

Assessing and Improving the Voluntary Principles on Security & Human Rights

Lessons from the Nigerian Experience

May 2013

EarthRights International

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The Centre for Environment,
Human Rights and Development

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Executive Summary

How can a voluntary multistakeholder initiative that brings together NGOs, governments, and companies best address one of the most intractable problems in international human rights protection?

This question has become salient because the United States and a number of other countries – not to mention many of the world’s largest oil companies – have thrown their weight behind the Voluntary Principles for Security and Human Rights (VPs) as one of their key initiatives to manage the human rights impacts of the relationship between extractive companies and security forces. This report examines the VPs and their record in Nigeria in an effort to determine whether the initiative as currently operated is up to the task.

Drawing on field surveys in communities in Nigeria, interviews with extractive industry and NGO personnel, conversations with government officials, and broad-based desk research, this report presents critiques of the structure of the VPs and their implementation in Nigeria, and offers recommendations for reform. The report focuses on Nigeria in particular because, as a country with a high incidence of violence, corruption, and human rights abuses associated with the extractive sector, it provides ready examples of all the situations and dangers that the VPs are meant to help companies navigate. If the VPs can work in the Niger Delta, they can work just about anywhere. However, the VPs appear to be largely a failure in Nigeria, as communities report ongoing friction and security forces continue to commit grave human rights abuses in connection with extractive operations – even those belonging to VPs companies such as Chevron and Shell.

Implementation Failures

To a great extent, the VPs’ failure to make a difference in Nigeria is attributable to problems with implementation.

1. *Failure to consult with local communities.* Communities are excluded as a matter of course from security planning, despite the VPs’ recommendation that companies “consult regularly” with local communities about the impacts of their security arrangements. Survey respondents in several oil-producing communities reported that far from being consulted them on security issues, they felt actively intimidated from participation and access. Communities believed that the companies would enjoy better security and avoid violent incidents if they were to successfully engage the communities, a conjecture that is borne out by experience in other countries, like Indonesia.

2. *Failure to consider the root causes of conflict.* Companies in Nigeria generally do not engage with communities to identify the root causes of conflict, a deficiency that contributes to inadequate risk assessments. As a result, companies' actions are seen – rightly or wrongly – as attempts to “divide and conquer” communities by supporting one side in hotly contested disagreements over land and leadership. Companies also neglect the environmental and social grievances that often underlie community opposition to extractive activities. These two problems contributed heavily to two of the most noted spasms of industry-linked violence in the past two decades – the military assault on Ogoni in the mid-1990s and the destruction of the community of Odioma in 2005.
3. *Failure to roll out the VPs on the ground, as opposed to at the highest levels of the corporation.* Companies and governments have generally focused on implementing high-level policies that emphasize cultivating a human rights-sensitive management culture, training employees and government officials, and monitoring and reporting on the corporate-level roll-out of human rights policies. They omit, however, the day-to-day interactions between company personnel, public security forces, and communities that define the conflictual security relationships of the Niger Delta.

Structural Weaknesses

The implementation failures in Nigeria are unlikely to be remedied because of a number of structural weaknesses in the VPs.

1. *Exclusion of communities from the VPs.* While the multi-stakeholder character of the VPs embraces a wide range of actors, it fails to provide a meaningful role for communities themselves, despite the fact that they are the ostensible focus of the initiative. Communities have no access to the confidential proceedings of the VPs, cannot raise grievances against members, and cannot propose changes to the initiative. NGO participation, as it turns out, is at best a poor substitute for community engagement.
2. *Inadequate expectations for government participants, and unrealistic expectations for civil society organizations.* The VPs offer only vague standards for the participation of government members. It is not clear whether they are expected to actively intervene or use influence to improve the implementation of the initiative in other countries, or to enact particular policies or laws relevant to conduct either within their own borders or abroad. The experience of Colombia, where the U.S. and Colombian governments have been active and enthusiastic participants, contrasts unfavorably with that of Nigeria. As for civil society organizations, they find that participation taxes their limited resources. This tends to effectively exclude local

NGOs in developing countries – who have comparatively fewer financial resources – from the VPs, while those NGOs that do participate fail to benefit from the increased trust that supposedly should arise from the VPs' confidentiality guarantees.

3. *Weak or non-existent assurance mechanisms.* The VPs are often criticized for their lack of transparency. Participants' annual reports are not released to the public, and the criteria for reporting are vague and unsatisfactory. This would appear to provide a diminished incentive to companies and government participants to make difficult choices. Moreover, there is no external grievance mechanism, and newly enacted internal mechanisms meant to address non-compliance are untested and cumbersome.

Recommendations

The report offers both substantive and procedural recommendations to approve the performance of the VPs, both at the initiative level and on the ground in Nigeria. These include:

- Mainstreaming community engagement at all stages of risk assessment, security planning, and deployment;
- Clarifying that companies are expected to incorporate the VPs in their security and project agreements with host governments;
- Strengthening the role of home governments to engage with and encourage host governments and companies to fully implement the VPs;
- Adding measures to allow community participation by guaranteeing access to the VPs Plenary, requiring VPs participants to engage directly with communities and local NGOs, and allowing communities to raise grievances with the Secretariat;
- Including ground-level performance data collection as a key component of in-country implementation plans; and
- Elaborating risk assessment protocols that address the root causes of conflict.

About ERI and CEHRD

EarthRights International (ERI), the author of this report, is a non-profit, non-governmental organization that works with communities in resource-rich countries to raise their voices and seek justice when their environmental and human rights are affected by the operations of multinational corporations. ERI has represented Niger Delta communities in litigation against Western oil companies for their complicity in human rights abuses and works with Nigerian organizations to train local lawyers and activists in human rights and environmental advocacy.

The Center for Human Rights, Development and the Environment (CEHRD), which conducted the field research that informs this report, is a rural-based and rural-focused non-profit organization founded by conservationists, environmentalists, activists, and health workers in the Niger Delta region of Nigeria. CEHRD was formed to respond to the environmental, human rights, rural health, and underdevelopment problems plaguing the Niger Delta.

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I. Introduction

Of the many controversies that surround the operations of extractive industries in the global South, one of the most troubling is the persistence of security forces employed by or acting in support of oil, gas, and mining companies committing grave human rights abuses against community members. Again and again, extractive companies have been accused in high profile cases of complicity in the violent repression of environmental protests, the indiscriminate extermination of civilian bases of support for the political opposition, and the sexual abuse of local women.¹ Although companies may be seeking to attain legitimate security goals, they continue to cooperate with and provide material support for security forces with dismal human rights records. In response, various stakeholders have sought and continue to seek avenues to improve the situation and make redress available for affected individuals and communities.

The Voluntary Principles on Security and Human Rights (VPs) are a leading initiative in the attempt to address this pressing human rights problem. With the statement that “security and respect for human rights can and should be consistent,”² U.S. Secretary of State Madeleine Albright and U.K. Secretary of State for Foreign and Commonwealth Affairs Robin Cook unveiled the VPs on December 20, 2000.³ At the time of their establishment, the VPs were hailed as a non-coercive, cooperative initiative between governments, non-governmental organizations (NGOs), and corporations that would serve to promote practices that protect communities and employees in extractive companies’ operating areas from abusive security practices.⁴ In a mark of serious ambition, the framers of the VPs designated three of the most problematic countries – Colombia, Indonesia, and Nigeria – as targets of special interest for the new voluntary regime.⁵

1 See, e.g., *Wiwa v. Royal Dutch Petroleum Co.*, No. 96 Civ. 8386(KMW), 2002 U.S. Dist. LEXIS 3293, 2002 WL 319887 (S.D.N.Y. Feb. 28, 2002); *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 244 F. Supp. 2d 289 (S.D.N.Y. 2003); HUMAN RIGHTS WATCH, GOLD’S COSTLY DIVIDEND: HUMAN RIGHTS IMPACTS OF PAPUA NEW GUINEA’S PORGERA GOLD MINE 43-55 (2010), available at <http://www.hrw.org/reports/2011/02/01/gold-s-costly-dividend-0>.

2 Bennett Freeman, *Drilling for Common Ground*, FOREIGN POL’Y, July 1, 2001, at 50.

3 *Id.*

4 See, e.g., Statement by the Governments of the United States of America and the United Kingdom, Voluntary Principles on Security and Human Rights (Dec. 19, 2000), http://www.unglobalcompact.org/issues/conflict_prevention/meetings_and_workshops/vol-support.html; David Stout, *Oil and Mining Leaders Agree to Protect Rights in Remote Areas*, N.Y. TIMES (Dec. 21, 2000), <http://www.nytimes.com/2000/12/21/world/oil-and-mining-leaders-agree-to-protect-rights-in-remote-areas.html>.

5 In 2010, Peru, Ghana, and the Democratic Republic of the Congo were added as additional target countries. FUND FOR PEACE (FFP) & INT’L ALERT, VOLUNTARY PRINCIPLES ON SECURITY & HUMAN RIGHTS: NATIONAL-LEVEL IMPLEMENTATION GUIDANCE NOTE 7 (2011).

Twelve years later, the record of the VPs is decidedly mixed. To be sure, some developments are positive. Many of the member companies report that they have incorporated the principles into their own security policies and into their contracts with external security providers.⁶ In Colombia – one of the original target countries for the VPs – government officials at multiple levels have been trained in the VPs, and the Ministry of Defense now includes a commitment to the VPs in its security agreements that provide forces for the protection of state-operated oil facilities.⁷ The VPs have also been included in the Performance Standards on Environmental and Social Sustainability that the International Finance Corporation, the Multilateral Investment Guarantee Agency, and the Equator Banks utilize to judge potential investments.⁸

Meanwhile, the VPs themselves continue to evolve. In 2009, the governments, NGOs, and corporations participating in the VPs (“Participants”) approved a framework for admitting new members, making the process more transparent.⁹ Moreover, the Secretariat of the VPs was transferred from two underfunded organizations on opposite sides of the Atlantic to the law firm Foley Hoag LLP, which has a specialized practice focused on corporate social responsibility and can presumably bring more resources to bear than had been previously allocated to the Secretariat.¹⁰ At a Plenary session in 2011, Participants developed and approved participation criteria that clarify the expectations that member organizations will submit reports, engage in dialogue and information sharing, and develop implementation plans.¹¹ These new criteria even envisage potential sanctions for members who fail to live up to these expectations – including the immediate demotion to “inactive” status for members who fail to submit annual reports – and a dispute resolution process by which Participants may raise concerns about the performance of another member – which could lead to sanctions up

6 See *generally* IMPLEMENTATION WORKING GRP., VOLUNTARY PRINCIPLES ON SEC. & HUMAN RIGHTS, OVERVIEW OF COMPANY EFFORTS TO IMPLEMENT THE VOLUNTARY PRINCIPLES (n.d.) [hereinafter IWG REPORT], available at http://www.voluntaryprinciples.org/files/vp_company_efforts.pdf.

7 VOLUNTARY PRINCIPLES ON SEC. & HUMAN RIGHTS, THE VOLUNTARY PRINCIPLES: COLOMBIA CASE STUDY 2 (n.d.) [hereinafter COLOMBIA CASE STUDY], available at http://voluntaryprinciples.org/files/vp_columbia_case_study.pdf.

8 E.g., INT’L FIN. CORP. (IFC), PERFORMANCE STANDARDS ON ENVIRONMENTAL AND SOCIAL SUSTAINABILITY (2012), available at http://www1.ifc.org/wps/wcm/connect/115482804a0255db96bffd1a5d13d27/PS_English_2012_Full-Documents.pdf?MOD=AJPERES.

9 VOLUNTARY PRINCIPLES ON SEC. & HUMAN RIGHTS, VOLUNTARY PRINCIPLES FRAMEWORK FOR ADMISSION OF NEW COMPANIES (2009), available at http://www.voluntaryprinciples.org/files/VPs_Company_Entry_Criteria_Final_-_127001_v1_FHE-DC.PDF; VOLUNTARY PRINCIPLES ON SEC. & HUMAN RIGHTS, VOLUNTARY PRINCIPLES FRAMEWORK FOR ADMISSION OF NEW GOVERNMENTS (2009) [hereinafter FRAMEWORK FOR ADMISSION OF NEW GOVERNMENTS], available at http://www.voluntaryprinciples.org/files/New_vp_government_application_framework.pdf; VOLUNTARY PRINCIPLES ON SEC. & HUMAN RIGHTS, VOLUNTARY PRINCIPLES FRAMEWORK FOR ADMISSION OF NEW NGOs (2009), available at http://www.voluntaryprinciples.org/files/VPs_NGO_Entry_Criteria_Final_-_127003_v1_FHE-DC.PDF.

10 *Foley Hoag’s CSR Practice Selected as Secretariat for the Voluntary Principles on Security and Human Rights*, FOLEY HOAG LLP (Sept. 30, 2010), http://www.foleyhoag.com/NewsCenter/PressCenter/2010/09/30/Foley_Hoag_Secretariat_Voluntary_Principles.aspx.

11 VOLUNTARY PRINCIPLES ON SEC. & HUMAN RIGHTS, PARTICIPATION CRITERIA (2011) [hereinafter PARTICIPATION CRITERIA], available at http://www.voluntaryprinciples.org/files/VPs_Participation_Criteria_Final_-_127000_v1_FHE-DC.PDF.

to and including expulsion from the initiative.¹² Moreover, at the 2012 Plenary session, Participants announced a pilot “assurance” project, which may explore the possibility of adding an external accountability mechanism to review members’ performances.¹³ At this same Plenary meeting, Participants also approved the creation of the Voluntary Principles Association, a formal non-profit administrative organization for the VPs that will be based in The Hague.¹⁴

Despite these promising developments, reports of persistent brutality by security forces and allegations of unresolved disputes between communities and extractive companies continue to dog governments and corporations that have signed onto the VPs. Nowhere is this truer than in Nigeria, where a long legacy of poverty, human rights abuses, and corruption has often pitted frustrated communities against oil companies and security forces. The security situation in this West African country is made especially difficult by the presence of violent criminal gangs that often target oil installations and oil workers, thereby triggering an escalation in the presence and pitch of security deployments.¹⁵ Thus, the situation in Nigeria is precisely the sort of fluid, complex situation that the VPs were designed to address – they purport to provide a flexible, pragmatic, and principled approach to dealing with security forces by helping companies engage communities, governments, and NGOs to manage risks, promote professionalism, and safeguard the human rights of the communities and employees affected by their operations.

With the above considerations in mind, this report examines the implementation of the VPs in Nigeria’s Niger Delta, with an eye toward reforming the structure and content of the VPs and strengthening their implementation. The report starts with a general summary of the VPs, including brief details on the composition of its current membership, the objectives of its guiding principles, and the functions of its various institutional components. The report then presents the results of field research on the shifting dynamics between Niger Delta communities and companies with respect to security arrangements. In light of this information and other recent developments in the VPs, the report then analyzes the substantive and structural features of the VPs that have undermined their effectiveness in Nigeria and elsewhere. Finally, it suggests ways in which the VPs should be strengthened or reformed to make them a truly useful instrument of change and an effective protector of human rights.

12 Participants may now raise “concerns regarding sustained lack of efforts to implement the Voluntary Principles.” *Id.* at 2. Such concerns are addressed first through direct dialogue, then (if necessary) processed by the Steering Committee and eventually referred to the Secretariat of the VPs for mediation. If the concerns are not resolved at that point, the matter is referred to the VPs Plenary, which is charged with resolving on a course of action. *Id.* at 2-3.

13 VOLUNTARY PRINCIPLES ON SEC. & HUMAN RIGHTS, SUMMARY OF VOLUNTARY PRINCIPLES IMPLEMENTATION EFFORTS DURING 2011, at 2 (2012), available at http://www.voluntaryprinciples.org/files/VPs_Summary_Annual_Report_April_2012.pdf.

14 CHAIR, VOLUNTARY PRINCIPLES ON SEC. & HUMAN RIGHTS, CHAIR’S SUMMARY OF PROCEEDINGS: VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS ANNUAL PLENARY MEETING, MARCH 29, 2012, at 1 (2012), available at http://www.voluntaryprinciples.org/files/Summary_of_Proceedings_VPs_Plenary_March_2012.pdf.

15 See, e.g., Cyril Obi, *Nigeria’s Niger Delta: Understanding the Complex Drivers of Violent Oil-Related Conflict*, 34 AFR. DEV. 103 (2009), available at <http://www.ajol.info/index.php/ad/article/viewFile/57373/45753>.

II. The Voluntary Principles on Security and Human Rights

The VPs constitute a multi-stakeholder initiative that stands on three “pillars”: governments, corporations, and NGOs. There are currently eight government Participants, including the U.S., the U.K., the Netherlands, and Colombia; twenty-one corporate Participants, including mining companies like BHP Billiton and oil companies like Shell and Chevron; and twelve NGO Participants, including major international NGOs like Amnesty International and more specialized organizations like the Fund for Peace and Search for Common Ground.¹⁶

At the core of the VPs is a tripartite set of guidelines on how extractive companies should (1) conduct risk assessments, (2) interact with government partners, and (3) contract with private security in order to avoid human rights abuses.¹⁷ The first section, entitled “Risk Assessment,” directs companies to gather information on security risks, rule of law, human rights records, the potential for violence, and the root causes and nature of conflict from a number of sources in each country that they operate in.¹⁸ The second section, entitled “Interactions Between Companies and Public Security,” calls on companies to share their human rights policies with government partners; encourage transparency in security arrangements; implement measures to ensure that equipment transfers and security deployments comply with international and domestic laws and standards; avoid use of security personnel with credible records of human rights abuse; consult with communities on security impacts; consult with civil society, governments, and other companies on security arrangements; and facilitate the investigation and resolution of alleged incidents of abuse.¹⁹ The third section, entitled “Interactions Between Companies and Private Security,” emphasizes the need for companies to review and assess the background of security providers, the need for private security contractors to operate in a legal and contractual framework that facilitates respect for human rights, and the need for companies to monitor and appropriately influence security operations.²⁰

16 *Participants*, VOLUNTARY PRINCIPLES ON SECURITY & HUM. RTS., <http://www.voluntaryprinciples.org/participants/> (last visited May 7, 2013).

17 THE VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS (2000) [hereinafter VPs], *available at* http://www.voluntaryprinciples.org/files/voluntary_principles_english.pdf.

18 *Id.* at 2-3.

19 *Id.* at 3-5.

20 *Id.* at 5-7.

The principal working body of the VPs is the Plenary, of which all Participants are members.²¹ The Plenary meets at least once a year in the country of the Government Chair, which rotates amongst the government Participants.²² During these meetings, the Plenary votes on budgets, formal initiatives, modifications to or adoption of the VPs or any governance documents, and the expulsion of members, among other things.²³ Between Plenary sessions, the work of the VPs is carried on by a Steering Committee composed of between six and twelve Participants.²⁴ The Steering Committee creates working groups, sets agendas, conducts outreach, makes recommendations on whether Participants should be declared “inactive,” oversees dispute resolution procedures, and oversees the Secretariat, among other things.²⁵ The Secretariat is the administrative body of the VPs – it supports the Steering Committee and any working groups, organizes Plenary meetings, prepares budgets, oversees applications and membership, and plays a role in dispute resolution.²⁶ The meetings of both the Steering Committee and the Plenary are confidential and are not open to non-Participants with the limited exception of specially designated Observers – which include organizations like the International Committee of the Red Cross and the International Council on Mining and Metals – and invited guests who can attend for limited purposes.²⁷

In order to join the VPs, an applicant must recognize the need to promote security within the framework of international humanitarian and law enforcement laws and standards.²⁸ The exact details of what is required for membership vary depending on whether the applicant is a government, corporation, or NGO, but applicants generally must accept the VPs’ confidentiality provisions and must submit an action plan detailing what the applicant is already doing that relates to the VPs and how it plans to implement the initiative.²⁹ Membership is generally decided by consensus, or, if consensus cannot be reached through a good faith effort, by a formal vote of at least 75% of the members of each pillar.³⁰

21 VOLUNTARY PRINCIPLES ON SEC. & HUMAN RIGHTS, THE INITIATIVE OF THE VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS: GOVERNANCE RULES § II, ¶ 1 (2011) [hereinafter GOVERNANCE RULES], *available at* http://www.voluntaryprinciples.org/files/VPs_Governance_Rules_Final.pdf.

22 *Id.* § II ¶ 1, § III ¶ 2(a)(3).

23 *Id.* § III ¶ 3(a)(1).

24 *Id.* § II ¶ 1, § III ¶ 2(b)(1).

25 *Id.* § III ¶ 3(b)(1).

26 *Id.* § III ¶ 3(c)(1).

27 *Id.* § III ¶ 4, app. 4.

28 VPs, *supra* note 17, at pmb1.

29 *See supra* note 9.

30 GOVERNANCE RULES, *supra* note 21, § III ¶ 3(a)(2).

All Participants are expected to promote the VPs, engage in dialogue and information exchange with other Participants, participate in “In-Country Implementation Processes” as appropriate, and submit annual reports.³¹ Corporate and government Participants are responsible for providing funds to sustain the initiative.³² Participants who fail to submit an annual report, engage with other Participants, respond to reasonable requests for information, or pay dues may be automatically declared “inactive.”³³ Moreover, if a Participant has concerns about the conduct of another Participant, it may raise its concerns with the Steering Committee, which can then launch a dispute resolution process that may include mediation.³⁴ This process can theoretically lead to the expulsion of a member based on the consensus of the Plenary,³⁵ although this has not happened to date.

Thus far, the various bodies of the VPs appear to have focused largely on expanding membership, developing performance and risk assessment criteria, and coordinating outreach and implementation in certain countries.³⁶ Most recently, a working group – an Outreach and Implementation Working Group – has been created, within which groups of participants assist with the development of In-Country Implementation Processes.

31 PARTICIPATION CRITERIA, *supra* note 11, at 2.

32 *Id.* at 3.

33 *Id.* at 2-3.

34 *Id.* at 2, 4.

35 *Id.* at 3.

36 *See, e.g.*, VOLUNTARY PRINCIPLES ON SEC. & HUMAN RIGHTS, SUMMARY REPORT OF VOLUNTARY PRINCIPLES IMPLEMENTATION EFFORTS DURING 2010 (2011) [hereinafter 2010 SUMMARY REPORT], *available at* http://www.voluntaryprinciples.org/files/VPs_Summary_Annual_Report_2010.pdf.

III. Security, Human Rights, and Extractive Industries in Nigeria

The choice of Nigeria as a target country for the VPs is fitting – few countries have such a troubling history of links between extractive operations, security, and serious human rights abuses. The record of violent oppression by security forces associated with corporate activity in Nigeria reaches back to colonial times.³⁷ In 1966, Nigerian government forces – supposedly with Shell’s support – were alleged to have captured and tortured self-proclaimed rebels who had targeted oil concessions in the Niger Delta.³⁸ By the 1970s, the Niger Delta was the main source of oil and gas within Nigeria’s borders, accounting for over 80% of national revenues and 95% of export earnings.³⁹ Demand for control over these resources grew in the decades that followed and, accordingly, tensions between Delta communities and the corporate and government actors entering the region to exploit those resources also reached extraordinary levels.

Throughout the 1990s, the Niger Delta witnessed an unbroken cycle of protests and occupation of oil facilities, leading to deadly security incidents and other human rights abuses.⁴⁰ In 1990, in an incident that garnered significant international attention, a group of protesters who may or may not have invaded Shell’s Umuechem flow station were brutally attacked by the government’s Mobile Police Force – allegedly with the knowledge and at the request of Shell.⁴¹

On January 4, 1993, a rally organized by the Movement for the Survival of the Ogoni People (MOSOP) was attended by roughly one-half of the entire population of the Ogoni people, a small tribe in whose territory Shell had extensive operations.⁴² Under the leadership of journalist and organizer Ken Saro-Wiwa, MOSOP had launched a major advocacy campaign in 1990, drawing attention to the environmental and economic plight of the Ogoni people and adopting an “Ogoni Bill of Rights” that demanded, among other things, political autonomy and the right to control and benefit from the Ogoni region’s considerable economic resources.⁴³ By the time of the 1993 rally, that position had hardened

37 See INT’L CRISIS GRP., AFRICA REPORT NO. 115, THE SWAMPS OF INSURGENCY: NIGERIA’S DELTA UNREST 3-4 (2006) (chronicling a British Navy attack on the Nembe kingdom as retaliation for a Nembe raid on Royal Niger Company headquarters), available at <http://www.crisisgroup.org/~media/Files/africa/west-africa/nigeria/The%20Swamps%20of%20Insurgency%20Nigerias%20Delta%20Unrest.pdf>.

38 See *id.* at 4.

39 Obi, *supra* note 15, at 115.

40 See INT’L CRISIS GRP., *supra* note 37, at 119-35, 139-42.

41 *Id.*; see also RIVERS STATE (NIGERIA), CONCLUSIONS OF THE GOVERNMENT OF RIVERS STATE ON THE REPORT OF THE JUDICIAL COMMISSION OF INQUIRY INTO THE UMUECHEM DISTURBANCES UNDER THE CHAIRMANSHIP OF HON. JUSTICE OPUBO INKO-TARIAH (RTD.) (1991).

42 INT’L CRISIS GRP., *supra* note 37, at 4-5.

43 *Id.*

into a demand that Shell withdraw from Ogoni territory.⁴⁴ Soon thereafter, the Nigerian government commenced a brutal crackdown on Ogoni activists and community leaders. Over the course of several years, government forces attacked villages and executed Ogoni individuals.⁴⁵ The campaign against the Ogoni people culminated on November 10, 1995, when the Nigerian military government executed nine MOSOP members, including Ken Saro-Wiwa, after a show trial in which they were convicted of the murder of four leaders of a rival MOSOP faction.⁴⁶ Shell had provided logistical and financial support on at least one occasion to the Nigerian security forces engaged in Ogoni.⁴⁷ Moreover, the company has been consistently accused – including in two U.S. lawsuits – of complicity in the execution of the “Ogoni Nine.”

Another incident that led to litigation in the U.S. involved a group of ethnic Ilaje villagers who boarded the Parabe oil platform – operated by Chevron’s Nigerian subsidiary – in 1998 to protest environmental damage and economic exploitation.⁴⁸ At the behest of – and perhaps under the direction of – Chevron’s security personnel, government forces arrived at Parabe by helicopter and opened fire, killing two protesters and subjecting others to torture in a detention facility.⁴⁹ A federal jury ultimately found that the Chevron parent corporations were not liable for this violence, but Chevron Nigeria did pay the funeral expenses of the men who were killed.⁵⁰

Incidents of security abuses linked to extractive industries has not abated in the last decade. A 2005 report by Amnesty International found that Shell had conducted inadequate due diligence in hiring contractors and paying for disputed land use rights in Bayelsa State in the Niger Delta.⁵¹ These missteps triggered a series of events that culminated in a devastating attack by the Nigerian military’s Joint Task Force (JTF) on the community of Odioma, leaving at least seventeen villagers dead, over 100 villagers displaced, and most of the village burned.⁵² Similar failures in proper risk assessment and community information gathering underlie the findings of a recent report alleging that Shell has made repeated payments to armed militants, empowered factions in deeply divided communities, and

44 Shell did in fact cease production from Ogoni fields later that year. *Id.* at 5.

45 *Id.*

46 *Id.*; HUMAN RIGHTS WATCH, THE PRICE OF OIL: CORPORATE RESPONSIBILITY AND HUMAN RIGHTS VIOLATIONS IN NIGERIA’S OIL PRODUCING COMMUNITIES 13 (1999), available at <http://www.hrw.org/reports/1999/nigeria/nigeria0199.pdf>.

47 *Id.* at 13.

48 *Id.* at 11.

49 *Id.* at 11, 15, 135, 164.

50 See *Bowoto v. Chevron Corp.*, No. C 99-02506 SI, Order re: Defendants’ Motion for Summary Judgment on Plaintiffs’ Claims 10 Through 17, Dkt. 1640 (N.D. Cal. Aug. 14, 2007), available at <http://www.earthrights.org/sites/default/files/legal/Chevron-1640-Order-re-state-law-claims.pdf>.

51 AMNESTY INT’L, AI INDEX AFR 44/022/2005, TEN YEARS ON: INJUSTICE AND VIOLENCE HAUNT THE OIL DELTA 18-23 (2005), available at <http://www.amnesty.org/en/library/asset/AFR44/022/2005/en/63b716d6-d49d-11dd-8a23-d58a49c0d652/af440222005en.pdf>.

52 *Id.* at 18-23.

hired security forces that beat and killed civilians with impunity between 2006 and 2010.⁵³ According to this report, Shell provided funding that fueled conflict and led to devastating violence in at least one Delta community.⁵⁴

Ugborodo – one of the sites of the empirical survey that informs this report – has repeatedly been the locus of violence stemming from protests over employment opportunities. In February 2005, protesters entered Chevron’s Escravos Tank Farm, which is adjacent to Ugborodo.⁵⁵ The JTF was called to respond, and in the course of evicting the protestors, at least one died and many others were allegedly beaten and tortured.⁵⁶ In 2008, another unarmed protest over inadequate employment opportunities in the area ended with the JTF shooting live bullets into the crowd and, consequently, badly wounding a number of community members.⁵⁷

In the past four years, tension and violence between communities and security forces over extractive operations has continued to escalate. In January 2009, dozens of women gathered in the town of Ogu at the headquarters of Daewoo, a Shell contractor, to protest against Daewoo’s lack of engagement with community members and development efforts in the area.⁵⁸ When threats by JTF to open fire failed to dislodge the protesters, security personnel attacked them with their rifle butts, whips, belts, iron bars, and planks of wood.⁵⁹ At least 17 women suffered serious injuries, including permanent disfigurements and broken bones.⁶⁰ Then, in December 2009, two heavily armed soldiers guarding a Shell manifold in the community of K-Dere allegedly attacked William Dimpka Nkoo and his wife, Priscillia, using the butts of their rifles and whips.⁶¹ They gave no reason for the attack apart from telling Mr. Nkoo that he talked “like somebody who claimed to know so much.”⁶² In January 2010, soldiers guarding a Shell facility in Kolo Creek stopped Opuwei Daniel and another man and humiliated them by forcing them to perform frog-jumps on the side of the road while being whipped.⁶³ In April 2010, in the Bomu oil field in the Ogoni region, JTF soldiers shot and killed Bariara

53 PLATFORM, COUNTING THE COST: CORPORATIONS AND HUMAN RIGHTS ABUSES IN THE NIGER DELTA (2011) [hereinafter COUNTING THE COST], available at http://platformlondon.org/nigeria/Counting_the_Cost.pdf.

54 *Id.*

55 AMNESTY INT’L, *supra* note 51, at 6-12.

56 *Id.* at 8-12.

57 CTR. FOR ENV’T, HUMAN RIGHTS & DEV. (CEHRD), SCORECARD FOR 2008, at 53-54 (2008).

58 PLATFORM (LONDON), *supra* note 53, at 47.

59 *Id.* at 48.

60 *Id.*

61 *Id.* at 15-16.

62 *Id.* at 16.

63 *Id.* at 19.

Vurasi, a young man in his early 20s who was working for Shell at the time of his death.⁶⁴ Allegedly, the soldiers had started beating Shell workers and firing shots into the air in response to a heated disagreement between the workers during their lunch break.⁶⁵ Mr. Vurasi was shot and killed as he was trying to escape the scene.⁶⁶ In September 2010, JTF soldiers at the Shell facility in Kolo Creek again engaged in the systematic harassment of local residents as they gathered approximately 30 people and forced them, at gunpoint, to perform intensive manual labor.⁶⁷

Most recently, there has been a growing concern that the JTF's new mandate to focus heavily on curbing incidents of oil theft in the Delta may "provok[e] [the] consequential rebirth of all nuances of criminalities associated with militancy that endangered lives of the civil population in the region" in past years.⁶⁸ As demonstrated by the above incidents, as well as many others not covered by this report, violence committed by security forces guarding extractive operations in Nigeria is a persistent reality that, unfortunately, has not been dispelled by twelve years of VPs implementation and expansion.

64 *Id.* at 16.

65 *Id.*

66 *Id.*

67 *Id.* at 19.

68 Egufe Yafugborhi, *Oil Theft: Stakeholders Toe Divergent Paths Over JTF's Altered Mandate*, VANGUARD (Sept. 26, 2012), <http://www.vanguardngr.com/2012/09/oil-theft-stakeholders-toe-divergent-paths-over-jtfs-altered-mandate/>.

IV. The VPs on the Ground in Nigeria: Minimal Consultation, Inadequate Risk Assessments, and a Failure to Address Root Causes of Conflict Fuel Ongoing Violence

This section presents the results of research and analysis as to the gaps that remain on the ground in Nigeria that prevent the VPs from fulfilling their promise. In particular, the report identifies community exclusion, gaps in risk assessment, and shortcomings in the translation of principles to practice as the key weaknesses in VPs implementation in Nigeria.

VPs Participants commit to “proactively implement or assist in the implementation of the Voluntary Principles.”⁶⁹ In furtherance of this commitment, the Governance Rules of the VPs provide for the formation of ad hoc, country-specific working groups to support “In-Country Implementation Processes.”⁷⁰ However, despite the fact that Nigeria is a priority country for implementation, VPs Participants did not decide to form a Nigeria Implementation Working Group until the September 2011 Plenary meeting.⁷¹ Echoing this delay in effective implementation of the VPs in Nigeria, the perception of communities in the West African country is that there has not been a substantial change in the way companies are operating in their areas with respect to security deployment, and that there continues to be a high threat to communities’ human rights as a result of the presence of security forces associated with extractive operations.⁷² So, why is it that security forces and communities continue to clash in Nigeria, despite the apparently sincere adoption of the VPs by Shell and Chevron?⁷³ Moreover, outside of Nigeria, why has there apparently been comparatively more success, such as the incorporation of the VPs into Colombian contracting procedures, oversight guidelines of the International Finance Corporation (IFC), and projects worldwide?

Undoubtedly, the particular complexities of history, economics, and politics in the Niger Delta play a role in the failure of the VPs to have meaningful impact on the ground. Deeply entrenched corruption and a history of military rule have left relations between communities, government, and law enforcement frayed. The national redistribution of oil revenues creates inter-regional resentment, as oil-producing states receive significantly less than their proportional contribution to the federal treasury,

69 PARTICIPATION CRITERIA, *supra* note 11, at 2.

70 GOVERNANCE RULES, *supra* note 21, § IV ¶ 2.

71 Conversation with Melike Yetken, Section Chief, Bus. & Human Rights Section, Bureau of Democracy, Human Rights & Labor, U.S. Dep’t of State (Oct. 6, 2011).

72 According to reports by VPs Participants surveyed for this report.

73 Although Shell, Chevron, and Exxon are all VPs Participants, this report focuses only on communities in close proximity to Shell and Chevron’s operations in Nigeria because Exxon’s operations in the Niger Delta are entirely offshore and thus entail fewer direct interactions between security forces and communities. This does not constitute an endorsement of Exxon’s security practices in Nigeria.

yet still receive greater per capita shares of federal transfers to the states than non-oil-producing states.⁷⁴ Thus, perceived inequities in benefit sharing; a history of violent conflict, unemployment, corruption and distrust; and widespread and severe environmental pollution all lead to further resentment of and increased demands on oil companies, especially when local and state governments fail to deliver public services. Companies and communities are additionally challenged by the ease with which petroleum – the highest-valued commodity that is readily available – can be stolen, and by the proliferation of weapons throughout the country.⁷⁵ These factors, combined with the fractured nature of leadership dynamics in many Delta communities, make it extremely challenging for companies and other stakeholders to know whom to consult, negotiate, and deal with when formulating security plans and impact-remediation schemes.

Yet these are exactly the sorts of difficult situations that the VPs were developed to address. Nigeria is not the only fragile, highly militarized country in which extractive industry operations occur – the Democratic Republic of Congo, Burma (Myanmar), and Indonesia also top the list of oil and mineral-rich states in which oil, gas, and mining operations take place against a backdrop of civil war and corruption.⁷⁶ If the VPs fail to provide useful guidelines and procedures in Nigeria, then it is incumbent on the Participants and stakeholders of the initiative to seek out ways to improve the regime. The results of the empirical survey and additional research that inform this report point to a number of weaknesses in the implementation of the VPs in Nigeria that undercut their effectiveness.

a. Communities are excluded from participation and on-ground consultation in the VPs as a matter of course

As noted in the VPs, “[c]ompanies should consult regularly with host governments and local communities about the impact of their security arrangements on those communities.”⁷⁷ It is clear, however, that companies operating in Nigeria do not consult with host communities about security matters on a regular basis and, above all, do not do so before making security planning decisions.

In all four communities that participated in the empirical survey that informs this report, perhaps the most consistent response from Nigerian interview subjects was that the company operating in each community’s area did not engage the community on security matters despite the fact that community

74 See Wumi Iledare & Rotimi Suberu, *FRAMEWORK PAPER: OIL AND GAS RESOURCES IN THE FEDERAL REPUBLIC OF NIGERIA* AT 3-4, FROM THE CONFERENCE ON OIL AND GAS IN FEDERAL SYSTEMS, March 3-4, 2010, World Bank Headquarters, Washington, DC, available at http://siteresources.worldbank.org/EXTOGMC/Resources/336929-1266445624608/Framework_Paper_Nigeria2.pdf.

75 See, e.g., Freedom C. Onuoha, *Small Arms and Light Weapons Proliferation and Human Security in Nigeria*, 1 CONFLICT TRENDS 50 (2011).

76 See, e.g., Michael L. Ross, *How Do Natural Resources Influence Civil War: Evidence from 13 Case Studies*, 58 INT’L ORG. 37 (2004), available at <http://www.sscnet.ucla.edu/polisci/faculty/ross/HowDoesNat3.pdf>.

77 See *Interactions Between Companies and Public Security: Security Arrangements*, VOLUNTARY PRINCIPLES ON SECURITY & HUM. RTS., http://www.voluntaryprinciples.org/principles/public_security.

members stood ready to participate in security planning. In general, awareness of the existence of the VPs – whether in name or in principle – in Niger Delta oil-producing communities is poor. For example, community members in Ugborodo reported that Chevron does not contact or consult with the community on security matters. “We don’t know anything about Voluntary Principles on security,” explained one Ugborodo community voice.⁷⁸ Another community member stated, “Chevron does not contact my community on security matters, for all I know.”⁷⁹ Further demonstrating the fact that Niger Delta oil-producing communities do not benefit from a consultative or inclusive security environment, more than one Ugborodo resident reported feeling intimidated when approaching the company about security concerns. As one noted, “We don’t have free access to Chevron . . . for fear of their big security agents surrounding their office.”⁸⁰

Similarly, AngloGold personnel in Colombia confirmed that the company does not engage the community in making security plans, although it does meticulously gather and publish data on security incidents in the communities where it operates. Security personnel – both at the operational level and at the corporate policy level – expressed the belief that inclusion of communities in security policy was not relevant to the VPs.

This oversight may stem partially from a lack of emphasis on community engagement in the VPs themselves, which suggest consultation on the *impacts* of security arrangements, yet make no mention of pre-deployment consultation or holistic integration of communities into security planning.⁸¹ In the section of the VPs dealing with public security providers, there is no express requirement to integrate community consultation into security arrangements, nor are companies directed to consult and seek advice from local communities on security and human rights issues.⁸² This oversight is glaring, given that corporate Participants *are* directed to consult with “other Companies, host and home governments, and civil society” on security and human rights on a regular and consistent basis.⁸³

This failure to consult is not, however, necessarily due to a lack of available guidance on the VPs. The International Council on Mining and Metals (ICMM) – an industry organization with VPs Observer status – published Implementation Guidance Tools (IGTs) in 2011 that include communities as stake-

78 UGBORODO AND NGOs FIELD REPORT (Apr.-May 2010) [hereinafter UGBORODO FIELD REPORT] (on file with ERI).

79 *Id.*

80 *Id.*

81 *See Interactions Between Companies and Public Security: Security Arrangements, supra* note 77.

82 *See id.*

83 *See UGBORODO FIELD REPORT, supra* note 78.

holders and recommend communication and consultation with them on security matters.⁸⁴ Among other things, the IGTs recognize communities as an important source of knowledge about security risks and acknowledge the need to develop sensitivity to community dynamics and perceptions.⁸⁵ Nothing in the VPs prevents Participants from carrying out this type of consultation. Similarly, nothing stops companies and governments from engaging and educating communities about the VPs themselves, in order to give them a better sense of what they should be able to expect from security forces operating with the companies.

In the empirical study that informs this report, communities clearly indicated their eagerness to be involved in security arrangements and stated that collaborative planning would help alleviate company security concerns and could lead to better relations between companies and communities. In Kwawa, Kono, and Ugborodo, villagers expressed a desire to engage on security issues but insisted that they had not been consulted. One Kwawa community member noted, “If Kwawa is given the opportunity to [be] involve[d] in security arrangements, we will be grateful. It will put an end to sabotage and even create employment to the community.”⁸⁶ Women from Kono were equally eager to discuss security matters with Shell.⁸⁷ While one respondent in Ugborodo believed that security forces associated with the companies were “trying to some extent” to improve their performance, others opined that the community “should be involved fully in security issues; if they benefit from what Chevron is doing I think they will protect Chevron’s facilities more.”⁸⁸

In Imiringi, community members complained that community involvement in security arrangements had *decreased* since the VPs were first enacted. According to community members, Shell had arranged to have Imiringi youths assist in providing security before 1999, but Shell had since replaced that system with armed public security forces and had ceased to consult with the community on security issues at all.⁸⁹ Some expressed bitterness that the formerly civilian security system – which was also an important source of employment in the area – had been abandoned in favor of a permanent and often intimidating military presence.⁹⁰

84 INT’L COUNCIL ON MINING & METALS (ICCM) ET AL., VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS: IMPLEMENTATION GUIDANCE TOOLS (2011) [hereinafter IGTs], available at http://www.voluntaryprinciples.org/files/VPs_IGT_Final_13-09-11.pdf.

85 *Id.* at 19-20.

86 KWAWA, KONO, AND IMIRINGI FIELD REPORT [hereinafter KKI FIELD REPORT] (Jan. 2010) (on file with ERI).

87 *Id.*

88 *Id.*

89 *Id.*

90 KKI FIELD REPORT, *supra* note 86.

Experiences in other parts of the world suggest that communities' intuition on integrated security planning holds promise. BP's Tangguh Project in Indonesia's restive West Papua Province includes an Integrated Community Based Security plan that assigns roles to communities, company employees, and public security forces and emphasizes dialogue and consultation to reduce the risk of conflict.⁹¹ While it is not clear whether all aspects of the plan have been implemented to the fullest,⁹² Tangguh clearly illustrates the possibilities of inclusive security planning. Moreover, the model can be viewed as a relative success in that there have been no allegations of abuse from security forces, and the plan is widely supported by both community leaders and local villagers.⁹³

b. Risk assessments fail to identify and address root causes of conflict

The VPs state that “[t]he ability to assess accurately risks present in a Company’s operating environment is critical to the security of personnel, local communities and assets; the success of the Company’s short and long-term operations; and to the promotion and protection of human rights.”⁹⁴ This is perhaps the most fundamental innovation of the VPs – the notion that security planning should incorporate human rights and conflict risk assessments that will enable a company to put in place appropriate systems for avoiding, mitigating, and responding to human rights abuses. Yet the section of the VPs guidelines dealing with risk assessments instructs companies to consult only with “local and national governments, security firms, other companies, home governments, multilateral institutions, and civil society knowledgeable about local conditions,” excluding communities from the list of voices whose perspectives should be heard.⁹⁵ Moreover, it appears that in the implementation of the VPs, Participants have not yet focused broadly on the root causes of conflict, thereby limiting the effectiveness of the VPs.

i. Divide and conquer tactics exacerbate communal conflicts

One prominent charge against the companies is that they engage in “divide and conquer” tactics by exploiting or ignoring divisions in the community and the potential for extractive operations to exacerbate intra-communal conflict. The violence in the Nigerian community of Odioma vividly illustrates the consequences of companies’ involvement in communal conflicts. A 2005 Amnesty International report

91 See *Tangguh Integrated Community Based Security*, BP, <http://www.bp.com/sectiongenericarticle.do?categoryId=9004771&contentId=7009147>.

92 ASIAN DEV. BANK, ENVIRONMENTAL AND SOCIAL MONITORING REPORT, INDONESIA: TANGGUH LIQUEFIED NATURAL GAS PROJECT REPORT FOR INTEGRATED SOCIAL PROGRAM - MID TERM REVIEW 11 (2009).

93 TANGGUH INDEP. ADVISORY PANEL, FIRST REPORT ON OPERATIONS PHASE OF THE TANGGUH LNG PROJECT 5 (2011), available at http://www.bp.com/liveassets/bp_internet/indonesia/STAGING/home_assets/downloads/t/TIAP_Report_2010.pdf.

94 *Risk Assessment*, VOLUNTARY PRINCIPLES ON SECURITY & HUM. RTS., http://www.voluntaryprinciples.org/principles/risk_assessment.

95 See *id.*

concludes that Shell is at least partially responsible for the destruction of Odioma. Amnesty criticizes the company for wading into an explosive land dispute between two rival communities and entering into negotiations with only one side without undertaking proper due diligence.⁹⁶

The field research that informs this report also reveals a widespread belief that one of the chief causes of conflict within oil-producing communities is the “divide and conquer” tactics of the oil companies. In Imiringi, community members noted that Shell makes payments to community members outside of the “laid down rules of constitutions guiding the economic well-being of the community.”⁹⁷ Shell’s decision to deal with a small sub-group of people instead of “transparently bringing it to [the entire] community” is one of the “primary drivers of conflict,” according to Kwawa inhabitants.⁹⁸ Ugborodo residents had similar complaints, noting that Chevron does not respect the “customary” or “real” landlords in the community and contributes to leadership struggles by paying royalties to particular factions.⁹⁹ These leadership contests –which communities firmly believe to be exacerbated by the behavior of the companies – have led to intra-communal violence and, in some cases, deaths.¹⁰⁰

Companies might be more successful at avoiding these types of consequences if the VPs had a stronger requirement for community consultation – as opposed to relying on governments and civil society to speak for communities. But the VPs already call on companies to “identif[y]... and understand[]” the root causes of conflicts, suggesting that the failure to perceive these dynamics is more a failure of implementation than of the actual content of the VPs. Determining with whom to negotiate and who is the rightful owner of property is not easy in the Niger Delta – dynamics are notoriously complex and contentious in many oil-producing communities, and the field researcher who conducted this survey found that it can be dangerous even to openly discuss transactions that might empower or enrich some community members. But effective implementation of the VPs in Nigeria absolutely depends on the ability of companies to deal with communities as a whole and engage in legitimate,

96 AMNESTY INT’L, *supra* note 51, at 22-23.

97 Complaints of “divide and rule” tactics were part of the animating force behind yet another protest including the Imiringi community in July 2011. See Samuel Oyandonga, *Bayelsa Protesting Communities Lay Fresh Siege to SPDC Kolo Creek Logistics Base*, SWEET CRUDE REP. (July 14, 2011), <http://sweetcrudereports.com/2011/07/14/bayelsa-protesting-communities-lay-fresh-siege-to-spdc-kolo-creek-logistics-base/>. This demonstration, which led to the paralysis of a Shell facility that was guarded by heavily-armed JTF personnel, ended peacefully. The demonstrators, however, clearly anticipated the possibility of a violent confrontation; one leader declared that they were prepared to retreat if the JTF opened fire, but would return “in full force.” See *Four Communities: Imiringi, Elebele, Otuasega and Oruma Stage Peaceful Protest Against Shell*, ENVTL. RTS. ACTION (July 8, 2011, 11:37 AM), <http://www.eraction.org/component/content/article/5/315-four-communities-imiringi-elebele-otuasega-and-oruma-stage-peaceful-protest-against-shell>.

98 KKI FIELD REPORT, *supra* note 86.

99 UGBORODO FIELD REPORT, *supra* note 78.

100 *Id.*

inclusive negotiations rather than piecemeal purchases and contracts.¹⁰¹ Extractive companies would be well advised to incorporate an in-depth assessment of communal conflicts in the due diligence that informs their security planning.

ii. Environmental and social neglect cause friction

Environmental devastation and neglect of the social problems created by oil activities are commonly cited as a potential flashpoint for violence between communities and the security forces employed by companies. Although the causes of community-company friction involve more than just environmental damage, simmering resentment related to pollution has repeatedly inspired protest activity, including production stoppages that have led to violent crackdowns by Nigerian armed forces. Communities are aggrieved by what they perceive as an imbalance between the costs and benefits of extractive operations – specifically, that the companies harm their livelihoods by contaminating the natural environment and disrupting traditional social patterns while failing to provide commensurate employment, investment, and infrastructure benefits in compensation. In several of the interviewed communities, villagers complained about inadequate development contributions. One villager from Kono remarked, “You can see for yourself. No electricity. No good water. No development. Just take a look at the Kono Secondary School.”¹⁰² In Imiringi, where company-built infrastructure is apparently more extensive, Shell’s contributions – which include roads, schools, electricity, and water, as well as certain types of employment contracts – were seen as grudging, inadequate, and incommensurate with the environmental damage done as a result of the extraction of high-value oil.¹⁰³

The litany of complaints about the environmental and health impacts of oil exploration reflect a situation in which communities are progressively unable to maintain their traditional livelihoods and have begun instead to disintegrate into factions that compete for access to oil and employment with the company – the chief sources of wealth in the region. In both Kono and Imiringi, interviewed community members expressed fear that the suffering engendered by environmental pollution could lead to conflict if left unchecked.¹⁰⁴ As currently structured, however, the VPs provide no opportunity to discuss how these issues contribute to the incidence of human rights abuse, and the implementation

101 The ICMM’s IGTs suggest that community consultations should take care to include a multiplicity of viewpoints and interests, but it does not specify the full range of actors and the kinds of information that should be elicited in order to avoid the “divide and conquer” effect. IGTs, *supra* note 84, at 19-20.

102 KKI FIELD REPORT, *supra* note 91.

103 *Id.* In Ugborodo, on the contrary, community members remarked on Chevron’s general responsiveness to community consultations and seemed prepared to credit the company for legitimate development initiatives. UGBORODO FIELD REPORT, *supra* note 78. However, the long legacy of repeated violent disturbances in Ugborodo suggests that these benefits are not equally perceived by all.

104 KKI FIELD REPORT, *supra* note 86.

of the VPs in Nigeria likewise fails to take these root causes of conflict into account. A risk assessment process featuring genuine community consultation and a focus on root causes of conflict could help to mitigating these fears.

c. Inadequate focus on ground-level roll-out limits reach and leaves decision makers without necessary information

Until recently, VPs Participants have consistently emphasized policies that address management-level decision-making as opposed to ground-level tools when developing guidance on VPs implementation and monitoring progress. In an undated document summarizing corporate efforts to implement the VPs, the VPs Information Working Group (“IWG”) describes consistent efforts and progress in creating a management culture that is sensitive to VPs concerns.¹⁰⁵ Yet, the absence of a focus on ground-level implementation means that Participants have been rolling out policies in a vacuum, leaving them disconnected from the people who will carry out those policies and the communities that are directly affected by them.

i. Human rights trainings overlook communities and actual security providers

One area in which the inadequate focus on ground-level implementation is apparent is in human rights trainings. Although human rights and VPs trainings appear to be increasingly widespread, this engagement often fails to include actual on-the-ground public security providers or community members. The IWG Report portrays companies as showing an increasing interest in training their employees and government officials,¹⁰⁶ but it simultaneously identifies a spotty record of training the actual security personnel and does not even mention the inclusion of community members in security trainings.¹⁰⁷ Shell promotional materials similarly evince an emphasis on training of non-security employees and government officials, although they do mention human rights training for a relatively limited number of contracted security personnel.¹⁰⁸

Shell does, however, conduct briefings with government security officials and partners at the CLEEN Foundation, a Nigerian NGO focusing on public safety and justice, to provide conflict resolution training to field personnel.¹⁰⁹ According to CLEEN, hundreds of security officers have been trained as part of this program.¹¹⁰ Similarly, Chevron has provided training workshops for public and private

¹⁰⁵ IWG REPORT, *supra* note 6, at 8-9.

¹⁰⁶ *Id.* at 3, 9.

¹⁰⁷ *Id.* at 9; *see also* 2010 SUMMARY REPORT, *supra* note 36, at 9.

¹⁰⁸ SHELL COMPANIES IN NIGERIA, SHELL IN NIGERIA: THE OPERATING ENVIRONMENT (2011), available at http://www-static.shell.com/static/nga/downloads/pdfs/briefing_notes/operating_env.pdf.

¹⁰⁹ *Id.*

¹¹⁰ UGBORODO FIELD REPORT, *supra* note 78.

security forces, as well as for their own security personnel.¹¹¹ Other companies engage in security force training exercises in various resource-producing countries. For example, BP reported in 2011 that it had participated in or conducted trainings in Indonesia, Georgia, Azerbaijan, Colombia, and Pakistan.¹¹²

These training efforts appear to be producing mixed results, and it is clear that they have not succeeded in eliminating security force violence against community members. On the one hand, a respondent in Ugborodo noted, “Currently we feel that Chevron’s security agents are trying to some extent.”¹¹³ But many other Ugborodo community members reported that the persistence of confrontational relationships with company-affiliated security forces remains high, and the stubborn recurrence of incidents in which security forces shoot protesters suggests that there remains a disconnect at the community level. This phenomenon may be a result of the transience of individually trained personnel – especially the public security forces. There may well be a role for home governments to ensure that VPs-related topics are incorporated in their military cooperation and trainings with host government security forces. It could also be connected to the lack of security trainings that actually *include* community members, which could improve relationships and also make communities more familiar with what they should expect from VPs-compliant security arrangements.

As for Shell’s operations in Nigeria, soldiers are reported to have beaten women protesters with iron bars outside the gates of a Shell contractor in January 2009,¹¹⁴ fired on protesters at a rally to commemorate the anniversary of the death of Ken Saro-Wiwa in November 2010,¹¹⁵ and shot and killed two Ogoni youths during a protest of the relocation of a military camp in central Ogoni in June 2011.¹¹⁶ Moreover, the scenes of protests remain targets for armed groups, who may draw support from local communities for the same reasons that inspire the protests. For example, in February 2009, shortly after the peaceful conclusion of a protest against Shell at Uwiwamuge over inadequate land payments, a group of armed youths attacked a local gas facility and were repelled by JTF forces in a firefight that took the lives of four of the attackers.¹¹⁷

111 VPSHR Training – Port Harcourt, NIGER DELTA PROFS. FOR DEV. (Aug. 29, 2011), <http://nidprodev.org/newsevents/events/174-vps-hr-training-port-harcourt>.

112 BP, ANNUAL REPORT ON THE VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS: JANUARY TO DECEMBER 2010, at 6-7 (2010), available at http://www.bp.com/liveassets/bp_internet/globalbp/globalbp_uk_english/sustainability/how_we_operate/STAGING/local_assets/downloads_pdfs/Voluntary_Principles_Plenary_2011_FINAL.pdf.

113 UGBORODO FIELD REPORT, *supra* note 78.

114 COUNTING THE COST, *supra* note 53, at 47-48.

115 Ben Amunwa, *Police Open Fire at Ogoni Vigil in Port Harcourt*, REMEMBER SARO-WIWA (Nov. 9, 2010), <http://remembersarowiwa.com/police-open-fire-at-ogoni-vigil-in-port-harcourt/>.

116 COUNTING THE COST, *supra* note 53, at 18.

117 Sola Adebayo, *Four Killed As JTF, Youths Clash*, NIGERIA DAILY NEWS (Feb. 8, 2009), <http://ndn.nigeriadailynews.com/templates/?a=13404>.

In addition, companies' continued, unconditional financial support for the JTF serves to undermine any positive message they seek to send through increased human rights training. According to a recent report, Shell alone is believed to have contributed tens of millions of dollars to the JTF in the last decade – a decade that has seen, among other tragic incidents, a series of attacks on a peaceful gathering in a local community that left tens of thousands of local residents displaced and killed an unconfirmed number of civilians.¹¹⁸ The VPs can hardly be said to be an effective tool for companies and governments to influence the behavior of security forces and protecting the rights of local communities if the Nigerian military can continue to commit such human rights abuses with Shell's logistical and financial support.

ii. *Monitoring and evaluation of the VPs ignores on-the-ground effects*

The lack of focus on the ground level, with respect to both security personnel and community consultations, is reflected in a near-complete absence of data about the on-the-ground effectiveness of the VPs as an initiative. Without such data, it is impossible to determine whether the VPs effectively reduce the incidence of human rights abuse associated with security forces and the extractive industry and which strategies might be most effective in doing so. All of the written materials analyzed for the purpose of this study touted the roll-out of management strategies, but none evidenced any systematic inquiry into the community-level impacts of the VPs. For example, the Asociación Colombiana de Petróleo (ACP) – the Colombian petroleum industry association that has taken on a key leadership role in VPs implementation in Colombia – confirmed in its field report that monitoring and evaluation initiatives thus far have focused on measuring implementation only at the corporate policy level.¹¹⁹ Monitoring of VPs implementation has depended primarily on ad hoc field reports from security personnel and Internet research for insight into what was actually happening on the ground, according to ACP and AngloGold personnel in Colombia.¹²⁰ As a result, companies and governments are unaware of whether the VPs are actually changing the relationship between communities, security forces, and company personnel – the true measure of success of the initiative.

Crucially, the gap in on-the-ground monitoring appears to have led to a disconnect in perceptions between VPs Participants and communities. AngloGold and ACP personnel depicted the relationship between security, the company, and the community as greatly improved from past years, while community representatives and advocates from oil-producing areas of Colombia expressed precisely the opposite sentiment.¹²¹ This suggests that VPs Participants are still unable to pinpoint the strengths and weaknesses of their implementation efforts, and, consequently, remain unable to

118 PLATFORM, DIRTY WORK: SHELL'S SECURITY SPENDING IN NIGERIA AND BEYOND 7-8 (2012) (citing U.S. State Dept. Report).

119 COLOMBIA FIELD REPORT (Nov. 2009) (on file with ERI).

120 *Id.*

121 *Id.*

systematically improve performance. Although monitoring the impact of a diffuse initiative like the VPs will doubtless be difficult, the results presented here suggest that it is possible to perceive progress and impacts through field studies.

V. Structural Weaknesses in the VPs: Community Exclusion, Unclear Roles for Governments and Civil Society Participants, and Weak Assurance Mechanisms Undermine Effectiveness

In addition to the implementation failures detailed above, the effectiveness of the VPs is further reduced by weaknesses in the architecture of the VPs themselves. Specifically, the initiative provides no mechanism for direct community participation, fails to spell out home government roles and responsibilities, and lacks assurance mechanisms to allow for external oversight and influence. It does not even envision a mechanism to allow resolution of community complaints.

a. Exclusion of communities

There is simply no place in the architecture of the VPs for host communities. Although international civil society groups, along with companies and governments, can join the VPs, communities cannot – they have no say in the initiative’s implementation. Moreover, communities cannot participate in the Plenary sessions in which decisions about the direction of the initiative are made,¹²² nor can they raise concerns about any “sustained lack of efforts to implement the Voluntary Principles.”¹²³ Even the location of Plenary sessions discourages community input and participation – the Government Chair (a position that rotates) is required to host each Plenary meeting,¹²⁴ which means that the meetings at which governance issues are addressed will rarely, if ever, be within reach for community representatives.

Participants may assume that NGOs will represent communities’ interests in the development of VPs content and procedures. Nonetheless, regardless of whether NGOs’ views and interests are aligned with local communities, NGOs cannot be expected to bring the VPs to all affected communities. Interviewed community members in Ugborodo reported that they had never heard of the VPs or its tenets, suggesting that civil society has not been able to adequately socialize the concept of the initiative there.¹²⁵ In fact, the reach of civil society organizations in the Niger Delta is relatively weak, due mostly to difficulties with personal security and limited resources. One civil society member expressed astonishment that civil society organizations might be expected to function as the voice of

122 See GOVERNANCE RULES, *supra* note 21, § III ¶ 4(b)(4) (“Attendance at Plenary meetings is limited to Participants, Engaged Governments, the Secretariat, Observers, and Invited Guests as deemed necessary by the Steering Committee.”).

123 *Id.* at § VII, ¶ 2.

124 *Id.* at § III, ¶ 4(b)(2).

125 UGBORODO FIELD REPORT, *supra* note 78.

communities, given the financial limitations of these organizations.¹²⁶ Moreover, the lack of a place in the architecture of the VPs for host communities undervalues the ability of many communities to effectively advocate for themselves, as it directs civil society participation away from communities and towards large NGOs. This lack of local participation continues to leave affected communities in the dark about the VPs, which only compounds the implementation challenges outlined above.

Although the exclusion of communities at the governance level is clearly a major weakness of the architecture of the VPs, the difficulty of including communities as Participants should not be underestimated. A flood of community participants could disrupt the workflow of Plenary meetings and, if not properly managed, might prevent members from having conversations that are important but must nevertheless remain confidential. In many parts of the world, affected communities lack the capacity to participate in multi-stakeholder initiatives, both in terms of financial resources and technical understanding. One solution to these concerns might be to aggregate community voices in coalitions that can participate in a more sustained and organized manner. These coalitions are likely to possess greater resources and capacity than any individual community might possess. In Nigeria, for example, the Host Communities Network – a coalition of communities in oil-producing areas – could be a convenient interlocutor and partner in facilitating community participation.

b. The lack of a clear role for government Participants and civil society organizations

The VPs are unclear on the responsibilities and modes of participation for governments and civil society organizations, contributing to an accountability gap that allows for Participants from each pillar to point fingers at the other Pillars for failing to cooperate.

i. Home governments

One glaring gap in the VPs' structure is a lack of clarity as to the proper and expected role of governments, especially those of corporations' home countries (the countries in which the companies are headquartered or incorporated). Because few host countries are members of the VPs and because incentives to engage vary so widely from country to country, home country diplomatic engagement and support is key to effective improvement in the performance of host country security forces. Largely as a result of this shortcoming, VPs implementation and progress is spotty and inconsistent.

The recently developed framework for admitting new governments as VPs members provides only general guidance as to what "engaged countries" are expected to do: (1) have appropriate laws, policies, and procedures in place to guarantee that security providers respect internationally-accepted principles, (2) promote international law enforcement principles, (3) continuously strengthen

126 Conversation with VPs NGO Pillar Rep. (Oct. 2010).

accountability mechanisms, and (4) lead a multi-stakeholder process within their borders to promote implementation of the VPs.¹²⁷ In order to qualify as full participating members, governments must also attend meetings, proactively promote the implementation of the VPs, submit Annual Reports to the VPs Secretariat, and respond to requests for information from other Participants.¹²⁸

What is expected of existing VPs members is even vaguer than the expectations for new members. In this regard, the Participation Criteria require only that all members publicly promote the VPs, proactively implement or assist in their implementation, attend meetings, report confidentially and communicate publicly about implementation, participate in dialogues, and respond to reasonable requests for information.¹²⁹

Nothing in this framework actually tells home or host governments what they are expected to do to promote the VPs, however. For example, what exactly are the “appropriate laws” that home governments must have in order to gain VPs membership? Does this concept simply refer to the need to hold domestic security providers accountable for human rights violations, or does it also refer to the possibility that home country governments should provide accountability mechanisms when their multinational companies are linked to such violations abroad? What does a “multi-stakeholder process” actually look like? How should home government Participants help to promote the VPs in host countries? Do the VPs expect more (or less) of a home government when the host country is not a government Participant, declines to engage seriously with the VPs, or presents particular human rights challenges due to instability or weak governance? Should the home government serve as a resource to assist – and, indeed, influence – its multinational companies operating abroad to implement the VPs?

A brief comparison of the VPs experience in Colombia and Nigeria clearly shows the need for a strong home government role in the implementation of the VPs. In Colombia, cooperation between the host government, home governments such as the U.S., and companies has led to a highly institutionalized process and notable successes – at least on the policy level – in VPs implementation. A group of embassy representatives, company executives, and Colombian government officials took the initiative to form a standing committee that was eventually expanded to include non-Participant companies and a small number of NGO representatives.¹³⁰ This group has created and published

127 FRAMEWORK FOR ADMISSION OF NEW GOVERNMENTS, *supra* note 9, at 4.

128 The VPs Secretariat is now housed in the Corporate Social Responsibility practice of U.S. law firm Foley Hoag LLP, which was elected in 2010 to take over from the Business for Social Responsibility (BSR) (<http://www.bsr.org/>) and the International Business Leaders Forum (IBLF) (<http://www.iblf.org/>), who had jointly served as Secretariat from 2004. See *Secretariat*, VOLUNTARY PRINCIPLES ON SECURITY & HUM. RTS., <http://voluntaryprinciples.org/about/> (last visited Nov. 14, 2012).

129 PARTICIPATION CRITERIA, *supra* note 11, at 2.

130 According to AngloGold personnel, the ACP, and officials from the Colombian Vice President’s office (which has assumed a leadership position on these issues).

guidance documents, developed indicators and monitoring mechanisms, and improved coordination between government agencies – including the Ministry of National Defense – in response to human rights situations and policy implementation. Notably, all this began long before Colombia became a government Participant in the VPs.¹³¹

In contrast, the trajectory of the initiative in Nigeria has been quite different from that in Colombia. Unlike Colombia, where oil production has only recently begun to expand, the Nigerian government has long-standing and secure relationships with major oil companies and therefore may face little pressure to commit to the implementation of the VPs. Moreover, as a target country, Nigeria benefits from whatever training, funding, and human capital investment VPs members choose to allocate to it, yet it has no obligation to engage in any deeper process of security sector reform. Therefore, to the extent that it is in the financial and personal interests of the Nigerian government, the police force, the armed forces, and individual commanders and officers to maintain a free hand in dealing with communities, the VPs as currently constituted are unlikely to gain much traction in Nigeria. Tellingly, no VPs working group similar to the Colombian standing committee existed in Nigeria to work out implementation problems until 2011, and the Nigerian government has still declined to engage.

The facts on the ground in Nigeria appear to confirm that vagueness as to home government obligations is a troubling gap in the VPs. Nigeria presents a case where the host country has been, and will probably continue to be, unwilling to curb human rights abuses associated with security for the extractive industry. Oil income provides over 95% of Nigeria's export earnings and 40% of government revenue.¹³² Any community resistance to company or government policies that affects oil production or exports is a direct threat to that revenue stream. As described above, Nigeria's pervasive history of poverty, corruption, environmental degradation and pollution, lack of benefit sharing, and community opposition has fueled violence that has now taken on serious elements of criminality and armed conflict. The existence of militant insurgents in oil-producing areas provides an incentive to increase federal military presence and blurs the distinction between legitimate community protests and extortionate criminal or rebel activity. In other words, where armed forces mobilized to fight an insurgency are summoned to respond to actions that threaten the normal operation of key oil facilities, the tactics used are likely to be similarly heavy-handed, regardless of whether the agitators are peaceful community protesters, armed fighters, or criminal saboteurs. In such a fluid and threatening situation, neither the Nigerian government nor the oil companies have much incentive to discourage or remedy abuses.

131 COLOMBIA FIELD REPORT, *supra* note 119.

132 U.S. Energy Info. Admin., *Country Analysis Briefs: Nigeria*, <http://www.eia.gov/countries/cab.cfm?fips=NI> (last updated Oct. 16, 2012).

U.S. government officials deplored the lack of VPs progress in Nigeria, but noted the difficulty of successfully identifying partners in the Nigerian government to assist with implementation.¹³³ This points to the related problem of insufficient mechanisms and incentives for host countries, but this seems to be an unjustified abdication of responsibility. The Nigerian government has no obligation to commit to the VPs. The VPs were created by home countries and were initially operated without any host government Participants. Presumably, home countries believed that they would be able to use their influence with host countries and companies alike to improve human rights performance. This appears to have been the case in Colombia, although the eventual presence of implementing partners in the Colombian government has also greatly contributed to the relatively successful implementation of the VPs there. Thus, home governments need strategies to implement the VPs for the multinational companies that are headquartered or incorporated within them, even in a case like Nigeria, where the host country is unable or unwilling to be a useful partner.

ii. Host countries

The fact that U.S. government officials have tied the lack of implementation progress in Nigeria to the Nigerian government – which has not been a consistent and committed interlocutor – points to another flaw in the structure of the VPs.¹³⁴ The VPs and their supporting documents give no guidance as to how Participants should engage non-Participants – which until recently included *all* host countries – and provides no institutionalized role for host countries.¹³⁵

One very specific problem is that corporate Participants and host country governments are not required to include the VPs in their contractual agreements with one another. Colombian government officials proudly pointed to the incorporation of the VPs into agreements between the state-owned oil company, Ecopetrol, and the armed forces.¹³⁶ Despite this development in Colombia, however, the VPs simply propose that companies “take all appropriate measures” to encourage compliance with international law-enforcement principles.¹³⁷ This limits the leverage that companies can exert over the operation of public security forces in the countries where they work.

133 Conversation with U.S. State Dept. official (July 16, 2012).

134 *Id.*

135 The September 2011 Plenary meeting identified “host government outreach” as a priority and created a Working Group to address the issue. See VOLUNTARY PRINCIPLES ON SEC. & HUMAN RIGHTS, SUMMARY OF PROCEEDINGS: VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS, EXTRAORDINARY PLENARY SESSION (2011), available at http://voluntaryprinciples.org/files/FHE-DC-130591-v1-VPs_Summary_of_Proceedings_Extraordinary_Plenary_Meeting.pdf. It is unclear exactly what this Working Group will accomplish; regardless, there is no indication that host governments will be given any particular role in the VPs.

136 COLOMBIA FIELD REPORT, *supra* note 119; see also COLOMBIA CASE STUDY, *supra* note 7, at 2.

137 *Interactions Between Companies and Public Security: Security Arrangements*, *supra* note 77.

For example, in a 2005 description of its operations in Algeria, BP noted that “we have not been so successful at influencing the area that is out of our direct control – the provision of public security by the State.”¹³⁸ BP specifically pointed to the absence of a “contractual relationship with the government regarding the provision of public security” as a limitation on its ability to promote security practices that would conform to human rights principles.¹³⁹ This situation contrasts with BP’s proactive inclusion of the VPs in its agreement with the Indonesian government launching the Tangguh natural gas project, as well as its incorporation of the VPs into the Security Protocol that constitutes a component of the contractual arrangements for the Baku-Tbilisi-Ceyhan pipeline project in the Caucasus.¹⁴⁰ If the VPs included an expectation that companies would include such provisions in their contracts and that home governments would support such arrangements through their diplomatic ties with host countries, incorporation of the VPs into security agreements would be likely be more consistent.

The gap with relation to host countries is, of course, wider than mere contractual agreements. Unless they are Participants, host governments have no seat at the VPs Plenary sessions, which means that decisions are made without the input of the states whose security forces are expected to cooperate in the implementation of the initiative. As stated above, the vast majority of host states are not members of the VPs, so the gap between those who are making decisions concerning the VPs and those who are essential in carrying out those decisions cannot be rectified without a consistent, credible plan for home governments to engage with and, where necessary, pressure host governments.

iii. Civil society organizations

One of the thorniest and most persistent problems for the VPs has been the difficulty of sustaining engagement and collaboration between companies and NGOs. While some NGOs interviewed for this report – such as the Fund for Peace – reported success in integrating smoothly into the VPs process,¹⁴¹ others have found it frustrating and unduly demanding considering their limited financial and human resources. As a result, these groups have questioned the utility of remaining involved. One NGO Participant felt that it was unreasonable to expect NGOs to provide expertise and access to affected communities given the more abundant resources and greater capacity of the other two pillars of the VPs.¹⁴² Moreover, the NGOs that form the civil society pillar are generally large, relatively well-resourced international organizations; no locally based civil society organizations have joined the initiative, despite the fact that these are the groups that would most likely work directly with govern-

138 BP, *Commitment to Voluntary Principles in Algeria*, AM. PETROLEUM INST., <http://www.api.org/ehs/partnerships/community/voluntary-algeria.cfm>.

139 *Id.* More recently, the IWG revealed that most VPs companies are now including the principles in their contracts with private security; only a few do so with host governments. IWG REPORT, *supra* note 6, at 7-8.

140 BP, HUMAN RIGHTS: A GUIDANCE NOTE 9 (2006).

141 Conversation with Krista Hendry, Executive Director, Fund for Peace (Nov. 2009).

142 Conversation with VPs NGO Pillar Rep., *supra* note 126.

ment and corporate Participants to implement the VPs. This is no surprise. If organizations like Amnesty International feel overly strained by the demands of participation, the barriers to entry for comparatively small, local organizations in countries like Nigeria, Colombia, and Indonesia are almost certainly too high to overcome. There is, however, no independent funding mechanism to train local NGOs or to help them participate.

As for the companies participating in the VPs, suspicion and lack of experience in cooperating with the NGO Participants appears to have limited their willingness to collaborate. The IWG report notes that, while some companies do engage in sustained dialogue with NGOs, others are concerned that NGOs will use information gained from these dialogues to advance an “anti-corporate agenda.”¹⁴³ Exemplifying this tension, none of the NGO Participants cooperates with Chevron or Shell on its VPs training programs for government officials and security personnel. Even in Colombia, where VPs implementation has been strongest, engagement with NGOs has been limited, at least partially due to companies’ reluctance to share human rights performance information with civil society.¹⁴⁴

Thus, many NGO Participants are caught in a difficult place – they are expected to act as full Participants and provide local and human rights expertise, yet at the same time are frozen out of the information-sharing process and are unable to commit adequate resources. It remains to be seen if the sanction of rendering a Participant “inactive” for refusing to engage in dialogue or otherwise respond to reasonable requests for information will help to bring some balance to the role of NGOs in the VPs.

d. Weak or non-existent assurance mechanisms

Regardless of the sincerity with which Participants have committed to the VPs, the current structure of the initiative is not conducive to the sorts of collaboration and tough decision-making that would be necessary to change realities on the ground in complex environments like Nigeria. Weak assurance mechanisms – including a near-complete lack of transparency and cumbersome and inaccessible grievance procedures – undermine the incentives of Participants to make adequate progress.

i. Transparency

Perhaps the most common criticism of the VPs is that outreach to non-Participants is completely discretionary and, as a result, the initiative is not transparent. Ugborodo residents report that they have never even heard of the VPs, much less been consulted on security matters. Discussions within the structure of the VPs are confidential and limited to Participants only.

143 IWG Report, *supra* note 6, at 6.

144 COLOMBIA CASE STUDY, *supra* note 7, at 7.

All Participants are expected to submit reports on VPs implementation to the Secretariat. However, the expectations for these reports are quite vague. The Participation Criteria require only that Participants report annually on “efforts to implement or assist in the implementation of the Voluntary Principles.”¹⁴⁵ Draft Reporting Guidelines – which have not yet been officially adopted by the initiative but are included in the publicly available Governance Documents – provide more detail, but even they focus exclusively on the creation of policies and procedures to implement the VPs rather than on the actual results of these policies.¹⁴⁶ Moreover, there is no independent mechanism for reviewing the adequacy or accuracy of these reports, nor are Participants required to make the reports public.

One VPs NGO Participant suggested that the guarantee of confidentiality is essential for frank conversations within the initiative,¹⁴⁷ but the IWG report notes that some Participants believe this lack of transparency significantly hurts the VPs’ “brand,” undermines trust, and may prevent companies from identifying potential security problems as early as possible.¹⁴⁸ The knowledge that reports will be made public could also serve as an incentive for companies and governments to make diligent efforts at implementation and to collaborate closely with civil society Participants and non-Participants, although there is some risk that publication of the reports might lead some companies to leave the initiative or not sign up in the first place.

An NGO Participant representative cited two major obstacles to a more transparent initiative: (1) companies’ fears that civil society will publicize and otherwise use stories of the challenges they have encountered in implementing the VPs to embarrass them and injure their reputation, and (2) the need to keep security arrangements confidential for reasons of operational safety.¹⁴⁹ But, as the IWG report notes, some companies that have published their reports and cooperated with international NGOs have found these measures to be helpful or, at least, not harmful to their interests.¹⁵⁰ Thus, all Participants may benefit from greater transparency because civil society and communities will perceive company and government efforts more clearly.

145 PARTICIPATION CRITERIA, *supra* note 11, at 2.

146 GOVERNANCE RULES, *supra* note 21, at app. 5 (“Reporting Guidelines”).

147 Conversation with Krista Hendry, *supra* note 141.

148 IWG REPORT, *supra* note 6, at 4, 11.

149 Conversation with Krista Hendry, *supra* note 141. Another unspoken, but presumably real, concern for companies is that increased transparency could in fact make them more vulnerable to litigation.

150 IWG REPORT, *supra* note 6, at 11.

Some recent developments in the initiative indicate positive steps in remedying the transparency issue. At the 2011 and 2012 Plenary sessions, ten companies agreed to develop a pilot “assurance mechanism” that will involve key performance indicators and that will focus at least partially on on-the-ground implementation. At this point, it is not clear to what extent this project will lead to an externally transparent review mechanism.

ii. Disciplinary and grievance measures

Until quite recently, there were no set procedures by which VPs Participants could be held accountable for the extent to which their conduct was consistent or inconsistent with the VPs, and there was no provision for dispute resolution or the raising of VPs-related grievances at the level of the initiative.¹⁵¹ This changed in 2011, when the Participation Criteria were adopted. The new criteria allow for Participants to “raise concerns regarding whether any other Participant has met the Participation Criteria and, where appropriate, concerns regarding sustained lack of efforts to implement the Voluntary Principles.”¹⁵² Participants are directed to attempt to address concerns first through direct dialogue; failing that, the VPs Steering Committee may decide to refer the matter to the Secretariat for formal consultations. The matter may then be referred by the interested Participants to the VPs Plenary, which may recommend measures that will strengthen the VPs, up to and including expulsion of a Participant (although this ultimate sanction requires a consensus vote from the entire Plenary).

It is, of course, too early to know if the new procedures – which were the hard-earned result of literally years of bargaining and compromise – will result in real accountability for compliance with the procedures and substance of the VPs. One interesting avenue open to the Plenary under the Participation Criteria is to demote a Participant to “inactive” status, which may happen if the Participant fails to submit an Annual Report or refuses to engage in good faith dialogue with another Participant over any concerns or requests for information. As an incentive for engagement and performance, however, these grievance mechanisms will only be effective to the extent that the Plenary is willing to take action, meaning that at least the majority of corporate and NGO Participants, as well as a supermajority of government Participants, must support taking action.

151 Prior to the adoption of the new Participation Criteria, the only publicly acknowledged instance of dispute resolution was an ad hoc, VPs-facilitated mediation between Oxfam International and Newmont Mining over security abuses at the Yanacocha Mine in Peru. This process ended in a mediated agreement between the parties in which Newmont committed to reviewing its security procedures and practice. However, Newmont’s attempts to expand gold mining in the area continue to inspire community resistance, culminating in a massive protest in Cajamarca, the declaration of a state of emergency, and the use by the military of live ammunition to quell demonstrations. See Associated Press, *Peru Protest Leaders Decry Siege*, CANADIAN BUS. (Dec. 5, 2011), <http://www.canadianbusiness.com/article/60370--peru-protest-leaders-decry-siege>.

152 PARTICIPATION CRITERIA, *supra* note 11, at 2.

In addition, these procedures are only available to government, company, and civil society Participants and are therefore not accessible to affected communities. In other words, there is no means by which affected groups can actually raise complaints about the performance of a company or government to the level of the initiative. This possibility does not even appear to be contemplated by VPs participants.

VI. Recommendations

On a number of levels, the VPs are at a crossroads. After the procedural progress of recent years – including the formulation of membership and participation criteria, the recruitment of new members (including Colombia), the designation of a Secretariat with greater human and financial resources, and the decision to create a legal entity for the initiative – Participants now have the opportunity to make **substantive and structural corrections** to the VPs themselves. Now would be an opportune time to develop a credible approach **to implementation in Nigeria**, focusing on a multi-stakeholder implementation plan. The following recommendations are directed to various stakeholders in the context of these two opportunities.

a. Substantive and structural reforms

Strengthen language referring to community consultation and engagement. In light of the identified gaps in the VPs with respect to community consultation and engagement, we recommend amending the VPs as follows:

- In the section of the VPs dealing with risk assessments, “local communities” should be included in the list of stakeholders whose perspectives should be gathered, with whom information should be shared, and who should be consulted in assessing the potential for violence.
- In the section of the VPs dealing with public security providers, bullet-points should be added under “Security Arrangements,” providing that companies should solicit input from local communities on proposed security deployments and should include communities in the provision of security to the maximum extent possible.
- In the section of the VPs dealing with public security providers, under “Consultation and Advice,” “local communities” should be added to the list of stakeholders with whom companies should consult.

Improve leverage for companies when dealing with host governments. In order to provide better leverage with host governments, we recommend amending the VPs as follows:

- In the section of the VPs dealing with public security providers, a bullet-point should be added noting that companies should include the VPs and/or the principles the VPs embody in their agreements with governments – either in their security provision contracts or, when there is no contract for security, in their overall project contracts.

Clarify the role of home government Participants. As described above in Section VI.b, nowhere in the VPs themselves or in the criteria for government participation is there any mention of what governments should do with respect to the human rights abuses associated with the operations of companies operating in host countries. As such, we recommend amending the VPs Participation Criteria as follows:

- Add a section prior to the subheading “In addition” on page 2 of the Participation Criteria with the following:

All participating governments must additionally meet the following criteria:

1. Engage with governments in which the multinational companies of the participating government operate to promote VPs compliance through all appropriate means;
2. Develop options to promote the inclusion of the VPs in security contracts, both at home and abroad, including through regulation, assistance to companies, or diplomatic engagement;
3. Provide advice and support to multinational companies faced with complex security environments;
4. Enhance effective regulatory measures and remedies for the foreign victims of abuses associated with the operations of the multinational companies of the participating government;
5. Enact policies that encourage host government participation with the VPs, including through the provision of VPs-consistent human rights trainings to host government security forces.

Develop mechanisms for community participation at the Plenary level. As civil society participation in the initiative has not been sufficient to bring local perspectives to the attention of the Plenary, we recommend the following improvements to the procedures and structures of the VPs:

- Amend Section III, ¶ 4(b)(4) of the Governance Rules to read as follows: “Attendance at Plenary meetings is limited to Participants, Engaged Governments, the Secretariat, Observers, and Invited Guests as deemed necessary by the Steering Committee. Representatives of Communities and Community Groups may also attend and speak at all Plenary meetings upon request. At the request of a Participant, the Secretariat may exclude Community representatives from parts of a Plenary meeting for good cause, but all efforts will be made to allow such representatives to participate as fully as possible.”

- Amend Section III, ¶ 4(b)(2) of the Governance Rules to read as follows: “Annual Plenary Meetings are chaired by the Government Chair. The Government Chair may host the Plenary Meeting, but is encouraged to fund and organize meetings in countries where the corporate Participants operate, with special focus on target countries, such as Nigeria, Colombia, and Indonesia.”
- Amend the Participation Criteria by adding additional criteria under the following subheading:

All Participants are expected to meet the following criteria:

1. Engage with relevant communities in between Plenary sessions to identify parties interested in participating in the VPs at the Plenary and implementation levels;
2. Cooperate with NGO Participants to communicate with interested community participants, educate communities about the VPs, and assist in building their capacity to participate;
3. Corporate and government Participants are expected to provide the resources necessary to fund community participation and engagement in the VPs.¹⁵³

Allow affected communities to invoke grievance procedures. The intra-VPs dispute resolution process should be open to affected communities directly. We therefore recommend amending the Participation Criteria by inserting an additional bullet point after the fourth bullet point under the subheading:

In addition:

The Steering Committee is also to accept communications from communities and community representatives that are directly affected by the security deployments associated with a corporate Participant’s operations or by a government Participant’s implementation of the Voluntary Principles. Such a communication is to be addressed in the same manner as a concern raised by a Participant.

Promote transparency. In light of the pilot assurance project that corporate Participants are preparing to launch, we recommend the following:

¹⁵³ In this regard, the U.S. has shown some initiative with the announcement of funding for “implementation by local stakeholders in Ghana and Nigeria.” See Bureau of Democracy, Human Rights, and Labor, U.S. State Dept., *2012 Report of the U.S. Government for Voluntary Principles on Security and Human Rights Initiative*, at <http://www.state.gov/j/drl/rls/vprpt/2012/206029.htm>. Corporate and government funding of NGO participation does, of course raise the possibility of conflicts of interest. One option to avoid this would be to establish a mechanism for administering such funds independently or any one participant or Pillar of the VPs, for example by an independently contracted expert or the Secretariat.

- The Plenary should reject the Draft Reporting Guidelines for Annual Reports and develop detailed reporting criteria that include on-the-ground information, rather than focusing solely on the policies developed by each Participant. Participants should also include information on public and private security arrangements in each country of operation, to the extent authorized under law, and should also detail security incidents, how they were handled by security forces, and what follow-up steps were taken by the company, if any.
- Amend Section III, ¶ 4(a)(1) of the Governance Rules as follows: “All Voluntary Principles Initiative documents are to be considered confidential, unless the Plenary or the Steering Committee, in close consultation with the Participants, has approved them for public release, except that Annual Reports will be made public except for any portions that the Plenary or the Steering Committee, in close consultation with the relevant Participant, deems to contain proprietary information or information that would compromise security. With the exception of Annual Reports as described above, documents that are primarily related to the activities of a specific Participant are not to be approved for public release without the express permission of that Participant. No confidential documents are to be distributed to non-Participants except as required by valid legal process or otherwise required by law.”
- Develop a peer review mechanism for Annual Reports. Companies should be encouraged to partner with NGO Participants, who would serve as monitors and auditors of the reports. Any information an NGO Participant receives from participation in the preparation of and/or review of an Annual Report should be deemed confidential and should be used only internally, for the purposes of improving the VPs.

b. In-country implementation process in Nigeria

Nigeria is, of course, not a member of the VPs, but, as a target implementation country, it has been decided that Nigeria will be the object of an initiative-wide multi-stakeholder implementation plan.¹⁵⁴ In developing this plan, the implementers should focus on community engagement and transparency, rather than conflate high-level policy roll-out with success.

Gather ground-level performance data. The field research presented here demonstrates that it is possible to “take the temperature” of communities, measure human rights impacts, and monitor the progress of on-the-ground implementation. Therefore:

- VPs Participants should focus their monitoring efforts on the community level, rather than on the policy level exclusively.

154 Conversation with Melike Yetken, *supra* note 71.

Include communities in the In-Country Implementation Process. The VPs do not provide for inclusion of communities in the implementation and design process, but any implementation plan is unlikely to succeed without their input. We recommend that:

- All affected communities should be engaged to participate in all deliberative processes focused on the implementation of the VPs.
- The implementers should consider working with the Host Communities Network, which may provide a useful point of contact and means of aggregating Nigerian community voices without overwhelming delicate negotiations between companies and governments or preventing the discussion of highly technical and potentially sensitive information.

Seek ways to include communities in security planning and deployment. Without a long-term plan for community involvement, the protocols developed during the In-Country Implementation Process are likely to foster the same type of community resistance as currently seen in response to efforts at security planning. We recommend that:

- Implementers should develop protocols for community consultation at every stage of the security planning and deployment process.
- Participants should consider the communities' opinion that community-based security may be the best way to simultaneously achieve companies' security goals and provide for harmonious relations between companies and communities.

Develop risk assessment protocols that avoid "divide and conquer" effects. The failure to properly assess social relations, landholding patterns, and power dynamics has led to tragic violence in some instances – as in the case of Odioma – and has caused widespread alienation among Niger Delta communities. We recommend that:

- The implementers should develop risk assessment protocols that include a range of community stakeholders that is as wide as possible. Before undertaking new projects or deploying security, corporate Participants should consult with community leaders, women, youths, representatives of minority tribes and factions, and other interested parties.
- The implementers' analysis should also be informed by consultation with *local* civil society groups in a way that can successfully identify communal fault lines and competing interests.
- Risk assessment must not be equated with choosing sides in community conflict or with buying off key stakeholders.

Broaden the conversation to include the root causes of conflict. An implementation plan that does not take into account the fact that environmental and social disruptions underlie conflict in Nigeria is unlikely to reduce civil disturbances and the human rights abuses with which they are inevitably associated in a sustainable fashion. We recommend that:

- The implementers should ensure that the risk assessment protocols developed for Nigeria include consideration of the root causes of conflict and should direct Participants to manage these issues as part of their mitigation strategies.

Appendix: Methodology

In order to better understand the dynamics of the implementation of the Voluntary Principles in the Niger Delta region, ERI and CEHRD undertook several lines of research. The research consisted of five components:

1. Surveys of existing literature and other publicly available information;
2. Field interviews in Niger Delta communities;¹⁵⁵
3. Interviews with civil society organizations in the Niger Delta that are involved in security and human rights issues;
4. Conversations with personnel from companies that are participating in the VPs, industry federation leaders, government officials, and civil society in Colombia;
5. Conversations and interviews with U.S. government officials and other personnel involved in the VPs.

(1) *Literature review.* VPs documents, literature on the VPs and on security and human rights, and research and analysis on human rights risk assessments, due diligence, and community-based security were reviewed to provide context for this report.

(2) *Field interviews in Niger Delta communities.* For the field interviews, the communities were selected due to their close proximity to oil facilities, their degree to which they could be considered as representative of the Niger Delta in terms of the impact of oil operations and demographics, and their history of conflict with companies and/or government forces. The following communities were chosen:

- Kwawa and Kono are ethnic Ogoni communities in the Khana Local Government Area in Rivers State. Both are farming and fishing communities located in close proximity to Shell flow stations. Both have a history of intra-communal conflict over leadership positions, and Kono has experienced violent conflict with government forces.
- Imiringi is located in the Ogbia Local Government Area in Bayelsa State. It is a farming and fishing community populated chiefly by the Ijaw people. Imiringi is located close to Shell oil wells and a flow station. The community has a history of intra-communal leadership conflict and has been the site of protests against the oil company that have, on occasion, become violent.

155 Because of intra-community tensions and the potential for violence, individual informants' names are not given.

- Ugborodo is located near the city of Warri in Delta State. It is a coastal farming and fishing community populated chiefly by the Itsekiri people. Chevron has significant facilities within or in close proximity to the community, including offshore oil platforms and the Escravos Tank Farm, which is the company's operational base in the area. There is a long history of friction between the community and the company, which has often led to violence.

A researcher from the CEHRD spent three days in each community, primarily using investigative and closed-door interviews to research the degree of community investment and engagement in oil companies' security policies. At least one dozen individuals were interviewed in each community. Community members discussed their perceptions of the oil companies and the companies' impacts, the level of tension between the community and the companies, the degree to which they felt consulted and included in decisions relating to provision of security, and the manner in which the handling of security incidents has changed in the past decade. These interviews were conducted confidentially and with special care because of the potential for the inquiry to ignite conflict within communities. The interviewer spoke with a variety of individuals in each community, including leaders and youths, men and women.

(3) Interviews with Nigerian civil society organizations. The field researcher also visited the offices of Nigerian civil society organizations that have expertise in security and human rights issues in the Niger Delta in order to provide greater perspective on the evolving dynamics between companies, security forces, and communities. The following organizations were consulted:

- Stakeholder Democracy Network (SDN) works with communities affected by the negative impacts of oil extraction in the Niger Delta. They promote corporate accountability and advocate for environmental justice, human rights, and good governance. In 2007, SDN authored a report on community perspectives on the VPs.
- CLEEN Foundation Nigeria, in partnership with government and civil society, promotes public safety, security, and accessible justice through the strategies of empirical research, legislative advocacy, demonstration programmes, and publications. In partnership with Shell, CLEEN trains public and private security officials to provide them with skills and expertise in engaging community members in a manner that would reduce tensions. This training explicitly draws on the VPs and includes human rights sensitization and the elaboration of best practices in oil company security provision.

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- Social Action (Social Development Integrated Centre) is dedicated to education, mobilization, and solidarity for communities and activists working for environmental justice, democracy, and social change in Nigeria and the Gulf of Guinea. The organization promotes increased citizen participation in addressing policies and practices in energy and mining, trade and investments that affects human rights, and democracy and livelihoods.

(4) Interviews in Colombia. In addition to the above field research conducted in Nigeria, this report draws lessons from the experience of the VPs in Colombia, a country that is often hailed as the greatest success story for the VPs. ERI interviewed government officials and industry personnel participating in Colombia's standing committee on VPs implementation. The only company whose employees would speak with ERI about the VPs was AngloGold Ashanti, a mining company whose offices in Bogotá, Colombia were visited by an ERI staff member. AngloGold staff provided valuable insight into the modes of participation and implementation strategies of a company that professes commitment to the VPs, both at the global management level and the local operational level. Officials of the Asociación Colombiana Petrolera (ACP) also spoke about the trajectory of the initiative in Colombia.

(5) Conversations with U.S. Government officials. Responsible personnel at the Bureau of Democracy, Human Rights, and Labor at the U.S. State Department also provided important insights into recent developments in the VPs and the likely trajectory of the initiative in the near-term.

Regrettably, none of the corporate VPs Participants with operations in Nigeria were willing to participate in this study. While there is considerable evidence that the aspect of the VPs that emphasizes collaboration and engagement between companies and civil society is particularly problematic, it is difficult to draw conclusions from this refusal to participate, as ERI has been involved in lawsuits against two of the three VPs members in Nigeria. ERI's researchers were also unable to meet with Nigerian police officials, who declined to be interviewed for the purposes of this study. ERI's researchers were also unable to meet with Nigerian federal or state government officials. The absence of voices from companies operating in Nigeria detracted from the potential for this study to shed light on the challenges and accomplishments of VPs implementation from the corporate point of view.

