

Amnesty International
FRAGILE STATES: BRIEFING PAPER

While foreign investment has the potential to aid development and bring social and economic benefits for fragile states, investment without adequate regulation and accountability can have devastating human rights impacts.

Companies must respect all human rights wherever they operate. This is a baseline, and widely accepted, international standard. The “responsibility to respect” – as it is known – requires companies to exercise due diligence to become aware of and prevent human rights abuses and to take action if abuses occur. It is independent of a country’s own human rights responsibilities and exists over and above compliance with national law and regulation.

The greater human rights risks associated with fragile states mean that companies should take extra care when operating in these countries. Unfortunately companies do take advantage of a country’s fragility or instability to maximise their profits at the expense of stability, growth and human rights. Fragile states typically have weak legal frameworks and lack the resources to enforce laws and regulations. Companies providing foreign investment can be relatively powerful actors in comparison and therefore exercise undue influence over governments. The challenges that fragile states face in regulating companies – because they lack the will or ability to do so – means that people living in these countries are more likely to experience corporate-related human rights abuses and are less able to access remedy.

Set out below are three case studies – based on Amnesty International research – where companies have taken advantage of fragility or instability within a country and undermined stability, growth or human rights as a result. The last two of these case studies – Myanmar and Nigeria – involve ongoing human rights abuses over a significant period of time and successive governments. The recent changes in government in both countries gives them a vital opportunity to tackle the negative human rights impacts of foreign investment.

Côte d’Ivoire

In August 2006, toxic waste was dumped at about 18 locations in and around the city of Abidjan. Trafigura – a multinational commodities trader – produced that waste by using caustic soda to “wash” on board a vessel at sea an extremely sulphurous petroleum product called coker naphtha. This process produces a hazardous and highly-odorous waste product. Trafigura intended to mix the cleaned naphtha with gasoline and sell it to the West African market for a profit of around US\$7 million per cargo.

Trafigura generated the waste knowing it was hazardous if not disposed of safely but without knowing how to dispose of it. Having tried and failed to dispose of the waste in various locations – including Amsterdam where its attempts at disposal sparked an environmental incident – Trafigura rejected an offer to dispose of the waste safely in The Netherlands for €544,000. The waste was eventually dumped in Abidjan by a local company hired by Trafigura to dispose of it for just US\$17,000.

The disaster had a devastating impact on the Côte d’Ivoire and Abidjan in particular. Over 100,000 people sought medical assistance and extensive clean-up and decontamination was required. Côte d’Ivoire authorities recorded about 15 deaths. The dumping led to the resignation of the interim Prime Minister and government, appointed after several years of political and military crisis during which both the government and armed opposition groups committed widespread human rights abuses. The political, environmental and medical consequences of the dumping stretched the government’s response capacities to the limit and resulted in a national emergency. Local hospitals and health centres were overwhelmed. The scale of the crisis was such that the government had to make a number of appeals for international assistance, including from the United Nations. The long-term health impacts of the dumping remain unclear. Trafigura has never been properly held to account for its role in the dumping.

Trafigura's decision to dispose of the waste in the Côte d'Ivoire – a country recently emerged from armed conflict, with a weak governance system and endemic poverty (and where Trafigura had ongoing business operations) – suggests a willingness to exploit the country's fragility and instability. Trafigura denies responsibility for the toxic waste dumping and maintains that it believed the local company would dispose of the waste safely and lawfully.

For more information and Trafigura's response, see Amnesty International's September 2012 report *The Toxic Truth*: www.amnesty.org/en/documents/afr31/002/2012/en/.

Myanmar

In early 2015, Amnesty International released a report exposing how companies linked to the Monywa copper mining project profited from serious human rights violations and illegal activity committed by government authorities, including large-scale forced evictions. The report describes how the evictions and serious pollution linked to the mine destroyed livelihoods and exposed thousands of people to long-term health risks. Community protests were met with excessive force by police – including on one occasion the use of white phosphorous.

The Monywa project has been characterised by serious human rights abuses since its inception and throughout various changes in ownership. In 1996 and 1997, the government nationalised land and forcibly evicted thousands of people to make way for one mine at Monywa, depriving them of their main source of livelihood. Between 1995 and 1996, the operator of the mine (a government-owned enterprise) discharged hazardous copper tailings over more than 150 acres of land and into a local river. Despite the waste posing significant health risks to the local community, substantial pollution remains 20 years later – the government itself has never made any attempt to clean up the waste and it allowed subsequent owners of the mine to continue operating without fully cleaning it up. The government also failed to monitor environmental incidents during later operations, the efficacy of any clean-up or preventative measures, or the impacts on local communities. Amnesty's report exposed several critical shortcomings in the Environmental and Social Impact Assessment for a future mining project at Monywa.

The Canadian and Chinese companies most recently involved in Monywa invested in the knowledge of Myanmar's lack of safeguards around commercial activity as well as its lack of legal framework and technical capacity to adequately regulate the environmental impacts of such a large and environmentally sensitive project. They invested in the knowledge of the specific human rights risks associated with the project. Despite this, they failed to undertake appropriate due diligence before investing – as required under international standards on business and human rights. They instead built their business on a foundation of human rights abuse, profited from abuses that took place during their investment and in some cases colluded in the commission of human rights violations by the Myanmar government. This suggests a willingness to take advantage of the country's fragility and instability, in particular the lack of effective safeguards around commercial activity and environmental impacts.

For more information and responses from the companies involved, see Amnesty International's February 2015 report *Open for Business? Corporate Crime and Abuses at Myanmar Copper Mine*: www.amnesty.org/en/documents/ASA16/0003/2015/en/.

Nigeria

Multinational oil companies have operated in Nigeria since the 1950s, when Shell first discovered oil in the Niger Delta. Since then, thousands of oil spills have caused environmental devastation in the region. Decades of oil pollution caused by the oil industry has destroyed farms and fisheries that local communities rely on for their food and livelihoods, and heavily contaminated water sources putting health at serious risk. Hundreds of thousands of people are affected; many have been pushed deeper into poverty as a direct consequence of the pollution.

Regulation of the oil industry in Nigeria is extremely weak and lacks independence. Numerous bodies, including UN agencies and the World Bank, have raised concerns that government agencies responsible for enforcement are under-resourced, ineffective and in some cases compromised by conflicts of interest. The oil spill agency (NOSDRA) has no independent capacity to identify oil spills,

and has to depend on the oil companies to analyse spills. Moreover, under the current system, oil companies have been given implicit or explicit authority to deal with matters that have a direct bearing on human rights with little or no oversight, and no effective safeguards.

In this context, a culture of impunity has been reinforced for oil companies in the Niger Delta. Multinationals such as Shell, Italian oil firm ENI, and French oil company Total have consistently failed to properly address oil pollution, exacerbating the impact on human rights and the environment and denying people their right to an effective remedy. Hundreds of spills continue to occur every year as a result of equipment failure, oil theft (“bunkering”) and sabotage. Although such criminal activity is a serious problem in Nigeria, too often the oil companies use it to divert attention away from spills that are due to ageing pipelines and poor maintenance or the company’s failure to properly secure its infrastructure against tampering. When oil spills do occur, clean-up operations are ineffective or do not take place at all. Affected communities are usually forced to negotiate directly with the companies to obtain compensation and redress, meaning they are frequently short-changed.

The situation is exacerbated by the historically close relationship between Nigeria’s government and the oil industry. The level of dependence of Nigeria on oil and the fact that the Nigerian government is the majority partner in joint ventures are fundamental problems which underpin regulatory failures. For example, according to US embassy documents published by WikiLeaks, Shell reportedly told US diplomats that the company had “seconded people to all the relevant ministries”, and that this gave them “access to everything that was being done in those ministries”.

Since being elected in 2015, President Buhari has committed to tackle corruption, introduce long-delayed oil industry reforms, and fast-track a clean-up operation of oil pollution in the Ogoniland region. This provides an important opportunity for the Nigeria Government to finally tackle the accountability gap that underpins the negative human rights and environmental impacts of the oil industry.

For more information, see Amnesty International’s reports including *Petroleum, Pollution and Poverty in the Niger Delta*, June 2009: www.amnesty.org/en/documents/AFR44/017/2009/en/; *Bad Information: Oil Spill Investigations in the Niger Delta*, November 2013: www.amnesty.org/en/documents/AFR44/028/2013/en/; *Clean It Up: Shell's False Claims About Oil Spill Response In The Niger Delta*: November 2015, <https://www.amnesty.org/en/documents/afr44/2746/2015/en/>.