

IPIS Insights

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Why businesses should assess human rights impacts from the outset of projects

SOCO International Oil Company in Virunga National Park, DRC

SOCO International, a British oil company, is prospecting for oil in the Democratic Republic of Congo's Virunga National Park – a World Heritage Site. For the past year, their presence has been criticised for putting a fragile environment at risk. However, more recently, their impact on human rights has also been questioned. Below, IPIS looks at why it is so vital for companies to employ rights-respectful processes, such as those advised in the UN Guiding Principles on Business and Human Rights, from the very beginning of the prospection stage.



Human rights due diligence

Last month, IPIS released a [report](#) on the potential social and environmental impacts of oil production in Uganda. The report included a short impact assessment, highlighting where problems might occur. In the remaining three of this series of four reports IPIS will address some of the ways these problems might be mitigated through using the UN [Guiding Principles on Business and Human Rights](#).

The Guiding Principles acknowledge that States have a primary role to protect human rights. However, from the business side, human rights risks can be addressed through assessing and addressing the impact that a company's project might have on a given community, area, country, or issue. This forms part of a process known as human rights due diligence.

For example, if an oil well were to be situated on the edge of a lake, human rights due diligence would include consideration of the impacts on local lives: How might people involved in the fishing industry be affected? Will their access to water be restricted? Might they be relocated? Will they be expected to take up another profession? Who perceives ownership over the land to be taken over by the company? How can all be adequately consulted with and compensated? What precautionary measures are in place in the event of pollution or an oil spill? Are private security companies to be used? How can it be assured that private security does not involve irresponsible recruitment, for example of armed groups?

In alignment with the company's human rights policy, strategies should be put in place to ensure that risks are mitigated, results tracked, and the lessons learnt integrated into ongoing practice. The UN's Guiding Principles on Business and Human Rights stress that human rights due diligence is the key way in which businesses can ensure that they respect human rights during their operations.

Despite due diligence's ability to protect both human rights and companies' reputation, management, and ethical commitments, it is still often being sidestepped by companies for a number of reasons. Sometimes companies express concern about the cost or difficulty. Others assure that they will implement human rights due diligence once there's more industry guidance on it. For example, oil companies might state that they are awaiting the, now released, European Commission's [Oil and Gas Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#). Some companies are also often quick to pledge that, once their operations have progressed to a more advanced stage, they will take steps to systematically assess human rights impacts. For example, oil companies might reassure that at the early prospection stage there is little need. Yet this falls far short of the kind of vigilance that the Guiding Principles urge for:

"Human rights due diligence should be initiated as early as possible in the development of a new activity or relationship, given that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements, and may be inherited..." (See Principle 18)

All too often, companies who have not invested in early, systematic and sincere human rights evaluation serve as cautionary examples for the necessity behind this corporate obligation. The presence of SOCO oil company in a Democratic Republic of Congo (DRC) National Park – Virunga – has recently become another case.

SOCO International in Virunga National Park, DRC

Doing business in the DRC occurs within a particular context: any multinational corporation, particularly those in the extractive industry, will inevitably come under scrutiny for their human rights impact in the country. This has increasingly been the case since shifts in the political landscape have put the DRC at the centre of the responsible vs. irresponsible business debate: specifically, in July 2010, the US' [Dodd-Frank Wall Street Reform and Consumer Protection Act](#) was passed by US Congress. Section 1502 of the Dodd Frank Act obliges companies that trade on the US stock exchanges and are implicated in the supply chains of the so-called 'conflict minerals', to act with due diligence. The great impact of the law on the whole mineral trading chain has ensured that many eyes remain focused on extractive companies in DRC.

Although oil does not fall under the Section 1502 mentioned minerals, the “black gold” has its own reputation for being linked with conflict, environmental destruction and corruption. Nigeria’s trajectory embodies many of the concerns that haunt the oil industry, including environmental devastation, gas flaring and its impacts on human health, and company complicity in military and police activities. The latter, according to [Human Rights Watch](#), have included “extra-judicial executions, arbitrary detentions, and draconian restrictions on the rights to freedom of expression, association, and assembly.” Nigeria is a country with immense oil wealth, but where many live in poverty – comparable to DRC, where potential mineral wealth is hailed as colossal in a country where 70% live under the [poverty](#) line.

Within Eastern DRC’s complicated context of poverty and insecurity, SOCO International – a UK-based oil company – secured licences to explore for oil in Virunga Park in DRC. The park is a World Heritage site, inscribed on the List of World Heritage in Danger since 1994. It contains lakes, forests, glaciers, savannah and volcanoes, and is home to around 200 [mountain gorillas](#) – an endangered species. The Director of the World Heritage Centre has expressed dismay at SOCO’s license and [evoked](#) the latest Decision of the World Heritage Committee (35COM7A.4) in which the Committee requested the suspension of the permit within the World Heritage site. Moreover, under Congolese law, oil and mining exploration and exploitation are specifically prohibited in the protected areas of the country by power of the Public Order Act of 1969 on the Conservation of Nature, and by the Mining Code of 2002.

International [concerns](#) have been clear from the outset, with the EU, the UK government, Belgian politicians, and the German government, expressing sincere apprehension over the sanctity of the park. Meanwhile international and local organisations, including IUCN, a Coalition of 13 European International NGOs, WWF, Greenpeace Africa, Global Witness, and ICG, have come together to speak out against oil production in Virunga. The most frequently-voiced objection seemed to be the park’s status as a World Heritage Site and the presence of biodiversity and endangered species in the park. WWF has raised concern about the pollution and environmental damage that could occur in the park as a result of oil production, with Raymond Lumbuenamo, country director for WWF-DRC [stating](#), “Once you turn it into an oil field you sell it once and it’s gone for good. It’s going to get destroyed, polluted - the beauty of it will go to waste.”

The human impact of oil

However, other arguments regarding the inappropriateness of the licences are increasingly rising to the surface. Oil extraction irrefutably impacts on people, as they are forced off their land and their livelihoods disrupted. As Lumbuenamo describes in a [video](#) on The Telegraph UK, “When I think about Virunga, I think of the people. I think of them as being custodians of this beautiful place. They’ve kept it intact for so many years. It gives them what they need to make a living.”

Likewise, spokesmen for the fishing and farming communities around Lake Edward (which lies within Virunga and is subject to the same protections) in DRC’s North Kivu, speaking through a [film](#) produced with IUCN National Committee of The Netherlands (IUCN NL), a conservation organisation, explain that they oppose the extraction. They ask how it will benefit them; “Where will they take the oil? To the white men’s continent in Europe.” Their concern about pollution is very clear: “Even our fishing regulations stipulate that engine oil should not be changed in the lake because it can kill fish.” Meanwhile Lumbuenamo also explains, “Two million people’s livelihoods depend one way or the other on the park and the surrounding ecosystem, and there could be disastrous consequences of oil extraction in what is already a very fragile area.”

Livelihoods are not the only human aspect impacted though; risks run deeper. In 2012, International Crisis Group (ICG) released a [report](#) expressing concern regarding the destabilising effects of oil extraction at this point in Congo’s trajectory. Issues such as the resumption of armed groups’ territorial expansion, the creation of power centres in the East of the country, internal tensions, and border sensitivities were all highlighted. “The abduction in 2011 of an oil employee in the Virunga Park,” ICG explained, “is a reminder that exploration is taking place in disputed areas where ethnic groups are competing for territorial control and the army and militias are engaged in years of illegally exploiting natural resources. Given that the Kivus are high-risk areas, oil discovery could aggravate the conflict.”

More recently, in August 2013, WWF highlighted similar issues in their report by Dalberg: [The Economic Value of Virunga National Park](#). This followed concerns expressed by WWF in 2012 when rangers in charge of protecting Virunga Park died, shot by rebels. "Oil exploration in this fragile region such as the one planned by London-based oil company SOCO, would only contribute to further destabilisation of the area," [explained WWF](#).

In order for companies to avoid damage to communities and human rights, it is essential for companies to ensure human rights due diligence, including the formation of effective policies and implementation of human rights impact assessments. The Guiding Principles offer the framework with which to conduct this. Recent allegations against SOCO acutely illustrate this necessity.

Recent human rights accusations against SOCO

On the 24th of July, a [press release](#) was issued by a coalition of environmental and human rights organisations – *Réseau CREF* (Le Réseau pour la Conservation et la Réhabilitation des Ecosystèmes Forestiers), *IDPE* (Innovation for the Development and Protection of the Environment), *CREDDHO* (Centre de Recherche sur L'Environnement, la Démocratie et les Droits de l'Homme), and *SOPR*. The press release condemned, in the strongest manner, the intimidations, arbitrary arrest, and torture of local community members opposing oil developments in Virunga National Park. The Press Release alleged that Major Burimbi Kingi Feruzi, a senior army officer in the DRC's national army – the FARDC – was the perpetrator of the intimidations and that he was acting as an agent of SOCO International.

The detailed accusations of the press release are that, firstly, a human rights activist of CREDDHO, Mr. Daniel Machozi Mupanza, was subject to intimidations, due to opposing oil exploration/exploitation in Virunga. The second accusation was that, on the 15th of July 2013, Mr. Marco Kyangwi Musakara, President of the local Fisher's Committee of Nyakakoma, was subject to arbitrary arrest, ordered by Major Feruzi. The press release claims that the ground for the arrest was Mr Musakara's denouncement of the negative impacts of the oil developments on the lives of people and ecosystems. The release urged SOCO to be law abiding and to "stop using officers of the Armed Forces (FARDC) in its engagement campaigns with communities that are already traumatized by unending conflicts and war."

SOCO has [responded](#) to these allegations by declaring them completely unfounded, and denying any knowledge of or involvement in the claims. However, due to the seriousness of the accusations, they report that they intend to investigate the allegations thoroughly. They acknowledge that Major Feruzi was assigned by the FARDC to act as Military Liaison Officer during SOCO's movements around the area of Block V. They have also provided a "third party statement" by [Mr Serge Darroze](#) of OKAPI-EC, an environmental consulting firm, stating that Major Feruzi spent the entirety of the 16th of July 2013 (notably, not the 15th of July, as the above press release stated) with Mr Darroze and other members of a group, apart from a few minutes. Mr Darroze asserted, "I cannot see how the Major would have had time to arrest and torture someone in the few minutes that we were separated."

SOCO's point of view

SOCO has manoeuvred itself in a risky, and quite bold, position. In response, investment has already been [withdrawn](#) and, if continued, considerable reputational damage might be sustained. Shell oil company has a "no-go" policy regarding World Heritage Sites. Meanwhile [Total](#), who have similar concessions in DRC, have responded to the political and public outcry against the environmental impacts of the Block V project by affirming that they will not engage in oil prospection within the current boundaries of Virunga Park. However SOCO have expressed surprise at this international reaction and has [described](#) many of the claims about them as "inflammatory and part of a dedicated campaign of spreading misleading information."

IPIS met with SOCO at their London offices in February 2013 and asked them about their perception of the situation and future intentions. They stated a number of motivations for their presence in Virunga and responses to the environmental and social issues levelled against them.

Firstly, SOCO were keen to stress, as they have also done in [press releases](#), that they are only prospecting and have no plan to drill at this point. However, they affirmed to IPIS that the entire costs of prospecting lie with them and, as such, constitute an investment.

Secondly, SOCO has held fast in public press that the issue of oil exploration is the business of Congo alone, and that SOCO is present in the Park at the Government of Congo's "[express invitation](#)." SOCO has publically stated that, "This was formalised through a Production Sharing Contract signed in 2006 and ratified by a Presidential Decree in 2010. The DRC Government has determined that this contract is valid according to their legislation... SOCO therefore has a contractual commitment with the DRC to continue with our activities in Block V. As we acknowledge, if the DRC Government decides that our involvement in Block V is no longer legal then we will of course stop all activities."

Thirdly, they stress that their presence in the Park will do more good than harm. SOCO has expressed commitment to partnering with authorities and conservationists. They have asserted that oil wealth could be the very catalyst that turns around "declining" Virunga. "SOCO is uncertain of what the Virunga National Park landscape looked like when it was declared a World Heritage Site in 1979. However, we are aware of what the area looks like today, [scarred](#) by decades of deforestation, poaching and violence against its inhabitants. Despite the efforts and financial investments of some organizations in the last two decades, very little positive change has taken place in the Virunga National Park during this period. To ignore this fact purely because this area has a World Heritage designation is disingenuous. We believe it may be time to consider a different approach, and that our involvement in the region, if approved by the Government of the DRC, can be positive."

SOCO's arguments distract from the main issue at hand: the impact of making profits on human rights and the environment. It is not credible that SOCO is more concerned with park management and poverty reduction than making a profit from their investment. Moreover, the recent Dalberg-WWF report valued the total economic value of the oil-less Virunga eco-system at USD48.9 million per year, increasing to USD1.1 billion per year, should current challenges be addressed. The income would come from fisheries, tourism, hydro-electric power, pharmacological use, education and research, carbon sequestration, forest conservation, water supply, and erosion control (amongst others); oil exploration is cited only as a long-term risk to this value.

The need for adherence to the Guiding Principles, specifically human rights impact assessments and due diligence

One of the main causes of the current problems is SOCO's failure to conduct a proper human rights due diligence before it started its activities in Virunga.

SOCO has been keen to stress the care they had taken to conduct considerable business and asserts that they have "been in [dialogue](#) with many local stakeholders to understand their needs and priorities," citing meetings organised under the authority of the Governor of North Kivu and the Environment Minister of North Kivu, reportedly attended by over [ninety](#) stakeholder representatives. During IPIS' interview with SOCO, the company expressed pride in the effects their presence was having on local populations in their pre-existing operations in Congo-Brazzaville, and now in DRC. They described drama workshops, cartoon-pamphlets and radio station announcements to communicate plans and probable impacts on communities, with a significant focus on respect for tribal traditions.

Yet they have not been able to present convincing evidence of a systematic attempt to consider human rights impacts upon their initial engagement or thereafter. When asked for a human rights policy, SOCO was only able to direct IPIS towards their online [Human Rights Commitment](#) – a six paragraph description of respect and recognition of rights and protocols, and their [Code of Business Conduct and Ethics](#). Although all positive commitments, the Commitment did not suggest an effective *process* to ensure respect for human rights. This is a particularly key point that should be stressed to all companies: engaging in eclectic community consultation, engagement and environmental impact assessments will, increasingly, prove inadequate, especially in such vulnerable circumstances as World Heritage Sites or conflict-affected States. Nor will a few lines of human rights policies. The Guiding Principles advocate

the need for systematic, thorough, human rights due diligence. A thinner system is unlikely to protect the local population, nor the company in question, from harm.

The Guiding Principles emphasise that business respect for human rights is not dependant on the standards of the State within which activities are current, but rather is a separate, universal baseline.

[The responsibility to respect human rights] exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. And it exists over and above compliance with national laws and regulations protecting human rights.

Universal norms are closing in on the tenet that, when operating in a country like DRC where the human rights record is so traumatised, it is not acceptable to maintain that the Government is behind you and it is no one else's business; business responsibilities are becoming more global than that. This does not turn businesses into charities, nor place any new legal expectation on them. It simply confers a standard of decency and respect for human dignity that, prior to the Guiding Principles, had previously not been adequately clarified.

The Guiding Principles offer a means by which companies can put this responsibility into action. In SOCO's case this would have been through thorough policies and adequate impact assessments at the very first stage of engagement with the project. Persistent protests by local communities and the global outcry at their activities in Virunga show that such policies are absent. An oil company should have been aware of the business risks it took when engaging in a natural heritage site in a conflict area. The consequences that SOCO is now facing should be a wake-up call and warning for all extractive companies about the risks of not implementing human rights due diligence.