

Introduction

1. It has long been a concern of ECCR that British Churches should listen more to their partners around the world as to the effect on local communities of UK-based companies, particularly in the extractive industries, from which UK share-holders, including the churches and individual Christians, benefit. Those voices need to be heard in this consultation, and, given, its short time-scale, we recommend that any draft conclusions from the current exercise be shared with ecumenical and denominational partners in those countries which are experiencing the activity of UK-based companies first-hand.
2. This activity touches on the rights of communities to give “free, prior and informed consent”¹ ; recognition of the traditions, including religious beliefs, associated with particular places and territories; environmental degradation; enforced movement of people; other infringements of human rights through corrupt collaboration between company officials and government both local and national, often involving the use of force.
3. ECCR, either directly or through the members of its Board, has connections with many of these partners. The most significant has been with Nigeria and continues through the Shareholders Alliance for Corporate Accountability (SACA) based in the Niger Delta.
4. Other connections – and, as this is an EIAG Consultation, we highlight those with a more Anglican dimension – include:

Philippines

The National Council of Churches, and in particular the Philippine Independent Church (IFI), a member-church of the Anglican Communion. A priest from IFI currently serving in Leicester, was supported by Us. (formerly USPG) to attend the *International People’s Conference on Mining* in Manila last October²

South Africa

Following the Marikana massacre in 2012, the Bishop of Pretoria, Joe Seoka, who chairs the South African NGO Bench Marks Foundation, has spoken out³ about the activities of mining companies, including Anglo-American.

Canada

Churches have expressed deep concern about extractive industries, and proposed new work, especially near the Arctic Circle, including the Anglican Church of Canada⁴ . In 2001 it co-sponsored an Ecumenical Conference on Mining. It is also, together with Lutherans, Presbyterians and the United Church, part of the *KAIROS* movement on “Mining Justice”⁵

5. We recommend that these churches and others who are likewise engaged, sometimes at great personal risk, be sent the draft conclusions from this consultation and asked to comment.

Theology and Ethics

2. What are the ethical considerations that should guide the way the extractives sector operates?

6. ECCR’s members are deeply concerned about issues of human rights and the environment. Our society increasingly recognises that larger companies have a key role and responsibility arising from their influence on the quality of life not only of their own workforce but of the wider community and from the longer-term human and environmental consequences of their decisions.

¹ Section 10, United Nations Declaration on the Rights of Indigenous Peoples

² <http://www.wearous.org.uk/news/mining/>

³ <http://business-humanrights.org/en/never-again-marikana-we-are-watching-you-address-by-bishop-jo-seoko-re-impacts-of-mining-in-so-africa-oct-2013#c79056>

⁴ <http://www.anglican.ca/publicwitness/resource-extraction/>

⁵ <http://www.kairoscanada.org/what-we-do/ecological-justice/mining-justice-open-for-justice>

7. Corporate and investor responsibility is a key matter for Christians who believe in an incarnate God working in our world. Faith communities evaluate companies not only by what they produce and their apparent profitability and efficiency, but by their impact on the environment, by their contribution to sustainable community, and by whether their actions tend to protect or undermine the dignity of the human person.
8. The challenge for the extractives sector is to ensure the just distribution of the costs and benefits of economic activity, supporting sustainable community and preserving the integrity of creation. The promotion and protection of human rights – civil, political, economic, social and cultural – are minimum standards for all social institutions, including extractives companies.
9. For ECCR, companies (including those in the extractives sector) are not the centre of economic life. Human communities and the environment are. Corporate responsibility has to look at the impacts of economic activity on people and the environment.
10. As Christians we accept responsibility to work for a society marked by justice, love, compassion and peace. Justice requires that we stand in solidarity with those oppressed by poverty and exploitation and work to change the structures, policies and practices that support oppression. It also requires us to evaluate the allocation of income, wealth and power in light of their impact on the poorest and most vulnerable people.
11. We believe that more active involvement of the Church, its member organisations and individual members can deepen the values of corporate and investor responsibility and help maintain and restore human dignity and the integrity of creation.

3. What are the ethical considerations that should guide the way the extractives sector operates in areas that have weak governance or are fragile states or conflict/post conflict zones?

12. In 2006 ECCR published ‘The Bench Marks: A User’s Guide’. It was written to introduce and help people and organisations use the Bench Marks as a tool for assessing and reporting on company behaviour, the Guide was first presented at ECCR’s Workshop on Churches, Civil Society, Multinational Companies and Corporate Responsibility in Central and Eastern Europe, October 2006, in Prague, Czech Republic.
13. Within the Bench Marks document there are a number of common themes and principles which can contribute to guiding the way multinational companies’ operate. These include the following:
 - Companies have a responsibility to ensure that all aspects of their production cycle cause minimum harm to people and the environment.
 - Responsible companies properly consult stakeholders before making final decisions about activities that affect them.
 - Responsible companies employ comparable standards across all of their operations. They do not use lower legal requirements in host countries to avoid applying those that would be required at home.
 - Effective corporate codes of conduct are drafted with input from those who will be affected by them and have to implement them.
 - Clear lines of responsibility and accountability are necessary for companies to properly implement corporate responsibility policies and practices.
 - Responsible companies have clear systems for monitoring their environmental and social impacts and enable communities and civil society to contribute to this.
 - Responsible companies provide publicly available and externally verified reports, giving comparable information about the social and environmental impacts of each of their operations.
14. The above principles still hold good today.

Communities

4. How do companies work with public agencies and governments to ensure legacy issues are dealt with in a fair and ethical manner?

15. ECCR published a report in 2010 “Shell in the Niger Delta: A Framework for Change - Five case studies from civil society”. The report provided an update on oil company Shell’s social and environmental impacts

in the Niger Delta. Comprising case studies from five civil society organisations that work with Delta communities, it assessed the operations of Royal Dutch Shell's Nigerian subsidiary, the Shell Petroleum Development Company (SPDC), and explored potential solutions to problems identified.

16. Questions that the report sought to address included: How far had life for communities improved or worsened in recent years? What measures do the Delta's people and civil society identify as priorities to be addressed and good practices to be followed? What should faith- and values-based investors urge Shell and SPDC to do to improve matters?
17. The report stated that not all the Niger Delta's problems can be laid at an international oil company's door. Recognising the state as the primary bearer of the duty to protect human rights, the report's premise was the increasingly recognised corporate duty to respect human rights. In the words of Professor John Ruggie, Special Representative of the UN Secretary-General on business and human rights (2005 – 2011): *'[T]he responsibility to respect requires companies to ... become aware of, prevent and address adverse human rights impacts.'*
18. The case studies largely concurred with the widespread civil society view that benefits from the oil industry's operations in the Niger Delta were outweighed by the very considerable local human and environmental costs. Shell, as the largest international oil and gas company operating in Nigeria, was central to those outcomes.
19. Despite their differences of emphasis, the case studies revealed a consistent thread of concerns. These included a continuing failure by Shell and SPDC to operate in the Niger Delta fully according to robust international social and environmental standards; severe pollution of air, land and water, with disastrous impacts on health and livelihoods; inadequate inclusion of communities in decisions affecting their lives; a failure to dialogue respectfully, address critical needs and maintain trust; short-termism and lack of vision. Shell's own General Business Principles, if rigorously implemented, would go some way to meet these concerns.
20. It has not been possible to complete a follow-up review of the report and to evaluate progress, if any, since the report was completed. However, there has been on-going work 'in the field' being carried out by ECCR member the Shareholders Alliance for Corporate Accountability (SACA) based in the Niger Delta. SACA have recently completed a Review of SPDC's Global Memorandum of Understanding (GMoU) model used in the SPDC's Integrated Oil and Gas Gathering Project (IOGP) for four GMoU clusters in Bayelsa State, Nigeria. These are considered further in Questions 7 and 8.

5. Is current best practice on free, prior and informed consent for indigenous communities working?

The response to this question has been prepared jointly by ECCR and the London Mining Network (LMN). ECCR is a member of LMN.

21. Free, prior and informed consent (FPIC) for indigenous communities (and now often extended in company policies beyond indigenous peoples) is a 'right' - or more specifically a tool to ensure the realisation of cultural, territorial and self-governance rights - which is enshrined in international human rights norms. Its use is primarily, but not exclusively, defined within the 2007 UN Declaration on the Rights of Indigenous Peoples. If there are problems with the 'practice' it should not be a question of whether something else should be tried but rather getting FPIC working to the benefit of all stakeholders, which not only makes good business sense (through reducing company risk) but it is an imperative in the framework of international human rights.
22. 'Best practice' depends on how it is defined from the perspective of the three main stakeholders all who have an interest in there being good process and outcomes from FPIC: they are the companies, the indigenous peoples and the state. There has been 'policy' progress for all three stakeholders. There are a growing number of states where FPIC is recognised, either in national legislation (e.g. Philippines) or through judicial decisions (e.g. Canada, Colombia). There are also a growing number of companies who recognise FPIC for indigenous peoples, most notably the International Council on Mining and Metals (ICMM) May 2013 position statement and 2015 Good Practice Guide⁶, even if the definition of consent and what would happen if communities say 'no', remain to be agreed by all parties.

6 ICMM, Indigenous Peoples and Mining Position Statement, May 2013; ICMM Good Practice guide: Indigenous Peoples and Mining

23. One of FPIC's major advances is in indigenous peoples codifying and asserting their own processes. The Subanon people of the Southern Philippines, tired of the failure of the implementing regulations of the Indigenous Peoples Rights Act (IPRA) to comply with the spirit and intent of the Act to ensure respect for their indigenous decision-making process, formulated their own manifesto setting out how they are to be consulted. The Kitchenuhmaykoosib Inninuwug (KI) of Canada have developed, as part of protracted struggles with resource companies, an enhanced consultation and consent protocol, which asserts their own law and ownership over their resources.⁷
24. This need for indigenous peoples' own world vision and customary decision-making being at the heart of any effective FPIC process is being increasingly understood by all parties. The Inter-American Court on Human Rights set a key international legal precedent in its case *Saramaka People v. Suriname*, which found that “regarding large-scale development or extraction projects that would have a major impact within [the indigenous] territory, the State has a duty, not only to consult with the [indigenous peoples], but also to obtain their free, prior, and informed consent, according to their customs and traditions.” [our emphasis]⁸ This is affirmed in Section 2.4 of the ICCM's Good Practice Guide.
25. There is a growing body of indigenous experience relating to negotiations with companies, particularly from Australia and North America. The 2013 report ‘Making FPIC a Reality’⁹ - explored the different experiences of the Kaska Dena, Lutsel K'e Dene and Tlicho First Nations in Canada, who have much experience of engaging with the mining industry. At any point in time each may be involved with up to 30 companies. With processes being defined by, and agreed with, indigenous peoples¹⁰, a transition to more constructive relationships in the extractive sector is being enabled. However, this good practice on joint mitigation of impacts and benefit sharing should be seen as a key part of the consent process, rather than replacing it, i.e. these benefits feed into and flow from a freely-given decision by the indigenous communities to say ‘yes’ or ‘no’ to a project.
26. A 2014 report by the Harvard Project on American Indian Economic Development reviews the legal and regulatory background to agreements reached in North America, addressing both impediments to, and the elements of, successful agreements. It quotes a number of case studies, including fossil fuel production on the Southern Ute Indian Tribe territory and experiences of coal and uranium mining with the Navajo. The report notes “the Navajo Nation has formed its own company and has taken over the Navajo Mine from BHP Billiton” The Southern Ute Tribe of Colorado is a fully formed, vertically integrated ‘player’ in the San Juan Basin natural gas.¹¹ Likewise, examples of “good practice” are published by the industry bodies IPIECA and ICMM, and by the UN Global Compact.¹²
27. In relation to the cases mentioned by industry, it is unclear to what extent they have been opened up to in-depth analysis. Research for the ‘Making FPIC a Reality’ report demonstrated that behind even often-quoted examples of good practice, such as Rio Tinto's decision to respect the wishes of the Mirrar people at the proposed Jabiluka mine, there are complex historical realities. In this case there have been ongoing tensions and differences of opinion with regard to the ideal nature of agreements and the role which the state should play in protecting indigenous peoples' rights. From the community perspective, while the current arrangement affords a strong safeguard for their rights, an outright prohibition on mining in the area is seen as being preferable to a contract which vests certain rights over the community's territory to a mining company. It is clearly a mark of both respect, and necessity, that both parties continue in long-term negotiations.¹³

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7 Both covered in Cathal Doyle & Jill Carino, *Making Free Prior Informed Consent a Reality*, May 2013 pp.30-36

8 *Saramaka People v. Suriname*, Judgment of November 28, 2007 (Preliminary Objections, Merits, Reparations, and Costs) Inter-American Court on Human Rights, (Ser. C) No. 172 (2007). The Inter-American Commission on Human Rights has released a new report exploring this in greater detail, see: IACHR, *Indigenous Peoples, Afro-Descendent Communities, and Natural Resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities*, 2015

9 <http://www.piplinks.org/system/files/Consortium+FPIC+report+-+May+2103+-+web+version.pdf>

10 Doyle & Carino, *op.cit.*, p.36-39

11 Harvard Project on American Indian Economic Development, *On Improving Tribal-Corporate Relations in the Mining Sector: A White Paper on Strategies for Both Sides of the Table*, April 2014, pp.70-79.

12 IPIECA, *Indigenous Peoples and the oil and gas industry: context, issues and emerging good practice*, April 2012 <http://www.ipeca.org/publication/indigenous-peoples-and-oil-and-gas-industry-contextissues-and-emerging-good-practice>; ICMM *op.cit.* Global Compact, *Practical Supplement: Business Reference Guide to the UN Declaration on the Rights of Indigenous Peoples*, January 2014, http://www.unglobalcompact.org/docs/issues_doc/human_rights/IndigenousPeoples/Case_Examples.pdf

13 Doyle & Carino, *op.cit.*, p.36-39

28. There are positive examples of indigenous communities having gone through a truly free, fair and informed process and exercising their right to say ‘yes’ or ‘no’. One of those is the Dongria Khond of Niyamgiri in India. After a very active campaign, which was well supported in both India and internationally to stop the UK-registered company, Vedanta Resources, from mining bauxite on their sacred mountain, the Indian Supreme Court directed that there be court-witnessed, public village councils (gram sabhas) of the affected indigenous peoples. The court was seen to be supporting the implementation of the Forest Act, which had been generally abused through intimidation and misinformation. Twelve gram sabhas assessed whether mining in Niyamgiri would infringe the religious, community and individual rights of local forest-dwellers. All gram sabhas rejected the project unanimously. Their decision was subsequently upheld by the Ministry of the Environment.¹⁴ The Niyamgiri example shows how judicial branches of states can support the legitimate rights of indigenous peoples with regard to project consent. However, it was won at a great cost in terms of the length of the campaign, and associated human rights violations inflicted on the community. Even now there are ongoing attempts to circumvent the legal decision and proceed regardless.¹⁵
29. In another example in Guatemala, a court ruled in favour of the Mayan people of the Municipality of Sipacapa, arguing that the Guatemalan government must respect their right to consultation over a mining exploration permit granted to a subsidiary of Goldcorp.¹⁶ At the Cerrejon mine in Colombia, some indigenous Wayuu communities have withdrawn from official consultation procedures, which they see as manipulated by the company and the government, and have begun to conduct their own “autonomous consultation” processes, which they will control themselves in accordance with their own traditions and their own timetable.¹⁷
30. Attempts by indigenous communities to assert their rights are often not accepted by states or companies or both. It could be argued these failed attempts are an example of FPIC not working. It is, however, equally - if not more - valid to argue that such an FPIC process could be best practice if it unites and informs communities, and in the long term assists them in affirming their rights to self-determination. However, it is only likely to be seen in such terms by the indigenous peoples themselves, as external actors are more likely to log an immediate outcome as 'an FPIC failure'.

Best Practice

7. What are the features of best practice within the extractives sector that combine long term value generation with societal good?

31. The responses to Questions 7 & 8 are guided by the experience of ECCR member – SACA - the Shareholders Alliance for Corporate Accountability - which monitors how multinational oil companies operate in the Niger Delta and implement their Corporate Social Responsibility policies including implementation of projects based on a Global Memorandum of Understanding (GMOU).
32. An example of societal good has been put in place through the In-Country Micro Project Scheme (ICMPS) which is a micro project designed by the Irish Embassy in Abuja, Nigeria with oversight provided by SACA. The project is seeking to diversify the local economy from its dependence on the extractives sector and to empower women and youths in sustainable livelihood programs such as fish farming, poultry farming etc. The objectives of the project include:
- engaging the women in sustainable livelihoods and reducing the rate of their marginalisation from the men;
 - encouraging the youth to refrain from pipeline and other crude oil facility sabotaging owned by multinational oil companies operating in the area; and
 - reducing poverty in Ikarama community.

14 Mines and Communities, Final tribal meeting rejects Vedanta’s mining proposal in Niyamgiri, 20 August 2013, available at <http://www.minesandcommunities.org/article.php?a=12422>; Mines and Communities, Jolt for Vedanta as mining in Niyamgiri Hills voted out, 30 July 2013, <http://www.minesandcommunities.org/article.php?a=12404>

15 Mines and Communities, India: will Nyamgiri mining now be allowed? , 5 March 2016, available at <http://www.minesandcommunities.org/article.php?a=13287>

16 Christin Sandberg, Guatemalan court rules in favor of indigenous people, Statement of Consejo del Pueblo Maya, 24 July 2014, available at <http://www.cpo.org.gt/index.php/articulos/168-guatemalan-court-rules-infavor-of-indigenous-people>

17 Richard Solly, Colombia’s Cerrejon Coal: “an abusive marriage, full of machismo,” Mines and Communities, 25 June 2014, <http://www.minesandcommunities.org/article.php?a=12692>

33. The impacts of the ICMPS in its first year have included:

- Significant reduction in the rate of pipeline sabotage in the area (as confirmed by oil companies operating in the area);
- Youths, who would otherwise be unemployed, are now involved in meaningful income generating activities; those involved with the project are now promoting the benefits of cooperative working to others;
- Recognition of the project by the Irish Ambassador (Amb. Sean Hoy) who raised the profile of the project, (including to SPDC & Agip) and enabled the people of Ikarama to feel proud of their community - they now believe there are still people apart from the state government that care about their wellbeing;
- The visit of an international researcher from the Netherlands (Miss. Tessel Kuijten) has enabled the benefits of the ICMPS project to be promoted to an international audience;
- During the project, AGIP decided to participate and contributed fingerlings and other agricultural products;
- Registration of two of the youth co-operatives has given the opportunity for those entities to apply for Government Agricultural loans etc.

34. In this instance it is a project initiated by an NGO – in this case SACA – working with local communities focusing on a project to bring long term societal good.

8. Are current models of best practice on community relations and engagement by extractive companies working?

35. SACA have recently completed a report – *“Review of Shell’s Global Memorandum of Understanding (GMOU) in the Integrated Oil and Gas Gathering Project (IOGP) in four clusters in Bayelsa State”*.

36. A GMOU is an agreement between SPDC and a group (or cluster) of several communities. Clusters are based on local government or clan/historical affinity lines as advised by the relevant state government. The GMOU aims to bring communities together with representatives of state and local governments, SPDC and non-profit organizations, such as development NGOs, in a decision-making committee called the Cluster Development Board (CDB).

37. Under the terms of the GMOUs, the communities decide the development they want while SPDC on behalf of its joint venture partners, provides secure funding for five years, ensuring that the communities have stable and reliable finances as they undertake the implementation of their community development plans. The GMOUs places emphasis on more transparent and accountable processes, regular communication with the grassroots, sustainability and conflict prevention.

38. During the two years of its Review, SACA observed first hand that mutual support, openness, and understanding between SPDC and the clusters/communities was limited and in many cases non-existent. SACA noted numerous conflicts regarding community relations, social and environmental impacts due to oil spills/sabotage, irregularities in awarding contracts (especially oil spill clean-up contracts), land owners who felt marginalized by the GMOU process, traditional rulers who felt excluded especially from local content contracts awarded by the Cluster Development Board, and women and youth groups who felt that they did not benefit in any way from the GMOU.

39. It was noted in the Review that ... *“The issue of ‘Trust’ and ‘Understanding’ between parties is the key element that needs to be developed and strengthened in the GMOU process. This was observed time and again by SACA in meetings with traditional rulers, community leaders, land owners, women and youth leaders, government officials, regulatory representatives, etc..... SACA recommend a special SPDC team to address these issues to build trust and understanding as it will make a difference. SPDC managers are busy with their responsibilities of making sure the project is up and running and there is no time to give to this time consuming exercise. On those occasions that SACA joined SPDC and community representatives to address issues, we were impressed with the skills of the SPDC team and we believe they can build trust and understanding over time. But we are not convinced that this is a priority for SPDC because it would take time, more staff and more funds. SPDC, as we understand, is not up for this”*

40. The full Review is available on request.
