institutions that offer specialised services for dealing with such issues, have contributed to the creation of a body of knowledge and good practice on how to manage resettlement operations³⁴. The World Bank has issued guidelines on how resettlement operations should be conducted.

Overall assessment

...the effectiveness of [private] initiatives [for corporate responsibility] is closely linked to the effectiveness of the broader systems of private and public governance from which they emerge -- private initiatives cannot work well if other parts of the system work poorly.

Private Initiatives for Corporate Responsibility, Report to Ministers by the Committee on International Investment and Multinational Enterprise, C/MIN(2000)4

59. This exploration of the role of OECD-based multinational enterprises in troubled countries gives grounds for both concern and hope. These countries present particular challenges for corporate responsibility because, unfortunately, there is so little "government responsibility." Governments in these countries are corrupt, violent and largely unconcerned with such functions as law and contract

34. For example, Business Partners for Development, jointly sponsored by a number of extractive industry firms, an NGO and the British government describes itself as a "project-based learning initiative in support and development of specific partnerships [of business, civil society and government] for the dual purpose of promoting their effectiveness and learning and communicating" A number of other NGOs assist firms in dealing with this kind of issue.

enforcement, regulation, infrastructure development and provision of social services. Multinational enterprises operating in these countries have steered their ways through these risky environments and some appear to have done better jobs of this than others.

60. Some serious concerns have been raised. Company's activities have placed them in close proximity to human rights abuses (some well documented, others only allegations). Companies have provided billions of US Dollars in revenues to corrupt regimes and, by signing confidentiality agreements with them, have at times appeared to be "silent partners" in wrongdoing. In addition to the human suffering that companies may indirectly be party to, this causes problems for the international policy and business communities as they try to build the case for the benefits of foreign direct investment.

61. Yet, there are grounds for hope. Some companies have taken steps to redress certain problems and raise public awareness of them. There is a growing awareness of and willingness to act on these issues in business, public policy and civic circles. Some companies -- working with governments, NGOs and international organisations -- have made progress in building consensus on how to deal with some of these issues. This has taken the form of guidelines on management practices. For the time being, it has been mainly large, multinational enterprises that have spearheaded these initiatives. The OECD Guidelines for Multinational Enterprises could provide a forum for enlisting the support of a broader range of companies. The OECD Guidelines are recommendations covering 10 areas of business ethics that express the shared values and expectations of the 36 countries that adhere to them. These include recommendations on human rights, information disclosure and taxation. With their distinctive follow up institutions they could be used as a forum for exploring ways that the private sector can contribute to the search for solutions to these countries' deeply rooted and stubborn problems.

Box 1. The ILO and the Issue of Forced Labour in Myanmar

Myanmar ratified the ILO's forced labour convention in 1955. The International Labour Office (ILO) has been calling on the Government to end the practice of forced labour since the early 1960's. The annual ILO conference decided on a Resolution in June 2000 calling on its constituents (governments, employers and trade unions) to review relations with Myanmar and cease any such relations that might assist its government to continue the practice of forced labour. In May 2001, the government of Myanmar agreed to receive a high level team (HLT) whose mandate was to carry out an objective assessment of the practical implementation and actual impact of the framework of legislative, executive and administrative measures taken by the authorities in order to put an end to the practice of forced labour. The HLT considered that its task extended beyond the analysis of the formal steps taken by the Government to implement the orders concerning forced labour. It also looked at the impact of these measures and at their effectiveness in changing the "realities of forced labour". In October 2001, the HLT issued its report which, while recognising that the new legislation had been the object of a wide, although uneven, dissemination across the country, found that its impact on the realities had been limited. In particular, it found that forced labour was practised in its various forms in areas affected by military presence and especially in border areas where fighting may still be ongoing.

The ILO's Governing Body considered the report in November 2001. The principal conclusions of the Governing Body were as follows:

The Governing Body acknowledged that the Myanmar authorities had fulfilled their commitments under the Understanding of 19 May 2001 which, *inter alia*, gave the team freedom of movement and contacts in the country.

It recognised the efforts made by the authorities to disseminate the orders among the population, but it considered that these efforts should be strengthened to include all media and use of a broader range of languages.

It expressed "profound concern" regarding the very limited impact of this new legislation to date and, in particular, the persistent impunity with regard to criminal prosecution of persons who have committed violations, despite the provisions of this legislation. It called on the Myanmar authorities to make urgent efforts to rectify this situation and provide more convincing evidence of their willingness to achieve this by the next session of the Governing Body (March 2002).

The Governing Body asked the Director General to pursue the dialogue with the authorities in order to establish continued and effective ILO representation in Myanmar as soon as possible. It asked that assistance be continued so as to promote the other suggestions put forward in the report, including with regard to establishing a form of ombudsman. The Director General was asked to report to the next meeting of the Governing Body regarding the progress achieved on the different points under consideration, including criminal proceedings concerning the allegations brought to the attention of the High Level Team during their investigation, if these are founded. The Governing Body will then decide on the proper course of action.

Following the Governing Body's decision, an ILO technical mission visited Myanmar in February 2002. The mission discussed with the government and, as regards the ILO representation in Myanmar, both sides agreed on the appointment of an ILO liaison officer in Myanmar. Through the liaison officer, they will continue to engage in dialogue and co-operation in order to eliminate the practice of forced labour in that country.

Box 2. Business and Conflict Prevention -- Selected International Initiatives

The OECD “Development Assistance Committee’s work in the area of conflict, peace and development co-operation is carried out primarily through the Network on Conflict Peace and Development Co-operation. This is the only international forum where conflict experts from bilateral and multilateral development co-operation agencies meet to define common approaches in support of peace. Development Ministers issued a statement in April 2001 on *Helping Prevent Violent Conflict: Orientations for External Partners*. Ministers refer in this Statement to the potential role of the OECD Guidelines for Multinational Enterprises in eliciting the help of private actors in combating “illicit trafficking, corrupt resource deals, rent seeking and the flow of economic resources that can stoke or be the aim of violent conflicts. Also noteworthy is the Committee's development of guidelines on conflict prevention. A compilation of guidance and policy statements on work in this area has just been published in *The DAC Guidelines -- Helping Prevent Violent Conflict* which includes a chapter on “Working with Business.” (See webnet1.oecd.org/oecd/pages/home/displaygeneral)

The Global Compact Office organises annual policy dialogues on the contemporary challenges of globalisation, providing a platform for the exchange of views and substantive discourse. The policy dialogues encourage action networks between business, labour and civil society organisations in pursuit of innovative solutions to complex problems. Participation in the dialogues is voluntary and open to all Global Compact participants. The first year’s dialogues focuses on the private sector in zones of conflict and includes discussion of the activities of extractive industry companies. (See www.unglobalcompact.org/un/gc/unweb.nsf)

The World Bank has sponsored analytical work on the causes and consequences of conflict. This includes consideration of the role of the private sector in influencing events in conflict zones (some of the studies that have emerged from this project are discussed in section III of this paper). It has also issued a new policy for the Bank’s work in conflict-affected countries.

Box 3. How OECD-based Extractive Industry Enterprises View Their Host Country Relations

Extractive industry firms often play important roles in their host economies and sometimes have major impacts on the local communities. This box looks at how extractive industry companies view these roles and impacts. This analysis is based on the public statements of 59 companies in “petroleum and gas” (29 companies) and in mining (30 companies). The methodology for this survey is described in the Annex 2 and selected results are reported in Table 2.

General description of public declarations and policy statements

Thirty-eight per cent of the petroleum companies and 13 per cent of the mining companies make extensive statements on their roles in host societies. The amount of material provided appears to be strongly correlated with the size and the public visibility of the companies. For example, all of the major oil companies except one have issued extensive policy statements and declarations. In mining, the so-called “seniors” (large companies) are much more likely to make public statements involving detailed explanations of policies and practices than the “juniors” (smaller, less visible companies).

This survey suggests that large companies in extractive industries are heavily involved in the provision of social services and that they view these as being among their important contributions to host societies. The building of schools and medical facilities is mentioned by 52 percent of the petroleum companies and 27 percent of the mining companies. The development of drinking water infrastructure (31 per cent and 13 per cent, respectively) and of agri-food projects (31 per cent and 10 per cent, respectively) are also mentioned.

Major companies often provide statements that outline their policies and programmes in particular countries or regions. Nigeria is the most common country to be discussed in this manner. Others include Angola, Azerbaijan, China, and Kazakhstan. One such statement is provided by a non-operating joint venture partner on the Yadana pipeline in Myanmar.

Natural resource revenues as a benefit to host countries

This survey shows that extractive industry firms are keenly aware of the potential contribution that their (often-large) tax and royalty payments can make to the economic development of host countries. Thirty-four percent of the petroleum companies and thirteen percent of the mining companies mention it. Thus, revenues paid to governments rank among the benefits most commonly cited by extractive industry firms.

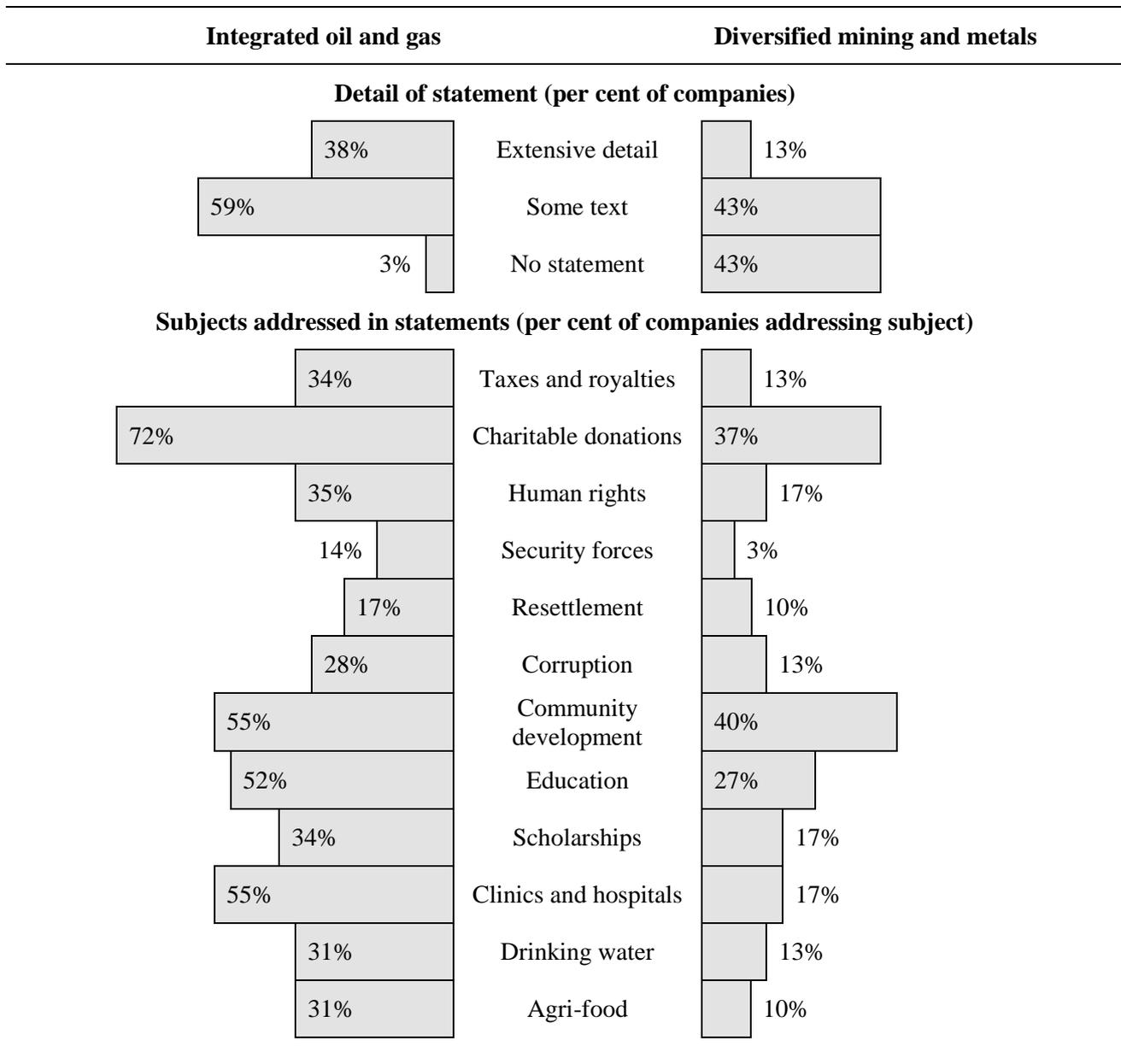
However, approaches to this issue vary. Most statements simply acknowledge that the payments made to governments are large and that they are a major benefit for host societies. However, a few companies (all large petroleum companies) state that they are concerned about the use that oil revenues are being put to. Two describe partnerships with international financial organisations (IMF and World Bank) designed to “clarify how the income from ... oil production is spent and accounted for.”

Respecting human rights in the vicinity of operations

Thirty-five per cent of the petroleum companies and 17 per cent of the mining companies discuss respect of human rights as a business issue. Security issues are mentioned less often, but a few provide detailed information on how they manage security. Three companies state that they are at times the target of extortion attempts.

Resettlement is mentioned by 17 per cent of petroleum companies and 10 per cent of mining companies. Two companies cite the World Bank Resettlement Guidelines and a few provide details on their compensation and resettlement practices.

Table 2. Extractive Industry Companies -- How They See Their Roles in Host Societies



Box 4. Revenue Management and the Chad-Cameroon Pipeline Project

(Extracts from a working paper funded by Business Partners for Development, a consortium of major mining, oil and gas companies; "Companies in Conflict Situations -- A Role for Tri-Sector Partnerships. Business Partners for Development, Working Paper no.9 by Aidan Davy. March 2001)

The Chad-Cameroon pipeline project links the oilfields of the Dobra Basin in Southern Chad to a coastal terminal at Kribi, 1100 kilometres away in Cameroon. A consortium led by [company name] is promoting the project and the World Bank has provided credits to the governments of Chad and Cameroon to take an equity stake in the project. More than 80 per cent of the people in Chad live below the poverty line. The programme of reconciliation and democratisation that began in the early 1990s marked the end of three decades of ethnic conflict, although human rights abuses are still reported. International NGOs have voiced concerns over the potential for project revenues to prompt a return to violence between the mainly Muslim northern population and the Christian south.

[Company name] views the World Bank's involvement as central to reducing the risks of investing in the region. The Bank's structural adjustment programmes in both countries include measures to improve transparency, financial management and the judicial process. In addition, it has explicitly required the government of Chad to develop a transparent programme to direct oil revenues to poverty alleviation. The Chadian government's proposal includes the following key elements:

Segregating nearly all royalties and dividends in a dedicated special account and investing the balance in a "future generations" fund.

Allocating most revenues in the dedicated special account to the priority sectors of health education, rural development infrastructure.

Having an oversight committee (including government, NGO, trade union and parliamentary representation) monitor the dedicated special account and auditing and publishing the financial statements.

Annex I.

Recommendations of French National Contact Point to Companies on the Issue of Forced Labour in Myanmar

The OECD Guidelines for Multinational Enterprises states that “enterprises should.... contribute to the elimination of all forms of forced or compulsory labour.” Chapter IV “Employment and Industrial Relations”.

On this basis, several labour unions asked the French National Contact Point (NCP) to look into the question of forced labour in Myanmar. In conformity with the procedural guidance set forth under the OECD Guidelines, the NCP undertook consultations with several enterprises, with the following results.

The NCP is of the opinion that companies operating in Myanmar should do everything possible in order to avoid direct or indirect recourse to forced labour in the normal course of their operations, in their relations with sub-contractors or through future investments, particularly in zones with a strong military presence and in activities controlled by the army.

In this respect, the consultations undertaken by the NCP have brought to light the following practices that companies can use to contribute to the fight against forced labour:

- Co-operative action with international labour organisations at the relevant levels;
- External monitoring;
- Promotion of legislation against forced labour;
- Contributions to development projects, especially in their areas of involvement;
- Verification by local managers of the behaviour of sub-contractors;
- Contributions to training operations.

Other company practices can also contribute;

- Development of a social dialogue with organisations representing employees at the local and international levels;
- Provision of regular information to Boards of Directors about initiatives taken to avoid recourse to forced labour.

Such practices obviously cannot substitute for the enforcement of the measures necessary for the suppression of forced labour by the Burmese government itself in conformity with the recommendations of the ILO, nor for actions by its member States.

Annex 2. The International Trade Unions' Campaign on Myanmar

In September 2001, the International Confederation of Free Trade Unions, the Global Union Federations and Trade Union Advisory Committee to the OECD wrote letters to some 310 companies concerning their operations in Myanmar. The companies were notified of the decision made by the International Labour Organisation's (ILO) Governing Body in November 2000 and informed them of the trade union position. Their position is that it is impossible to engage in economic activity with Myanmar without providing direct or indirect support, mostly financial, to the military regime. Firms were asked to explain the nature and scope of their involvement in Myanmar and invited to withdraw from the country.

According to the trade unions involved in the campaign, a total of over 60 companies -- mostly large multinational enterprises -- responded directly. Some companies denied involvement, some defended their activities as beneficial to the people of Myanmar and some responded to the offer of dialogue. In addition, a number of companies have publicly stated that they have recently withdrawn from Myanmar or are in the process of doing so. Those companies have been removed from the list.

According to trade unions, after publication of the list of companies operating in Myanmar, eight top pension funds worth over 600 billion euros joined forces in an unprecedented move to highlight the problems such as "loss of shareholder confidence, negative press and publicity campaigns, safety risks and corruption," which face companies involved in Myanmar. The full list of companies, including details of each individual company, such as copies of the correspondence, can be found on the following web-site: www.global-unions.org/burma/. There are, at present, 250 companies on the list. Companies have been added to the list when a link has been found between the company and the Burmese regime during the period following the ILO decision of November 2000.

Annex 3

Methodology for Analysis of Public Statements of Extractive Industry Companies

This study involved the construction of a sample of public statements by a group of companies identified by a well-known, on-line financial information service (Hoovers) in the petroleum and mining sectors. The content of these statements was then coded into a database using the criteria described below. This database will be made available to anyone who requests it.

The objective of the analysis is to capture extractive industry companies' views of their roles in less developed countries and, in particular, in troubled countries such as Myanmar. For this purpose only publicly available statements by companies or company officials were taken into account and, in particular, only those available on their websites. These statements include anything available on the sites -- policy statements, codes of conduct, descriptions or explanations of activities, speeches by company officials, news releases.

The sample of companies covers two sectors defined on the Hoovers corporate financial information website: "integrated oil and gas"; and "diversified mining and metals". The sectoral and business unit definitions are those used by Hoover in organising their financial analysis of these companies. All of the companies covered are publicly quoted. (For a list of companies by sector, see www.hoovers.com/company/dir/0,2116,6118,00.html.)

Integrated oil and gas is defined as "major international energy companies engaged in the diverse aspects of oil and gas operations including crude oil and gas exploration, production, manufacturing, refining, marketing and transportation."

Diversified mining and metals is defined as major international mining companies engaged in the ownership of mining properties and the mining and processing of a variety of minerals.

The selection of textual attributes is based on publications dealing with corporate social responsibility in extractive industries and an initial reading of the public statements. The analysis looks for specific mention of the following attributes: human rights; reference to external texts (Universal Declaration, Global Sullivan Principles, UN Global Compact, OECD Guidelines, and others); relations with local communities; compensation for land and relocation; security forces management; use of private security forces; paying government forces; extortion; contributions to economic development; importance of taxes and other payments to governments; jobs; investment; community development; providing infrastructure; hospitals or medical clinics; sanitary initiatives; schools/teaching; drinking water; agri-food development; scholarships; employee involvement; legal compliance; charitable donations; dollar amounts spent on these activities; corruption; transparency; relations with NGOs; political contributions; external audits; training; signing of commitments by employees; ethics committee or senior officer involvement; whistleblowing; internal control/compliance systems; environment.

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