Sharing the lessons learned: Business & Human Rights, Conflict Sensitivity and Business & Peace
17 November 2016 Villa Barton, Geneva

Section 1: What did we learn?

<u>About the roles of the various actors:</u>

- For companies, human rights organisations often raise "red flags" simply by the nature of their work
- No company wants to work on conflict in the public eye
- Scandals publicised by campaigning organisation provide the context or environment that requires companies to engage with civil society.
- Given the often significant power imbalance between local communities and companies and/or government, small NGOs are grateful for any safe space for dialogue provided by international NGOs
- NGOs in the global north and south (should) have differing and complementary roles
- All these actors have their roles in the "ecosystem" – differences inevitable and clearly linked to theories of change but also security factors
- Risk of perception of international organisations such as World Bank and the UN as untrustworthy
- humanitarian institutions such as ICRC and human rights institutions rarely used to working with business; consequently experience a feeling of lacking competencies in this engagement
- The company is only one actor in a complex system – need to expand the analysis to include more actors and have a broader picture
- Governments are not receiving enough attention in this work and regularly have a tendency to try to steer at level of company

<u>About the importance of local context:</u>

- Vital to particular context in which we are operating and to recognise when our respective experience and learning are context specific
- Some companies are well aware of the need for human rights due diligence and familiar with the Guiding Principles on Business and Human Rights → need to go beyond compliance with this group
- If legal teams of companies take the lead the process is often restricted to traditional due diligence with little knowledge of how to engage with local communities, etc.
- Many companies operating in African countries claim they have no responsibility to guarantee human rights due to a lack of understanding and little "buy-in" to African Charter processes
- Chinese companies come from a culture that expects national government to deal with situations in local community → companies first need to grasp the need for company-community engagement
- In regions where the rule of law is weak the governance of a company may be more powerful than national governments
- In some settings e.g. Latin America, inviting community representatives to engage in formal dialogue with companies is a way of identifying community leaders who are later be forcibly removed → engagement a question of survival in such settings
- HR standard always there but need to be sensitive to see what will work in what context

<u>About Challenges in doing this work:</u>

- Often difficult for civil society to access information and many times companies not receptive to information provided by local communities and NGOs
- Important that research is done well, and that evidence reaches a certain standard
- Getting information on contracts e.g. between companies and govts. is very difficult
- Lack of tracked information on impact of investments e.g. extractive industries on the environment and communities
- Human rights NGOs as well as international humanitarian institutions' such as the ICRC are hesitant to engage with companies due to fear of manipulation → it is necessary, and can be productive to engage, but it should be recognised that such manipulation is a real danger
- Access to the company sometimes difficult; some refuse to consult before a report is published
- Community shadow assessments by Oxfam, Earthrights International, etc. suffer from lack of company buy-in and instead exclusively become advocacy tools
- Vacuum of independent assessments increasingly filled by consultants who are not always a credible proxy for local communities
- Companies make a public commitment to follow the Guiding principles, however, often there is no back up strategy behind that
- Many problems overlooked such as legacy issues from previous fundamental abuse
- Cases of company CEOs and NGOs agreeing at international level but key problems in translating agreement down the chain / to a local level

About how to overcome challenges:

Capacity building for various stakeholders

- Training for human rights defenders to engage with business, including on use of language → local NGOs able to begin building relationships with companies e.g. ISHR in DRC, Zimbabwe, Namibia
- Peace Nexus 'company-community trust fund' response to need for financing of community engagement processes → not only a mechanism for dialogue and mediation but vehicle to build local competencies such as negotiating skills and confidence to later engage with local government thus helps to create better local governance
- Key: build capacity of companies to measure the right things and to assess performance;
- Important for the future: getting the metrics rights – not numbers of trainings or complaints or policies developed are decisive but quality of mechanisms to help implementation and ways of assessing preparedness for worst case scenarios.

Finding the right connection in the company

- Before engaging with companies there is a need to identify the "right person" to talk to; crucial that the company representative has status and be sufficiently senior to ensure longevity of cooperation → it is thus important to analyse the "political economy" of the firm in order to understand who holds the power and makes decisions; where the power is located varies from company to company sometimes it is the board, sometimes a powerful CEO or key manager
- → bear in mind that the right people to connect to might not just be the decision makers but also those that understand the problem
- However, such allies can disappear with changeover in a company and so relationship building may need to begin afresh
- Quality of relationship is crucial → needs to be possible to communicate frankly at decisive moments
- Allies without power are not sufficient; necessary to connect with senior management

- Even at point of crisis need to embed relationship within higher management structure

The assessment gap

- Supply side challenge where companies are open to community engagement and an independent assessment is needed that goes beyond environmental and basic social assessment – who can provide the service and has credibility with all parties?
- Need for appropriate and competent assessor to engage in dialogue with various interested parties of community and understand legacy or historical background and perceptions legacy,
- Small group of assessors such as KPMG and PWC UK dominate the field
- Access Facility (NL) has small database of company community mediators and regional partners
- Who pays for such assessments? Should be companies but how to make independent and credible?
- Some NGOs get earn income from such consultancies
- Crucial to consider language barriers and regional differences in the process
- 3rd parties necessary for multi-stakeholder processes? Can these be generated at the local level?
- Need for a roster according to type of situation and local knowledge

Access to information

- Local communities often make decisions based on limited information and short time horizons
- rare good practice by company : show community the impact of a similar project elsewhere
- International agreements can provide a useful legal framework for engagement with businesses; see for instance agreement on access to information, public participation in decision making and access to justice in environmental matters being negotiated at the moment in Latin America and Caribbean, with involvement of civil society,
- Access to data and making the data usable for local communities equally important
- Map X Project (which aggregates geo-spatial information, authenticates it and analyses correlations over time as well as generating scenarios of impact) from UNEP and World Bank as an example at international level
  → currently in development phase; each project to be co-designed with stakeholders – governance, modus operandi, interface, etc.; important to develop particular application such as data dimensions with local partners (for more information on Map X, please contact Inga PETERSEN at UNEP)
- Need to generate data from local contexts to supplement data available internationally
- Democratisation of data collection important →when value beyond accuracy, comes from process of conceiving and working with data tailored to people's needs
- Work on-going to change disclosure requirements in banks and regulators e.g. the BRICS regulators → crucial to make link to local effects
- Colombia University project is mapping financial chains around projects – equity (ownership), debt/loans – useful to knowing who is connected, their link to the project and how to use networks
- Important to share good practice as examples that can be adapted to the local context (see ICRC DCAF project and QUNO work on natural resources, conflict and cooperation)
- Technological change has to some extent reduced power imbalance by increasing opportunities to access and share information
- Ideally NGOs should consult businesses and share reports before publishing. Here, of course, the willingness to engage on the part of companies is essential
- When asking for evidence for report etc. it is important to consider local context and protection possibilities → need for safe conditions to allow to evidence to be presented at international level

Framing and strategy

- Peacebuilding approaches can benefit from making use of human rights frameworks and mechanisms
- Peacebuilding approaches are not limited to dialogue and mediation but include empowerment strategies to address power imbalances that may be conflict intensifying in the short term
- Important for human rights approaches to ref-frame from negative "do no harm approach" to the positive action of respecting human rights
- Need to address governments regulations→ essential to go beyond voluntary agreements
- As the SDGs are focused at the national level this could be used as an entry point to bring in governments
- Important to ensure that SDGs are not used to pick and choose which aspects of rights, peace and development to work on and ignore others. Question to be asked in relation to SDGs is: where are the risks to people?
- Need to focus efforts in situations where rule of law weak at national level and company has HQ in other countries
- Identify and encourage Group of champions among companies

Section 2: Please find a list of shared resources in the Annex

Section 3: What next?

- Address the challenge of the assessment gap: why is this not being filled? How can we build capacity and secure financing for this?
- Explore how to encourage good practice of local companies. Specifically raise awareness of good examples, particularly related to impact on community. Explore how to make examples accessible and used by companies.
- Broaden the group for discussion to include companies, trade unionists and other relevant organisations such as International Institute for Environment and Development (IIED), International Institute for Sustainable Development (IISD), etc.
- Examine role of regional economic organisations
- Analyse interface between governments and corporations
- Case studies analysed jointly to compare perspectives and identify commonalities → tell stories – " what do you see in the story as a peace and conflict worker or human rights worker "; where can differences be identified

ANNEX

List of shared resources

- ➢ Columbia University project on financial chains
  http://www.humanrightscolumbia.org/sites/default/files/pdf/bhr_future_development_finance_accountability_landscape.pdf

- ➢ Business risks missing out on its best chance to contribute to sustainable development, Shift
  http://www.shiftproject.org/news/business-risks-missing-out-contribute-sustainable-development/

- ➢ Background info on Barrick case in PNG (BHRRC's case page):
  https://business-humanrights.org/en/porgera-joint-venture-barrick-gold-mineral-resources-enga

- ➢ "Human Rights Due Diligence in High Risk Circumstancs: Practical Strategies for Businesses", Shift
  http://www.shiftproject.org/resources/publications/human-rights-due-diligence-high-risk-circumstances/

- ➢ "Supporting Financial Institutions to Implement the Guiding Principles", Shift
  http://www.shiftproject.org/resources/collaborations/supporting-financial-institutions-implement-guiding-principles/

- ➢ Link to list of mediators
  http://www.accessfacility.org/facilitators

- ➢ Addressing security and human rights challenges in complex environments, ICRC / DCAF
  http://www.securityhumanrightshub.org/

- ➢ Meaningful community engagement in the extractive industries – Stakeholder perspectives and research priorities, IIED Report 2016

- ➢ A human rights defender toolkit for promoting business respect for human rights, ISHR 2015

- ➢ Mapping and assessing the performance of the extractive industries (MAP – X); Presentation by Inga Peterssen, UNEP