The CSR challenges facing the extractive industry in weak governance zones

A comparative analysis of the extractive industry’s strategies and performance on human rights, community involvement and corruption in weak governance zones.

With a preface by Daniel Lebègue,
Chairman of the French chapter of Transparency International
Summary

Preface 3

Foreword 4

Key findings 5

Examples of controversies 6
in weak governance zones (risk countries)

Performance overview 12
  Human rights 14
  Community involvement 21
  Prevention of corruption 27

Conclusion 33

Appendices
  Annex 1: Sample of companies under review 34
  Annex 2: List of ‘Risk Countries’ 35
  Annex 3: Vigeo Methodology 37
Preface

Daniel Lebègue
Chairman of the French chapter of Transparency International

Numerous studies have shown that countries rich in resources such as oil, gas and minerals are particularly exposed to risks of weak governance, corruption, authoritarianism and recurrent conflicts. Two-thirds of the most underprivileged populations live in such countries. In order to combat this “resource curse”, the transparency of earnings is essential. The availability of information is indeed a pre-requisite for making governments accountable and thus guaranteeing the efficient management of a complex industry. These are two necessary conditions for achieving sustainable development, political stability and responsible public governance.

The transparency of the extractive industry is therefore a major issue in the fight against corruption. As such, it is one of Transparency International (TI)’s fields of action through the “Promoting revenue transparency” project. This initiative, which in particular consists of publishing assessment reports, aims at encouraging governments and extractive industries to increase their transparency and to report on their efforts to citizens and investors. In the same way as governments must implement a regulatory framework covering the extractive industry’s operations, companies also have their role to play. They can voluntarily decide to report on this information. However, even today, too few companies publish the amounts of money they pay to governments in countries where they have operations – what we call country-by-country reporting. On a positive note, TI’s last report on oil and gas companies, released in March 2011, reveals that some companies are relatively transparent, even in countries known for their hostile environment. Therefore, it appears possible, for those companies so inclined, to be transparent without jeopardising earnings. This type of behaviour must be encouraged.

Let us hope that this Vigeo study contributes to the promotion of such behaviour by encouraging companies to adopt best practices.

1http://www.transparency.org/policy_research/surveys_indices/promoting_revenue_transparency
Foreword

The extraction of minerals and hydrocarbons exposes companies to a range of environmental, social and governance (ESG) risks that need to be managed in a responsible way. The depletion of relatively high-grade, easy-to-extract mineral and hydrocarbon resources means that companies are making the transition into more challenging operations to maintain production and meet demand, the upshot of which is that companies are increasingly operating in areas of high environmental and social sensitivity. It also increases the risk of being exposed to corruption practices and to regimes that do not share extractive earnings fairly among their populations and that are involved in human rights abuses.

There are many examples where the combination of conflict, corruption and corporate complicity has contributed to flagrant human rights abuses. However, companies with good human rights records are more likely to create constructive partnerships with civil society, local businesses and authorities, thereby enhancing their social licence to operate.

Companies engaging in corruption foster political instability and unpredictability, ultimately leading to an undesirable business environment. The reputational burden of corruption allegations is especially onerous and, if brought to court, these cases may lead to financial (and legal) costs and lost business opportunities. But companies that are highly transparent can more easily demonstrate their non-involvement in bribery and corruption and show their economic contribution to the country.

When projects disregard local communities and the benefits of resource exploitation do not reach them, extractive companies may face community opposition. This may lead to work stoppages, blockades, conflict and violence, which harm company reputation and increase project costs. However, pro-active companies mitigate these risks by engaging with local stakeholders and implementing local socio-economic impact assessments.

The assessment of the way in which extractive industry companies (oil and gas companies and mining companies) are managing anti-corruption, human rights and community involvement in weak governance zones (or risk countries) is the object of this study. How well do companies define the ESG risks they are facing and the targets they set themselves to manage the impact of these risks? How visible are these actions for the company's employees and stakeholders? Additionally, the efficiency of a company's actions and involvement is questioned. How many companies have been denounced by the press or sanctioned for acts of corruption, violations of human rights or community rights? How many companies have put in place corrective measures? Is there a link to the companies' presence in weak governance zones?

The central hypothesis of this study suggests a negative link between the companies' territories of operation and their CSR performance on these three ESG factors (human rights, anti-corruption and community involvement). This questioning has led Vigeo to observe and establish the differences in managerial performance that might exist between the North American and European extractive industries (energy and mining companies) of a sample of the largest 40 companies (by market capitalisation) listed on the STOXX 1800. The companies were rated by Vigeo between January 2009 and April 2010.

A notable conclusion of this study is that sector-based differences, host-country legislation or the presence in weak governance zones do not suffice in explaining the companies' overall performance on these ESG factors. This substantiates our conviction that, as with all social responsibility factors, the managerial sphere and the principles on which it is founded are the key to success.
Key findings

The extractive sector is highly exposed to allegations and controversies

The frequency of allegations and controversies related to corruption and violations of community and human rights within the selected sample of extractive industry companies is much higher than in other sectors analysed by Vigeo.

Human rights: Very high exposure (50%) to controversies and allegations

The European energy and mining companies assessed in this study are more exposed to human rights controversies than their North American counterparts and more often fail to adequately report on their response to these allegations.

In terms of human rights management (policies and implementation measures), mining companies generally lag behind energy companies. However, both sectors are equally exposed to allegations. In both cases, ten out of 20 companies (50%) are involved in human rights controversies.

Community involvement: High exposure to controversies and allegations

In total, 11 of the 40 companies assessed have faced allegations in the identified risk countries. Vigeo observes a slightly positive correlation between a high presence in risk countries and the development of relevant policies and the implementation of measures to mitigate impact on local communities. The majority of the companies with a high presence in risk countries have a relatively elevated overall score, but at the same time many of those companies remain involved in recurrent allegations related to their impact on their neighbouring communities, leading to a downgrading in the Results score.

Anti-corruption: High exposure to allegations

Companies from both regions display rather similar overall scores. But when looking at controversies, Vigeo’s analysis reveals that energy companies are slightly more exposed to controversies (seven out of 20 have faced at least one allegation during the period under review) than mining companies (five out of 20). A focus on the policies reveals that 25% of mining companies have not included any commitment for preventing corruption in a formal policy such as a Code of Conduct or an Ethics Charter, as opposed to only one oil and gas company out of 20 (i.e. 5%).

Human rights and community involvement: Strong link

Three companies display strong scores (top five best performers) on three (Lonmin) or two (Anglo American & Xstrata) of the risk factors assessed. On the other hand, three companies in the worst five performers on human rights issues (Chevron, Peabody Energy & Vedanta Resources) also display similarly weak performance on community issues. In general, Vigeo observes a link between human rights and community rights performance. This can be explained by the fact that the nature of the violations related to community rights in the extractive industry is, in the majority of cases, also very similar and linked to more general human rights violations.
Examples of controversies in weak governance zones (risk countries)

Human rights controversies and violations

**Indonesia** (low ranking on the TI Corruption Perception Index, the Revenue Watch Index and the Human Development Index)

**BP:** In April 2008, a group of human rights organisations sent a letter to BP Chief Executive Tony Hayward warning that the Tangguh liquefied natural-gas project in Indonesia could worsen the security situation in the Papua region. It should be noted that a human rights impact assessment was carried out before operations started, leading to the implementation of a permanent consultation panel.

**Exxon** has been the target of human rights activists for actions undertaken by the company in the Indonesian territory of Aceh. A lawsuit filed in 2001 alleges that the company assisted human rights violations, including torture, murder and rape, by employing and providing material support to Indonesian military forces, who committed the alleged offences during civil unrest. The lawsuit, filed by 11 Indonesians, claims the soldiers were under Exxon Mobil’s direction and control, making the company liable. The lawsuit was, however, dismissed by a federal judge in September 2009.

**Freeport:** Some sources suspect that there is a link between dubious payments made to military and police officials between 1998 and 2004 and security force violence around PT Freeport Indo-
nesia’s mine. However, an investigation by the FBI did not uncover any evidence of liability. Local media claimed in March 2009 that the company is still paying the military, but despite a recent governmental ministerial decree prohibiting such payments, the violence has not stopped. Due to continuous unrest and following stakeholder pressure, Freeport has established a comprehensive human rights policy and has committed to maintaining regular dialogue with stakeholders.

**Papua New Guinea** (low ranking on the Freedom House List, the Revenue Watch Index, the TI Corruption Perception Index, the Human Development Index and the Failed States Index)

**Barrick Gold** acquired the Porgera mine in Papua New Guinea in 2006, where a local human rights organisation had reported incidents of killings, torture, arbitrary arrest and beatings by the mine’s security forces in 2005. There have been further allegations of killings by Porgera security forces in 2007 and 2008.

**Rio Tinto**: In 2009, a Los Angeles federal judge ruled that alien tort claims could be brought alleging that Rio Tinto engaged in mining operations on the island of Bougainville in Papua New Guinea that incited a ten-year civil war, during which thousands of civilians died. Rio Tinto denies the allegations.

**Philippines** (low ranking on the Freedom House List, the TI Corruption Perception Index, the Human Development Index and Failed States Index)

**Anglo American** has attracted criticism for its exploration activities in the Cordillera region of the Philippines, where it is alleged that it has manipulated community-consent processes in order to obtain the legally required certificate of Free Prior Informed Consent (FPIC). It is in a highly militarised area, where those who express opposition to mining are subjected to threats and intimidation.

**India** (low ranking on the Human Development Index and the TI Corruption Perception Index)

**Vedanta**: Although India’s Supreme Court has given approval for the bauxite mine in Orissa, the local Kondh peoples are determined to prevent the destruction of their most sacred site. In 2009, the UK OECD Contact Point stated that Vedanta is in breach of the human rights articles of the OECD guidelines. In a final statement of September 2009, the UK OECD concluded that Vedanta failed to engage with the Dongria Kondh in adequate and timely consultations on the construction of the bauxite mine; it did not consider the impact of the construction of the mine on the rights and freedoms of the Dongria Kondh, or balance the impact against the need to promote the success of the company. The OECD Contact Point called on Vedanta to change its behaviour. In 2009, Indian Supreme Court’s Expert Advisory Committee (EAC) found that among the approximately 260 families displaced by the company's Bodai-Daldali project, 189 families had not been resettled. Families without clear legal title had not been compensated. The EAC ruled that the project should not be expanded until these matters were resolved.

**Colombia** (low ranking on the Freedom House List and included in the Failed States Index)

**Rio Tinto**: La Muriel Mining Corporation’s Mandé Norte/Murindó project is being pursued on collectively owned indigenous and Afro-Colombian land against the express wishes of the communities involved. It is alleged that the project has been accompanied by intimidation, deceit, manipulation and falsification of community consultation procedures, militarisation, terrorisation and forced displacement of families. In January 2009, a delegation of indigenous people met with the Human Rights Ombudsman to tell him that the consultation process was illegitimate.

**Anglo American, BHP Billiton and Xstrata**: In 2007, two complaints were lodged against BHP Billiton and Xstrata respectively to the Australian National Contact Point and the Swiss National Contact Point for breaches of the OECD Guidelines at the Cerrejón mine co-owned by Xstrata, BHP Billiton, and Anglo American. The submis-
sion claimed that the owners and operators of the mine destroyed the township of Tabaco, forced the expulsion of its population, and that five other communities in the region are suffering the effects of a policy designed to make living unviable and to drive the population out. In response, the companies commissioned an independent panel of investigation to provide an assessment of the social engagement of the mine. In December 2008, an agreement was signed and the Contact Points closed the specific investigation. However, NGOs report that the conflict continues between communities facing displacement and those already displaced. Local communities state that recommendations concerning livelihood have, to date, not been implemented and that standards of transparency have not been met.

**Occidental Petroleum:** Oxy is reported by the Italy-based Permanent People’s Tribunal to “have been involved in practices violating the most basic human rights, joining forces with violent networks that have roots in State strategies and encouraged by hemispheric policies that search to legitimise themselves in the imperative to provide security for large investors and business people.” In addition, Oxy, in particular, was singled out for being part of official mechanisms for coordinating the military strategy of “Plan Colombia”.

**Nigeria** (low ranking on the Freedom House List, the Revenue Watch Index, the TI Corruption Perception Index, the Human Development Index and the Failed States Index)

**ENI, Shell and Total:** In June 2009, Amnesty International issued the report « Petroleum, pollution and poverty in the Niger Delta », which focuses on the impact of pollution and environmental damage caused by the oil industry on the human rights of the people living in the Niger Delta, most of whom rely on fisheries, subsistence agriculture and associated processing industries for their livelihood. The human rights implications of this pollution and environmental damage include, amongst others, the violations of the right to water, the violations of the right to health, the failure to provide affected communities with adequate information or ensure consultation on the impact of oil operations on their human rights.

**Shell** has been at the centre of criticism, as it is the largest operator there. The company denied a number of allegations mentioned in the report and states that 85% of the environmental damages from its operations come from attacks and sabotage. In June 2009, Shell settled a court case in New York in connection with the Nigerian military government’s execution of Ken Saro-Wiwa and others in 1995. The plaintiffs alleged that at the request of Shell, in addition to its assistance and financing, the Nigerian military used deadly force and brutal raids against the Ogoni people throughout the early 1990s to repress a growing movement against the oil company. Shell has always maintained the allegations were false. The lawsuit was brought under the Alien Tort Claims Act.

**Chevron:** A court case for damages against Chevron by the Nigerian Larry Bowoto and other Ilaje victims was brought to the US federal court and to California state courts, where the plaintiffs sought an injunction to prevent Chevron from further complicity in abuse by the Nigerian military. In her ruling, Judge Illston found “evidence that CNL [Chevron Nigeria Limited] personnel were directly involved in the attacks; CNL transported the GSF [Nigerian government security forces], CNL paid the GSF; and CNL knew that GSF were prone to use excessive force”. The plaintiffs are also taking action on the legality of the Nigerian government’s conduct at Parabe and Opia/Ikenyan, asking the court to limit CNL’s ability to obtain armed protection in Nigeria. The trial stems from a series of incidents in Nigeria in mid-1998 and early 1999. Chevron denies any role in the Nigeria attacks and said the incident was “a violent occupation of private property by aggressors seeking to extort cash payments from the company”. In December 2008, Chevron was cleared of the 1998 shootings by a federal jury.
Community rights controversies and violations

**India** (low ranking on the Human Development Index and the TI Corruption Perception Index)

**Vedanta Resources**: Vedanta’s mining activities face widespread criticism for their disrupting impact on the local community in India. The activities of the mine are said to endanger the access to food and water for the more than 8,000 Dongria Kondh, whose livelihood depends on the mountain.

On 24 August 2010, India’s Ministry for Environment and Forest (MoEF) rejected Vedanta’s controversial plans to establish operations in forested areas in the eastern Indian state of Orissa that are held sacred by several tribal communities. In its report of 16 August 2010, the MoEF committee concluded that ‘allowing mining in the proposed mining lease area by depriving two Primitive Tribal Groups of their rights over the proposed mining site in order to benefit a private company would shake the faith of tribal people in the laws of the land.’

**Colombia** (low ranking on the Freedom House List and included in the Failed States Index)

**Anglo American, BHP Billiton, Xstrata**: In 2007, a complaint against BHP Billiton was submitted to the Australian Contact Point of the OECD (ANCP) for breaches of the OECD Guidelines in Colombia at the Cerrejón mine co-owned by Xstrata, BHP Billiton, and Anglo American. The submission was lodged by an Australian lawyer as agent for affected communities in Colombia. The initiators claimed that the owners and operators of the Cerrejón mine destroyed the township of Tabaco, forced the expulsion of its population and that five other communities in the region are suffering the effects of a policy designed to render livelihood unviable and to drive the population out. In 2007, in response to this criticism, BHP Billiton, Anglo American and Xstrata commissioned an Independent Panel of Investigation to provide an assessment on the social engagement of the mine. As a result of the review, an agreement was signed in which Cerrejón committed to pay $1.8 million for additional compensation and another $1.3 million to provide land and related infrastructure works for the affected communities. NGOs report that the conflict continues with communities facing displacement and those already displaced. Local communities state that recommendations concerning livelihood (provision of services and financing of small-scale economic projects, relocation of land) have, to date, not been implemented and that standards of transparency on communication and transparency have not been met. Meanwhile, Cerrejón local communities and mine workers who are members of SINTRACARBON trade union complain of coal dust which causes skin and respiratory problems.

**Rio Tinto** is currently involved in a highly controversial mining exploration project in Colombia, i.e. La Muriel Mining Corporation’s Mandé Norte/Murindó project. According to the Colombia Solidarity Campaign, exploration began against the wishes of local people and has caused considerable impact on local people and the environment. Apparently, no environmental impact study exists. Among other irregularities, the communities report that the people consulted by the mining company to obtain their consent to the project were bribed, threatened or do not live in the affected area. Local communities allege that there have been multiple violations of human rights and indigenous rights, including continuous brutal intimidation of communities, forced displacements, severe impact upon health, loss of primary forest and the desecration of the sacred hill. They allege that there has never been proper consultation with those people who will actually be affected by the project. Both the company and the Colombian government claim
that the consultation process was carried out according to the law. In January 2009, a delegation of indigenous people met with the Human Rights Ombudsman to tell him that the consultation process was illegitimate.

Democratic Republic of the Congo (DRC) (low ranking on the Freedom House List, the Revenue Watch Index, the TI Corruption Perception Index, the Human Development Index, Vigeo’s Sustainable Country Rating and the Failed States Index)

In the DRC, Freeport is facing tension with illegal miners. In August 2010, hundreds of illegal miners rioted and blocked export traffic at the Tenke Fungurume copper and cobalt mine, halting hundreds of trucks from mines further north. Jean-Pierre Muteba, the head of a local mining trade union, told Reuters by telephone: “Tenke has rights but the problem is they are not engaging with the people and there are no jobs - the miners just want to be able to work.”

Nigeria (low ranking on the Freedom House List, the Revenue Watch Index, the TI Corruption Perception Index, the Human Development Index and the Failed States Index)

Royal Dutch Shell, Exxon Mobil Corp, Total: In July 2009, a lawsuit was filed by the Registered Trustees of the Socio-Economic Rights & Accountability Project (SERAP) against the Shell Petroleum Development Company (SPDC), Elf Petroleum Nigeria Ltd, Exxon Mobil Corp and Total. In the lawsuit, the group alleged violations of the right to an adequate standard of living, including the right to food, work, health, water, life and human dignity, clean and healthy environment and to economic and social development, resulting from the impact of oil companies in the region. SPDC and Elf have called upon the ECOWAS Community Court of Justice in Abuja to dismiss the suit.

In October 2008, the Shell Petroleum Development Company (Nigerian subsidiary) was accused by the Ugborhen Community in Okpe Council area of Delta State of a breach of the Memorandum of Understanding (MoU), signed by both parties in 2002. The plaintiff states that the agreement included the provision of basic social amenities and infrastructures.

ENI, Total: In Nigeria, ENI operations face chronic attacks by the Movement for the Emancipation of the Niger Delta (MEND), a militia that appeared in December 2005. In April 2008, in addition, the Niger Delta Youths sued the Nigerian Agip Oil Company (NAOC) and Total, along with four other oil companies and the federal government, demanding N 5 trillion (EUR 30 million) for illegal gas flaring and pollution in the Niger Delta region. The pollutants emitted into the atmosphere during the course of flaring were nitrogen dioxides, sulphur dioxide, hydrogen sulfide, VOCs and carcinogens.

Oil companies operating in Nigeria are facing major sabotage actions by MEND, including bombings, staff kidnapping and deliberate pipeline spillage.
Allegations of corruption

**Iraq** (low ranking on the Freedom House Index, the Revenue Watch Index, the TI Corruption Perception Index, the Human Development Index and the Failed States Index)

Chevron faces recurrent allegations of corruption. In June 2008, the Iraqi government filed a lawsuit in the US courts, seeking recovery of what it claims could be billions of dollars of damages arising from corruption of the United Nations Oil-For-Food Program (OFFP). The Republic of Iraq named 93 defendant companies and individuals in what is styled as an organised crime case under the US law. Chevron is among the oil industry defendants.

In October 2006, Christophe de Margerie, Total’s CEO, was placed under official investigation for his alleged role in the breaches of the OFFP in Iraq. The accusations state that Total circumvented the OFFP and bribed foreign agents to buy more Iraqi oil than was allowed. The case was dropped in 2009 but re-opened in 2010.

**Nigeria** (low ranking on the Freedom House Index, the Revenue Watch Index, the TI Corruption Perception Index, the Human Development Index and the Failed States Index)

In November 2010, Shell and six oil-service companies agreed to pay more than USD 156 million in criminal damages to resolve investigations of Foreign Corrupt Practices Act (FCPA) violations. The companies also agreed to pay USD 80 million in SEC civil disgorgement and penalties. This came after an investigation that focused on allegations of foreign bribery in the oil field-service industry. In total, Shell will pay USD 48.1 million in relation to its operations in Nigeria. Shell stated that it had fully cooperated with the US Department of Justice (DoJ) and the US Securities and Exchange Commission (SEC) throughout this investigation.

**Iran** (low ranking on the Freedom House Index, the Revenue Watch Index, the TI Corruption Perception Index, Vigeo’s Sustainable Country Rating and the Failed States Index)

In March 2007, Christophe de Margerie (Total) was placed under investigation by French authorities for the second time for the suspected “corruption of foreign public agents and misuse of corporate assets.” Total is suspected of having paid top Iranian officials nearly CHF 100 million (EUR 60 million) through two Swiss bank accounts to win a contract in South Pars in 1997. Mr. De Margerie was Total’s head of Middle East operations from 1995 to 1999.

**China** (low ranking on the Freedom House Index, the Revenue Watch Index, the Human Development Index and Vigeo’s Sustainable Country Rating)

In July 2009, Chinese prosecutors formally arrested four Rio Tinto employees on suspicion of having obtained trade secrets and of commercial bribery. The detention of the employees came amid fraught talks over iron ore pricing and follows Rio’s decision to abandon a plan to sell a USD 19.5 billion stake to Chinalco, the Chinese state-owned mining company. In a statement, China’s Supreme People’s Procuratorate said prosecutors had gathered sufficient evidence to formally approve their arrest for “obtaining commercial secrets of China’s steel and iron industry through improper means”, in violation of the country’s criminal law. In March 2010, Stern Hu, the Australian executive at Rio Tinto, was sentenced to ten years in prison by a Shanghai court on charges of bribery and stealing commercial secrets. Mr. Hu’s three Chinese colleagues were found guilty of accepting bribes of up to $9 million and stealing steel industry secrets. Wang Yong was given 14 years, Liu Caikui seven years and Ge Minqiang eight years.
Performance overview

Analysis of the extractive industry’s strategies and performance on human rights, community involvement and corruption

The evaluated sample

The evaluated sample of this Vigeo study comprises 40 companies - ten European mining companies, ten European energy companies, ten North American mining companies and ten North American energy companies. They were assessed by Vigeo between January 2009 and April 2010. For the list of the complete sample, see Annex 1. All the companies are listed on the STOXX 1800. For each sector, the ten largest companies by market capitalisation were selected.

The meaning of “weak governance zones” and “risk country” in this document

According to the OECD (Organization of Economic Cooperation and Development), a weak governance zone is defined as “an investment environment in which governments are unable or unwilling to assume their responsibilities. These “government failures” lead to broader failures in political, economic and civic institutions that, in turn, create the conditions for endemic violence, crime and corruption and that block economic and social development”. About 15% of the world’s people live in such areas, notably in sub-Saharan Africa.”

This Vigeo study focuses on the ESG risks that extractive companies have to manage when operating in weak governance zones, i.e. where specific ESG factors are more frequently violated or placed under pressure. Based on a broad mix of international definitions and related rankings of countries, in terms of the probability or risk of a given ESG factor (in this study, human rights, corruption and community involvement) being violated in a given country, cross-checked with the lists of natural resource-dependant countries, Vigeo developed its own list of ‘risk countries’ or ‘weak governance zones’ for this study (see table in Annex 2).

---

A country’s exposure to weak institutions, human rights violations, corruption, low development and low political freedom is, for the purposes of this definition, based on:

- **the Freedom House List**: All countries categorised as ‘Not Free’ and ‘Partly Free’ (2010 ranking)
- **the Revenue Watch Index 2010**: Countries with only partial revenue transparency or scant revenue transparency (2010 ranking).
- **Transparency International’s Corruption Perception Index**: the 100 most corrupt countries (2009 ranking)
- **the United Nations Human Development Index**: Medium and Low Human Development countries (2010 ranking)
- **Vigeo’s Sustainable Country Rating**: the 50 least democratic countries (based on the functioning of democratic institutions)
- **Foreign Policy Failed States Index**: All ‘Critical’, ‘in Danger’ and ‘Borderline’ countries (2010 ranking)

A country’s high dependence (% export) on natural resources is, for the purposes of this definition, based on:

- **EITI (Extractive Industries Transparency Initiative) countries**
- **Natural Resource-Rich Countries**. According to the Revenue Watch Institute
- **World proved oil reserves by country and region, 2008** (in billions of barrels and percentage) (World Trade Report 2010)
- **Leading exporters of mining products, excluding intra-EU trade, 2008** (World Trade Report 2010)
- **Country Mine**: Mineral-producing and exporting countries
- **Countries with a high share of natural resources in total exports** (World Trade Report 2010)
Respect for human rights standards and the prevention of violations

The respect for human rights standards and prevention of violations is measured and rated according to the Vigeo Methodology. See also Annex 3: Vigeo Methodology.

Specific human rights issues in the extractive industry sector

Property rights and involuntary resettlement
Projects involving land acquisition sometimes require the relocation or resettlement of people, resulting in local communities losing shelter, land and crops or access to assets or resources. Companies are therefore expected to ensure that agreements with the host government specify that land acquisition and resettlement will be conducted in accordance with international standards.

Wherever resettlement occurs, there is increased potential for conflict arising from a multitude of causes including disputes over ownership, rights to land or resources, inadequate compensation, conflicts with resettled people and their host populations or as a result of corrupt behaviour by implementing officials.

Indigenous rights
Indigenous peoples are recognised under international law and institutions as distinct, self-determining peoples with inherent collective rights including the right to free, prior and informed consent (FPIC) and the right to self-determination.

There is an important distinction between consultation and consent. Only FPIC guarantees the right of indigenous peoples to potentially veto companies' projects. FPIC is seen by the UN Declaration on the Rights of Indigenous Peoples as being an essential step forward in guaranteeing the well-being of indigenous peoples.

Use of security forces
According to the United Nations Conference on Trade and Development (UNCTAD), there have been many reported abuses by private security forces, as well as a large number of charges against private firms acting on behalf of companies in weakly governed states or conflict zones. Furthermore, when companies rely on state forces to provide security, they might still be held accountable for their behaviour, even though these forces may be under the control of a host-state entity, especially when they support their actions either by paying their salaries or by providing intelligence or other services such as transportation.

A tripartite initiative between business, civil society groups and both the UK and US governments, led to the US-UK Voluntary Principles on Security and Human Rights. These principles address matters relating to risk assessment and engagement with private and public security forces.

Investments
Through their investments and operations in countries with poor human right records, oil, gas and mining companies could be considered responsible for financing or providing support to repressive regimes and thus be accused of complicity in human rights violations. For instance, several reports denounce the role of Total and other oil companies in fuelling the oppressive

---

dictatorship in Myanmar, notorious for its widespread use of forced labour and human rights violations. Concerns were also raised by human rights organisations on the companies’ presence in countries such as Sudan and the Niger Delta where human rights violations are reported.

The risks that extractive industry companies are facing when violating human rights

Reputational risks

The Mining and Minerals Sustainable Development (MMSD) Project, initiated by the World Business Council for Sustainable Development (WBCSD) and supported by the Global Mining Initiative (GMI), recognised that campaigning by environmental and civil society groups has played an important role as a catalyst for major changes in the standards pursued by the minerals industry in the past and that these groups would continue to be major drivers of change. Consequently, some companies are facing increasing scrutiny by investors and the wider public on these issues, with local issues previously covered in the local press now reaching a global audience. Reputational risk can harm brand value, employee morale, the ability to recruit and, in some cases, the ability to gain access to markets and resources.

Moreover, activist pension funds, mutual funds, ethical funds, trade unions and civil society organisations have learned to use shareholder pressure by means of resolutions, votes and demands for divestment, which represents another risk for companies. For example, in 2007, the Norwegian government decided to drop Vedanta from its global pension fund due to systematic environmental and human rights failures.

In November 2007, War on Want, a UK non-profit organisation, released a report on “The role of British mining companies in conflict and the violation of human rights”. This report targeted major UK companies such as BHP Billiton, Rio Tinto, Anglo American and Vedanta.

Similarly, oil and gas companies that attempt to disregard the complex human rights features within the context of their operations by adopting a ‘business as usual’ approach have suffered widespread condemnation by civil society groups, sometimes culminating in NGO campaigns or consumer boycotts, e.g. Shell in Nigeria.

Legal risks

Increasingly, activist groups, NGO’s and tort lawyers are using the law to sue companies for complicity in human rights abuses. In addition to the cost of management time and legal representation, which can run into millions of dollars, there is a genuine possibility of an adverse judgment with serious repercussions in determining a company’s liability and assessing punitive damages.

In some circumstances, failure to follow good international resettlement practice may be interpreted as ‘forced eviction’ and leave a company vulnerable to prosecution under international human rights law.

Despite maintaining the allegations were false, Shell agreed in June 2009 to settle a court case related to the Nigerian military government’s execution of Ken Saro-Wiwa and others in 1995. The plaintiffs alleged that at the request of Shell, in addition to its assistance and financing, the Nigerian military used deadly force and brutal raids against the Ogoni people throughout the early 1990s to repress a growing movement against the oil company. The law suit was brought under the Alien Tort Claims Act.

---

5. [http://www.waronwant.org/attachments/Fanning%20the%20Flames.pdf](http://www.waronwant.org/attachments/Fanning%20the%20Flames.pdf)
Operational efficiency risks

Inadequate attention to the impacts of land acquisition and resettlement can cause enduring hardship, resentment and opposition towards a project and its operators. This can contribute to delays in land being vacated for project construction, subsequent construction delays as a result of protests or ongoing disruptions to operations from blockages or sabotage. It can lead disaffected communities and civil society groups to lobby governments and delay approvals for operations.

In situations where companies do not have good relations with indigenous peoples, they face loss of permits and contracts, lawsuits, hostile advocacy campaigns, violent attacks, the reopening of assessment and negotiation processes, and the re-drawing of project plans in mid-cycle. All this can have a considerable impact on the ability of a company to continue its operations.

For example, a case against BP for breaches of the OECD guidelines for multinational companies linked to allegations regarding the Baku-Tbilisi-Ceyhan (BTC) pipeline has been pending since 2003. The Baku Ceyhan Campaign is working to raise public awareness of the social problems, human rights abuses and environmental damage being caused by the pipeline, which runs through Azerbaijan, Georgia and Turkey.

Performance by region

In terms of human rights, companies from both regions display rather similar overall scores, i.e. 47.6/100 for European companies and 43.8/100 for North American companies.

European companies show an average Leadership score of 50.25/100, ahead of North American companies that only achieve a score of 35.4/100. Companies from both regions adhere to international standards such as the Global Compact and the US/UK Voluntary Principles on Security and Human Rights, but relatively more North American companies have a publicly formalised policy on human rights (70% of companies as opposed to 55% of European companies).

However, European companies perform better as regards the ownership of their commitment. In four cases, external stakeholders are directly involved and four companies have a dedicated department responsible for human rights (as opposed to only two North American companies). Moreover, European companies display greater transparency on the content of their policy and on the specific issues that are tackled internally. This greater transparency and better reporting by European companies also affects their Implementation score, which stands at 41.3/100, as opposed to 25.95/100 for North American companies.

When it comes to the Results score, however, North American companies perform better than their European peers (69.8/100 versus 51.5/100). Indeed, 12 out of 20 companies based in the North American region achieve a score of 100/100 in Results questions, meaning that 60% of these companies have not faced any major human rights allegation during the period under review. As regards European companies, conversely, only 40% achieved a score of 100/100.

---


In conclusion, European oil and mining companies are more exposed to controversies than North American companies and more often fail to adequately report on their response to these allegations. European companies are relatively more present in weak governance zones, with seven companies operating in more than five identified risk countries, as opposed to four North American companies.

Examples of controversies in risk countries

The assessed companies faced human rights allegations in the following risk countries: Indonesia, Papua New Guinea, Philippines, India, Colombia and Nigeria. The companies involved were: BP, Exxon, Freeport, Barrick, Rio Tinto, Anglo American, Vedanta, BHP Billiton, Xstrata, Occidental Petroleum, ENI, Shell, Total and Chevron.

For a detailed description of the controversies, see page 5 and beyond.

Performance by sector

From a sector-based point of view, energy companies appear to perform better than mining companies.

Controversies and the way in which they are handled do not fully explain the different scores. A focus on Leadership scores shows that only one energy company does not have a human rights policy in place. In the mining sector, on the other hand, as many as six companies have not published any commitment to upholding human rights within their operations. This is surprising since the mining sector is subject to several voluntary private-sector initiatives, such as the International Council on Mining and Metals (ICMM) or the Mining and Minerals Sustainable Development Project (MMSD). It should be noted that four of those six companies without clear policies have not been involved in any controversy. It seems that the sector is reactive rather than proactive, merely tackling human rights issues once problems have occurred rather than anticipating them.

Three of the five best-performing companies are to be found in the energy sector, whereas four of the five worst-performing companies are in the mining sector.
Exposure to risk countries and related risk management: Human rights

Managerial performance vs. Number of high risk countries

1. Alcoa
2. Anglo American
3. Antofagasta
4. Barrick Gold
5. BC Group
6. BHP Billiton
7. BP
8. Cameco
9. Canadian Natural Resources
10. Chevron
11. Cia Espanola De Petroleos
12. ConocoPhillips
13. Consol Energy
14. ENI
15. Eurasian Natural Resources
16. Exxon Mobil
17. Freeport-McMoRan
18. Galp Energia
19. Goldcorp
20. Hess
21. Husky Energy
22. Imperial Oil
23. Kazakhmys
24. Lonmin
25. Marathon Oil
26. Newmont Mining
27. Occidental Petroleum
28. Omv
29. Peabody Energy
30. Petropavlovsk
31. Repsol
32. Rio Tinto
33. Royal Dutch Shell
34. Statoil
35. Suncor Energy
36. Teck Cominco
37. Total
38. Vedanta Resources
39. Xstrata
40. Yamana Gold
The horizontal axis of the graph represents the number of risk countries where the companies have operations (ranging from 0 to 17 countries). The vertical axis represents the company's managerial performance in terms of human rights (on a scale of 0 to 100).

Companies with little or no presence (less than five) in risk countries display highly varied levels of performance, ranging from 15/100 to 81/100. This divergence shows that the number of risk countries where companies operate, at least below a certain threshold, is not likely to influence the company's performance. **Barrick Gold** achieves the lowest score (15/100) because it fails to communicate comprehensively on the measures implemented as a response to controversies in Papua New Guinea, among others. **OMV**, on the other hand, shows the best performance (81/100) because it proactively and successfully seeks to avoid human rights disputes while being active in one risk country. **Lonmin** also proactively tackles human rights issues, despite not having operations in any risk country (77/100).

Companies with a presence in between six and ten risk countries also display varied levels of performance, 50% having a score above 50/100 and 50% below. Both **BP** and **Chevron** operate in ten risk countries, but while the former achieves a good score of 58/100, the latter displays only sub-standard performance (22/100). Indeed, not only does **BP** have a dedicated department for implementing its human rights policy, but it also has training programmes for security forces. Moreover, a permanent consultation panel has been set up at its Indonesian operations.

The companies with the highest presence in risk countries are **ENI** (13 countries), **Total** (16 countries) and **Exxon Mobil** (17 countries). None of those companies perform above 50/100 and all of them are seriously embroiled in controversies. **ENI** and **Total** however, show strong levels of commitment and provide transparency on their internal compliance systems. Total even involves stakeholders such as the IPIECA Social Responsibility Working Group and the Danish Institute for Human Rights. Both **ENI** and **Total** have implemented corrective measures as a reaction to human rights controversies. Their scores are also higher at 43/100 and 47/100, respectively. **Exxon’s** human rights policy, on the other hand, is less thorough; and its internal control system less extensive. Overall, its human rights score stands at just 38/100.
## Companies with strong human rights performance

<table>
<thead>
<tr>
<th>Company</th>
<th>Sector</th>
<th>Presence in risk Countries</th>
<th>Zone</th>
<th>Result scores</th>
<th>Global score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Omv AG</td>
<td>Energy</td>
<td>1</td>
<td>EUR</td>
<td>100</td>
<td>81</td>
</tr>
<tr>
<td>Lonmin</td>
<td>Mining</td>
<td>0</td>
<td>EUR</td>
<td>100</td>
<td>77</td>
</tr>
<tr>
<td>Suncor Energy Inc.</td>
<td>Energy</td>
<td>1</td>
<td>NAM</td>
<td>100</td>
<td>72</td>
</tr>
<tr>
<td>Marathon Oil Corp.</td>
<td>Energy</td>
<td>4</td>
<td>NAM</td>
<td>100</td>
<td>67</td>
</tr>
<tr>
<td>Freeport-McMoRan Copper &amp; Gold Inc.</td>
<td>Mining</td>
<td>2</td>
<td>NAM</td>
<td>69</td>
<td>63</td>
</tr>
</tbody>
</table>

## Companies with weak human rights performance

<table>
<thead>
<tr>
<th>Company</th>
<th>Sector</th>
<th>Presence in risk Countries</th>
<th>Zone</th>
<th>Result scores</th>
<th>Global score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barrick Gold Corp.</td>
<td>Mining</td>
<td>2</td>
<td>NAM</td>
<td>9</td>
<td>15</td>
</tr>
<tr>
<td>Vedanta Resources</td>
<td>Mining</td>
<td>1</td>
<td>EUR</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td>Peabody Energy Corp.</td>
<td>Mining</td>
<td>0</td>
<td>NAM</td>
<td>62</td>
<td>21</td>
</tr>
<tr>
<td>Chevron Corp.</td>
<td>Energy</td>
<td>10</td>
<td>NAM</td>
<td>0</td>
<td>22</td>
</tr>
<tr>
<td>Goldcorp Inc.</td>
<td>Mining</td>
<td>1</td>
<td>NAM</td>
<td>38</td>
<td>31</td>
</tr>
</tbody>
</table>
Community involvement

The way in which companies respect community rights is measured and rated according to the Vigeo Methodology. See also Annex 3: Vigeo Methodology.

**Specific community issues in the extractive industry sector**

**Dealing with the disruptive impacts of operations**

Extractive activities have a significant impact on local communities and livelihood. Impact on local communities can be synonymous with relocation, an increase in employment of migrant workers and economic activity, disruption in typical sources of income (fisheries in the case of off-shore and coastal drilling, farms and other activities (tourism) in the case of on-shore drilling).

**Transparency on revenues and redistribution of resources**

Extractive industry companies operate under a licence, i.e. they obtain the right to explore and extract oil and gas in return for the taxes and royalties that they pay to local governments. Therefore, several important issues exist with regards to the levels of these taxes and royalties (transparency issue), how local governments use these resources (redistribution issue) and what influence these companies can have on these governments to encourage a fair redistribution within communities living around their activities.

**Local development**

Companies Companies in the sector can have a positive impact on developing countries by ensuring the creation of jobs and supply chain opportunities in the country where operations are based. A practice often referred to as ‘local content’ initiatives commonly includes support for social programmes on health and education, promotion and support for local industries, improvement of the delivery of services, such as health, education, transport and power etc., support for local employment, development of SMEs and procurement policies, support for training (apprenticeships for the unemployed, etc.).

**Community engagement**

Companies should develop plans for continuous engagement during the life of the project, from exploration through to closure. This plan should be discussed with the community to ensure that the mechanisms proposed are considered appropriate. Companies must ensure that those in charge have the right skills and proper authority and that there is continuity of involvement.

**Integrated impact assessment and integrated planning for closure**

This should include an early phase of consultation with the community to identify local concerns and to ensure that these are addressed. As many mineral projects depend on specific deposits that have a finite life span, there is a need to focus on where the community wants to be when the project closes. This preferably requires end-of-life environmental, social, and economic conditions, identifying the courses of action required to achieve them and clearly allocating the roles and responsibilities of each of the players. There needs to be a focus on sustaining benefits in areas such as housing, community health and education.

**Dispute resolution mechanisms**

When there is restricted access to justice, especially at the community level, or when existing mechanisms are inadequate or mistrusted, it may be necessary to formulate dispute resolution mechanisms at the community level.

**The risks extractive industry companies face when violating community rights**

**Reputational risks**

The project may harm the proponent’s or financial institution’s brand identity, which can translate into a loss of market value. Developing posi-
tive relations with local stakeholders through establishing two-way dialogue structures with legitimate local representatives is key to building a positive image on the ground and to ensuring social acceptance within the community of operation and general public acceptance.

Operational efficiency risks

Enhancing community values presents a particular challenge, given the often intense social change brought about by mining and oil extraction activities and the potential influx of outsiders (migrants). A company’s “licence to operate” on the ground is linked to its legitimacy to operate and extract resources there. Damaged relations with local stakeholders can lead to sabotage and civil unrest, as seen in the Niger Delta, and can have a significant impact upon operations and procurement security. Oil companies operating in Nigeria are facing major sabotage actions by the Movement for the Emancipation of the Niger Delta (MEND), including bombings, staff kidnapping and deliberate pipeline spillage. These conflicts are mainly the result of low level of local participation and the disregard for local oil workers’ welfare.

Legal risks

Host-government risk: the host government may withdraw permits and licences, undertake enforcement actions, impose civil or criminal penalties on the proponent or tighten requirements.

Host-country political risk: political forces in the host country may threaten the project.

A company that fails to address the economic and social development of a community, particularly in developing or volatile countries, potentially increases its legal risks, as local communities can challenge projects in local or international courts.

Performance of the extractive industry companies by zone

The overall score for the European companies in the energy and mining sector demonstrates a higher-than-average score on Leadership, Implementation and Results than their North American counterparts.

Indeed, companies registered in the European zone demonstrate the strongest performance among the two regions under analysis (52/100 versus 45/100). European companies outperform their peers in the demonstration of Leadership (60/100). In addition, in terms of managerial performance, European companies have implemented more comprehensive measures (53/100) than their North American counterparts. In particular in the Results section (42.15/100), European companies also demonstrate higher performance than companies registered in the North American zones (36/100). Notwithstanding that European companies face more allegations than their North American counterparts, they have a higher disclosure rate of outcome indicators of the implemented community projects. In the European zone, nine companies integrate all identified key responsibilities into their policies and three companies even obtain the highest score in Leadership (100), i.e. ENI, Shell and Total. Six companies in this panel have not adopted a policy to address the main issues of concern in this sector. European companies (53/100) have implemented more comprehensive measures than their North American counterparts (46/100). Indeed, in terms of implementation, 12 companies in the European energy sector have allocated significant means with which to interact with local stakeholders and to mitigate the impact upon local social and economic development.
The selected companies in the North American zone demonstrate, on average, good Leadership, but slightly lower than their European counterparts. Furthermore, North American companies demonstrate less efficient management systems to address the issues at stake. In the North American zone, only eight companies display well-developed implementation measures, i.e. Barrick Gold, Canadian Natural Resources, Exxon Mobile, Freeport Newmont, Goldcorp Suncor Energy and Imperial Oil.

Conversely, many other companies fail to disclose measures adopted to mitigate or optimise their impact on the local communities where they operate. In the Results section, European companies (42.15/100) also demonstrate stronger performance than companies registered in the North American zones (36/100).

Overall, 11 of the 40 companies assessed have faced allegations in the identified risk countries.

Examples of controversies in risk countries

The assessed companies faced community rights allegations in the following risk countries: India, Colombia, Democratic Republic of the Congo and Nigeria. The companies involved were Vedanta, Anglo American, BHP Billiton, Xstrata, Rio Tinto, Freeport, Shell, Exxon, Total and ENI.

For a detailed description of the controversies, see page 8 and beyond.

Global performance by sector

At a sector level, energy companies perform slightly better than mining companies (52/100 versus 45/100) on community rights issues.

In terms of Leadership, 75% of energy companies have a formalised policy in place to address the impact of their operations on the surrounding communities, whereas only 40% of mining companies have set up formalised policies.

In terms of Implementation, 40% of energy companies have implemented significant management procedures to reduce the negative social impact of their activities and engage with local stakeholders and/or have measures in place to support the local economic and social development in the country of operation, whereas the majority of mining companies have implemented significant and even extensive measures to address their local impact.

30% of energy and mining companies face major and/or recurrent allegations linked to community involvement. 30% of mining companies face isolated allegations, whereas only 15% of energy companies face similar allegations. 65% of companies in the energy panel disclose some performance indicators, but the disclosure of outcome indicators is very limited. In the mining sector, 35% of companies disclose some performance indicators, but also here clear outcome indicators are often lacking.
Exposure to risk countries & related risk management: Community involvement

Managerial performance

Number of high risk countries

1. Alcoa
2. Anglo American
3. Antofagasta
4. Barrick Gold
5. BG Group
6. BHP Billiton
7. BP
8. Cameco
9. Canadian Natural Resources
10. Chevron
11. Cia Espanola De Petroleos
12. ConocoPhillips
13. Consol Energy
14. ENI
15. Eurasian Natural Resources
16. Exxon Mobil
17. Freeport-McMoRan
18. Galp Energia
19. Goldcorp
20. Hess
21. Husky Energy
22. Imperial Oil
23. Kazakhmys
24. Lonmin
25. Marathon Oil
26. Newmont Mining
27. Occidental Petroleum
28. Omv
29. Peabody Energy
30. Petropavlovsk
31. Repsol
32. Rio Tinto
33. Royal Dutch Shell
34. Statoil
35. Suncor Energy
36. Teck Cominco
37. Total
38. Vedanta Resources
39. Xstrata
40. Yamana Gold
The horizontal axis of the graph represents the number of risk countries where the companies have operations (ranging from 0 to 17 countries). The vertical axis represents the company's managerial performance in terms of community involvement (on scale of 0 to 100).

The three companies with the highest presence countries, i.e. Eni, Total and Exxon Mobil, also have a relatively good score in this domain (between 59/100 and 62/100). As these companies face high risks linked to the social acceptability of their operations, they have also set up a dedicated structure and management guidelines to deal with the affected communities. It should also be noted that these companies still face allegations related to their impact on the communities.

Overall, there is a slightly positive correlation between a high presence in risk countries and the development of relevant policies and the implementation of measures to mitigate the impact on local communities. Indeed, the majority of the companies with a high presence in risk countries have a relatively elevated score in this domain, but at the same time many of those companies remain implicated in recurrent allegations related to their impact on their neighbouring communities.

The best-performing company on community issues, Statoil, is also active in eight risk countries. This also reveals the trend that companies with a higher risk exposure are adopting a more elaborated approach on community issues. Conversely, those companies without any presence in the identified risk countries display diverse level of performance. Consol Energy and Peabody Energy have a relatively low score, which could perhaps be explained by the fact that their main activities are situated in the United States, where the mitigation of their impact on communities is of lesser concern, considering the highly developed legislative framework protecting the local communities. But exceptions include Chevron, which has a high presence in risk countries (ten), but has not implemented efficient measures to mitigate the negative social impact of its activities and faces major and recurrent allegations.
Companies with a strong community performance

<table>
<thead>
<tr>
<th>Company</th>
<th>Sector</th>
<th>Presence in risk Countries</th>
<th>Zone</th>
<th>Result scores</th>
<th>Global score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Statoil</td>
<td>Energy</td>
<td>8</td>
<td>EUR</td>
<td>18</td>
<td>77</td>
</tr>
<tr>
<td>Anglo American</td>
<td>Mining</td>
<td>1</td>
<td>EUR</td>
<td>12</td>
<td>75</td>
</tr>
<tr>
<td>Imperial Oil</td>
<td>Energy</td>
<td>0</td>
<td>NAM</td>
<td>100</td>
<td>70</td>
</tr>
<tr>
<td>Lonmin</td>
<td>Mining</td>
<td>0</td>
<td>EUR</td>
<td>100</td>
<td>70</td>
</tr>
<tr>
<td>Xstrata</td>
<td>Mining</td>
<td>4</td>
<td>EUR</td>
<td>12</td>
<td>69</td>
</tr>
</tbody>
</table>

Companies with a weak community performance

<table>
<thead>
<tr>
<th>Company</th>
<th>Sector</th>
<th>Presence in risk Countries</th>
<th>Zone</th>
<th>Result scores</th>
<th>Global score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Peabody Energy</td>
<td>Mining</td>
<td>0</td>
<td>NAM</td>
<td>62</td>
<td>13</td>
</tr>
<tr>
<td>Yamana Gold</td>
<td>Mining</td>
<td>1</td>
<td>NAM</td>
<td>100</td>
<td>18</td>
</tr>
<tr>
<td>BP</td>
<td>Energy</td>
<td>10</td>
<td>EUR</td>
<td>58</td>
<td>22</td>
</tr>
<tr>
<td>Chevron</td>
<td>Energy</td>
<td>10</td>
<td>NAM</td>
<td>0</td>
<td>23</td>
</tr>
<tr>
<td>Vedanta Resources</td>
<td>Mining</td>
<td>1</td>
<td>EUR</td>
<td>0</td>
<td>24</td>
</tr>
</tbody>
</table>
Prevention of corruption

The management of prevention of corruption is measured and rated according to the Vigeo Methodology. See also Annex 3: Vigeo Methodology.

Introduction

According to Transparency International’s Bribe Payers’ Index, the petroleum and mining sectors are among the sectors in which government officials are most likely to solicit or accept bribes. Vigeo’s 2010 corruption study reported that 38% of European energy companies evaluated had been subject to corruption allegations during the 18 months preceding their evaluation. In North America, the figure was even higher for mining, as 44% of the companies had been subject to allegations during the same period.

What are risks for extractive companies engaging in corruption?

Reputational risks

Large conglomerates cite reputational risk as the most common risk. However, reputational risk does not affect the financial health of all companies, since reputation may be damaged in a variety of different way depending on the industry and on the nature of the business (Business-to-Business or Business-to-Consumer). In the extractive industry, reputation risk is also directly linked to the company’s social licence to operate, which is a strategic factor for the long-term continuity of operations.

Legal risks

The most important risk for companies is legal risk due to its direct association with administrative, financial, and criminal sanctions. In the United States, legislative reinforcements have led to an increase in sanctions imposed on companies found guilty of corrupt acts. Additionally, judicial decisions are usually followed by the dismissal of employees who have transgressed corporate rules, which leads to inefficiency due to the difficult transition. Finally, a legal risk can take the form of a market risk that can also be particularly damaging for the company. Companies can be placed on a blacklist by national and international institutions and organisations. In 2009, the operating licence of the French oil group Total was suspended for one year by the Italian authorities due to an investigation related to corruption. If a company does not have strong systems in place to prevent corruption, in addition to a culture of honest/legal business activities, it exposes itself to increased legal risks. The costs of non-compliance with anti-corruption laws are now reaching higher levels. In 2009, Halliburton had to pay fines amounting to USD 579 million for corruption. It should also be remembered that these costs exclude the additional burden of fees related to operational disruptions, the investigation and the review of internal control systems.
Operational risks

Operational risk has a direct impact on a company's earnings. An investigation for corruption can be a major burden for a company, requiring the allocation of major resources and means. Hence, an investigation can considerably impede the continuation of a company's operations since investigations require a great deal of time and effort. The arrival of investigators at the workplace, researching and analysing the company's documents, and interrogations disrupt the company's business administration. Even after a settlement, companies may face operational disturbances. Under the Foreign Corrupt Practices Act (FCPA), companies that reach a settlement with authorities may have to recruit an independent compliance monitor (often for at least three years) in addition to paying a penalty. The role of this independent consultant is to review and evaluate the company's FCPA compliance policies and procedures. This can be a major operational burden for the company, as the assignment of a monitor also requires the setting up of a specific team of lawyers and other employees to assist them in performing their work and investigations.

Human capital

Furthermore, a risk to social cohesion can arise when employees have to collaborate with investigators. If these acts involve the company executives directly, this can result in employees losing their trust in management and losing faith in the company's values.

The extractive industry's exposure to different types of risks, which can sometimes be interdependent, calls for formalised, coherent, and measurable strategies to prevent corruption.

Performance by region

In terms of prevention of corruption, companies from both regions display rather similar overall scores. North American companies display an average score of 52.7/100, closely followed by European companies with 52.5/100.

From a managerial perspective, European extractive companies display slightly lower levels of performance than their North American peers in terms of Leadership (policies) (58.6/100 versus 60/100) and Results (52.7/100 versus 56.3/100). The Results score can partly be explained by the fact that European companies, on average, face more allegations. Indeed, 45% of the European extractive companies, as opposed to 25% in North America, have faced one allegation of corruption during their assessment period. In terms of Implementation, European companies display better levels of performance than their North American peers with a score of 46.5/100 (versus 41.9/100).

In terms of Leadership, the slight difference in score between the two regions may be explained by the fact that, thanks to the Revised Federal Sentencing Guidelines, introduced in 2004 in the United States, companies that can prove that they have efficiently implemented an anti-corruption programme may receive a reduction in the size of the sanction imposed as a result of the company having been found to have engaged in illegal activity. More specifically, the guidelines stipulate that the company must promote an organisational culture that rewards ethical behaviour.
In terms of Implementation, the Sarbanes-Oxley Act, passed in 2002 in the United States, requires public companies to protect whistle-blowers. Even though the prevention of accounting fraud is at the core of the Sarbanes-Oxley Act, numerous companies expanded the scope of whistle-blowing to also enable their employees to report acts of corruption or behaviour that digress from their business principles. Surprisingly, the proportion of extractive companies that provide evidence on the implementation of internal controls, including a confidential reporting system, is higher in Europe (65%) than in North America (60%).

With regard to awareness campaigns, 30% of European companies and 40% of North American companies did not provide evidence on the existence of such measures, which raises concerns, since this is key towards building a culture of integrity.

Examples of controversies in risk countries

The assessed companies faced corruption allegations in the following risk countries: Iraq, Nigeria, Libya, Iran and China. The companies involved were: Chevron, Total, Shell and Rio Tinto.

For a detailed description of the controversies, see page 10 and beyond.

Performance by sector

When taking a sector-based perspective, energy companies appear to perform slightly better than mining companies. But upon analysing controversies, Vigeo’s analysis reveals that energy companies are slightly more exposed to controversies (7 out of 20 have faced at least one allegation during the period under review) than mining companies (5 out of 20).

Controversies and the way in which they are handled do not fully explain the different scores. A focus on the leadership managerial angle shows that 25% of mining companies have not formalised any commitment for preventing corruption in a formal policy such as a Code of Conduct or an Ethics Charter, compared to only one oil and gas company out of 20 (i.e. 5%).

In terms of Implementation, 55% of energy companies had put in place internal controls to prevent corruption, including a confidential reporting system, compared to 30% of companies in the mining sector.

Interesting results are revealed when looking at best and worst performance. Four of the top five and four of worst five companies are mining companies. Among the worst performers, only one company has faced allegations of corruption. Even though the others have not faced controversies in recent years, they provide very limited assurances that corruption risks have been adequately integrated into their control systems. Among the best performers, only one company has been the subject of corruption allegations. In addition, they all display strong levels of commitment and robust control systems that apply beyond their workforce (suppliers, consultants, sales agents).
Exposure to risk countries and related risk management: Prevention of corruption

1. Alcoa
2. Anglo American
3. Antofagasta
4. Barrick Gold
5. BGC Group
6. BHP Billiton
7. BP
8. Cameco
9. Canadian Natural Resources
10. Chevron
11. Cia Espanola De Petroleos
12. ConocoPhillips
13. Consol Energy
14. ENI
15. Eurasian Natural Resources
16. Exxon Mobil
17. Freeport-McMoRan
18. Galp Energia
19. Goldcorp
20. Hess
21. Husky Energy
22. Imperial Oil
23. Kazakhmys
24. Lonmin
25. Marathon Oil
26. Newmont Mining
27. Occidental Petroleum
28. Omv
29. Peabody Energy
30. Petropavlovsk
31. Repsol
32. Rio Tinto
33. Royal Dutch Shell
34. Statoil
35. Suncor Energy
36. Teck Cominco
37. Total
38. Vedanta Resources
39. Xstrata
40. Yamana Gold

Vigeo rating
May 2011
The horizontal axis of the graph represents the number of risk countries where the companies have operations (ranging from 0 to 17 countries). The vertical axis represents the company’s managerial performance in terms of prevention of corruption (on a scale of 0 to 100).

Companies with little or no presence in countries considered as risk countries by Vigeo display highly varied levels of performance (from 20/100 to 85/100). Half of the companies located in the green zone display above-average performance in terms of preventing corruption. These extreme digressions from the average tend to show that companies with no or limited presence in high-risk countries do not allocate the same resources for preventing corruption.

Yet, looking at the red zone, which contains companies with presence in between four and ten risk countries, 12 out of the 13 companies in this zone display above-average levels of performance, which may show that beyond a certain threshold in terms of geographical presence, companies tend to have more efficient anti-corruption programmes. **Eurasian Natural Resources** (UK) and **Chevron** (US) constitute two exceptions (black zones), as the former has operations in four risk countries and displays very weak performance (27/100). Similarly, **Chevron** has operations in ten risk countries and also displays weak performance (37/100).

**Exxon Mobil** is the company with the highest presence in risk countries (17 countries) and the company provides reasonable assurances that its anti-corruption programmes are efficient (62/100). Regarding **ENI** and **Total**, they are present in 13 and 16 risk countries respectively, but their levels of performance are much lower and below the sector average at 51/100 and 48/100. Even though these two companies achieve better results than **Exxon Mobil** in terms of **Leadership** and **Implementation**, they have both been frequently placed under investigation for corruption-related matters in recent years, with **ENI** reaching an agreement with the United States to pay USD 240 million in fines, resulting in their overall lower scores.

By dividing the graph into four quadrants, **Chevron** and **Total** are the only two companies in the category “high country exposure and low managerial performance”. Six companies can be found in the “high country exposure and high performance” quadrant, i.e. **Exxon Mobil**, **ENI**, **BP**, **Royal Dutch Shell**, **Statoil** and **ConocoPhillips**. These companies tend to show high levels of transparency on their reaction to corruption allegations and condemnations, as well as a demonstrated willingness to eradicate corruption from their operations. Yet, apart from **BP** (71/100), their overall absolute levels of performance show that there is still much room for improvement.
Companies with strong anti-corruption performance

<table>
<thead>
<tr>
<th>Company</th>
<th>Sector</th>
<th>Presence in risk Countries</th>
<th>Zone</th>
<th>Result scores</th>
<th>Global score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Anglo American</td>
<td>Mining</td>
<td>1</td>
<td>EUR</td>
<td>100</td>
<td>85</td>
</tr>
<tr>
<td>Lonmin</td>
<td>Mining</td>
<td>0</td>
<td>EUR</td>
<td>84</td>
<td>82</td>
</tr>
<tr>
<td>BHP Billiton PLC</td>
<td>Mining</td>
<td>4</td>
<td>EUR</td>
<td>48</td>
<td>72</td>
</tr>
<tr>
<td>Xstrata PLC</td>
<td>Mining</td>
<td>4</td>
<td>EUR</td>
<td>92</td>
<td>72</td>
</tr>
<tr>
<td>BP</td>
<td>Energy</td>
<td>10</td>
<td>EUR</td>
<td>77</td>
<td>71</td>
</tr>
</tbody>
</table>

Companies with weak anti-corruption performance

<table>
<thead>
<tr>
<th>Company</th>
<th>Sector</th>
<th>Presence in risk Countries</th>
<th>Zone</th>
<th>Result scores</th>
<th>Global score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Petropavlovsk PLC</td>
<td>Mining</td>
<td>2</td>
<td>EUR</td>
<td>61</td>
<td>20</td>
</tr>
<tr>
<td>Kazakhmys</td>
<td>Mining</td>
<td>3</td>
<td>EUR</td>
<td>69</td>
<td>23</td>
</tr>
<tr>
<td>Eurasian Natural Resources Corp. PLC</td>
<td>Mining</td>
<td>4</td>
<td>EUR</td>
<td>61</td>
<td>27</td>
</tr>
<tr>
<td>Cia Espanola De Petroleos</td>
<td>Energy</td>
<td>2</td>
<td>EUR</td>
<td>67</td>
<td>30</td>
</tr>
<tr>
<td>Vedanta Resources</td>
<td>Mining</td>
<td>1</td>
<td>EUR</td>
<td>15</td>
<td>33</td>
</tr>
</tbody>
</table>
Conclusion

The aim of this study was to assess the presence of extractive companies in weak governance zones (risk countries) and their related managerial performance in terms of anti-corruption, human rights and community involvement.

As a consequence of intense scrutiny and pressure from stakeholder organisations (local and international NGOs, human rights organisations, investors and sector initiatives such as the EITI, the Voluntary Principles on Business and Human Rights and the International Council on Mining and Metals), companies in the extractive industry increasingly tend to take these risk factors into account in their risk management and policies.

The levels of commitment of the North American and European extractive companies for preventing corruption, the respect of human rights and community rights are quite developed in terms of relevance. However, many of the companies analysed are implicated in major controversies or allegations, especially on human rights and community rights.

In general, companies with a high presence in weak governance zones seem to be better prepared (through efficient risk management strategies, due diligence processes, social impact assessments, stakeholder involvement and corrective measures) for dealing with certain specific risk factors in the extractive industry. However, the frequency and seriousness of the allegations and controversies that these companies are still facing demonstrate that the efficiency and relevance of some of their policies and implementation measures can still be called into question.

Initiatives such as the UN Global Compact’s new guidance on responsible investment in conflict-affected and high-risk areas and the OECD risk awareness tool for multinational enterprises in weak governance zones can provide the necessary guidance to companies on the different risks they face when they operate in these countries.

Sector-driven and voluntary initiatives such as the EITI (Extractive Industry Transparency Initiative), the Voluntary Principles on Security and Human Rights, the Sustainable Development Framework of the ICMM (International Council on Mining and Metals) or the Mining and Minerals Sustainable Development (MMSD) initiative can also support corporate commitments and practices but are not the main determinants in the prevention of corruption and human rights and community violations. Nor is the presence in weak governance zones a sufficient and single explanatory factor to explain a company’s behaviour in terms of human rights, anti-corruption or community involvement.

The way in which extractive companies manage these different risk factors depends on a complex interaction between host- and home-country legislation, voluntary sector initiatives, presence in weak governance zones, the managerial sphere and the specific company principles and values on which they are founded.
Appendixes

Annex 1
Sample of companies under review

<table>
<thead>
<tr>
<th>Energy Europe</th>
<th>Energy North-America</th>
<th>Mining Europe</th>
<th>Mining North-America</th>
</tr>
</thead>
<tbody>
<tr>
<td>Royal Dutch Shell</td>
<td>Exxon Mobil Corp.</td>
<td>Rio Tinto</td>
<td>Alcoa Inc.</td>
</tr>
<tr>
<td>BP</td>
<td>Chevron Corp.</td>
<td>BHP Billiton PLC</td>
<td>Freeport-McMoRan Copper &amp; Gold Inc.</td>
</tr>
<tr>
<td>Total</td>
<td>ConocoPhillips</td>
<td>XSTRATA PLC</td>
<td>Teck Cominco Ltd. Cl B</td>
</tr>
<tr>
<td>ENI</td>
<td>Marathon Oil Corp.</td>
<td>Anglo American</td>
<td>Barrick Gold Corp.</td>
</tr>
<tr>
<td>Statoil ASA</td>
<td>Hess Corp.</td>
<td>Eurasian Natural Resources Corp. PLC</td>
<td>Newmont Mining Corp.</td>
</tr>
<tr>
<td>Repsol YPF</td>
<td>Suncor Energy Inc.</td>
<td>VEDANTA RESOURCES</td>
<td>Peabody Energy Corp.</td>
</tr>
<tr>
<td>Cia Espanola De Petroleos</td>
<td>Imperial Oil Ltd.</td>
<td>KAZAKHMYS</td>
<td>Consol Energy Inc.</td>
</tr>
<tr>
<td>Omv AG</td>
<td>Canadian Natural Resources</td>
<td>Antofagasta HDG.</td>
<td>Cameco Corp.</td>
</tr>
<tr>
<td>Galp Energia SGPS S/A</td>
<td>Occidental Petroleum</td>
<td>Lonmin</td>
<td>Goldcorp Inc.</td>
</tr>
<tr>
<td>BG Group</td>
<td>Huskey Energy</td>
<td>Petropavlovsk PLC</td>
<td>Yamana Gold Inc.</td>
</tr>
</tbody>
</table>
### Annex 2 - List of ‘Risk Countries’

<table>
<thead>
<tr>
<th>Countries with a high exposure to weak institutions, human rights violations, corruption and low development</th>
<th>Countries with high dependence on natural resources and/or high reserves of natural resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Algeria</td>
<td>x</td>
</tr>
<tr>
<td>Angola</td>
<td>x</td>
</tr>
<tr>
<td>Argentina</td>
<td>x</td>
</tr>
<tr>
<td>Azerbaijan</td>
<td>x</td>
</tr>
<tr>
<td>Bolivia</td>
<td>x</td>
</tr>
<tr>
<td>Cameroon</td>
<td>x</td>
</tr>
<tr>
<td>Chad</td>
<td>x</td>
</tr>
<tr>
<td>China*</td>
<td>x</td>
</tr>
<tr>
<td>Congo Brazzaville</td>
<td>x</td>
</tr>
<tr>
<td>Colombia*</td>
<td>x</td>
</tr>
<tr>
<td>DR Congo*</td>
<td>x</td>
</tr>
<tr>
<td>Ecuador</td>
<td>x</td>
</tr>
<tr>
<td>Egypt</td>
<td>x</td>
</tr>
<tr>
<td>Equatorial Guinea</td>
<td>x</td>
</tr>
<tr>
<td>Gabon</td>
<td>x</td>
</tr>
<tr>
<td>Ghana*</td>
<td>x</td>
</tr>
<tr>
<td>Guinea-Bissau</td>
<td>x</td>
</tr>
<tr>
<td>India*</td>
<td>x</td>
</tr>
<tr>
<td>Indonesia*</td>
<td>x</td>
</tr>
<tr>
<td>Iran*</td>
<td>x</td>
</tr>
<tr>
<td>Iraq*</td>
<td>x</td>
</tr>
<tr>
<td>Kazakhstan</td>
<td>x</td>
</tr>
<tr>
<td>Kyrgyzstan</td>
<td>x</td>
</tr>
<tr>
<td>Libya*</td>
<td>x</td>
</tr>
<tr>
<td>Mozambique</td>
<td>x</td>
</tr>
<tr>
<td>Nigeria*</td>
<td>x</td>
</tr>
<tr>
<td>Papua New Guinea*</td>
<td>x</td>
</tr>
<tr>
<td>Philippines*</td>
<td>x</td>
</tr>
<tr>
<td>Russia</td>
<td>x</td>
</tr>
<tr>
<td>Saudi Arabia</td>
<td>x</td>
</tr>
<tr>
<td>Syria</td>
<td>x</td>
</tr>
<tr>
<td>Tajikistan</td>
<td>x</td>
</tr>
<tr>
<td>Venezuela</td>
<td>x</td>
</tr>
<tr>
<td>Vietnam</td>
<td>x</td>
</tr>
<tr>
<td>Yemen</td>
<td>x</td>
</tr>
</tbody>
</table>

* Countries were the companies of this panel faced major controversies and allegations
Countries with a high exposure to weak institutions, human rights violations, corruption, low development and low political freedom:

1: Freedom House List: All countries categorized as 'Not Free' and 'Partly Free' countries (2010 ranking)⁸
2: Revenue Watch Index 2010: Countries with only Partial Revenue transparency or Scant Revenue Transparency (2010 ranking)⁹
3: Transparency International - corruption perception index: 100 most corrupt countries (2009 ranking)¹⁰
4: United Nations Human Development Index: Medium & Low Human Development countries (2010 ranking)¹¹
5: Vigeo’s Sustainable Country Rating: 50 least democratic countries (functioning of democratic institutions)
6: Foreign Policy failed states index: All 'Critical', 'in Danger' & 'Bordeline' countries (2010 ranking)¹²

Countries with high dependence on natural resources and/or high reserves of natural resources:

7: EITI (Extractive Industries Transparency Initiative) countries¹³
8: Natural Resource Rich Countries. According to the Revenue Watch Institute¹⁴
9: World proved oil reserves by country and region, 2008 (Billion barrels and percentage) (World Trade Report 2010)
10: Leading exporters of mining products excluding intra-EU trade, 2008 (World Trade Report 2010)
11: Country Mine: Minerals producing and exporting countries¹⁵
12: Countries with a high share of natural resources in total exports (World Trade Report 2010)

⁸ http://www.freedomhouse.org/template.cfm?page=546&year=2010
¹² http://www.foreignpolicy.com/articles/2010/06/21/2010_failed_states_index_interactive_map_and_rankings
¹³ http://eiti.org/implementingcountries
¹⁵ http://www.infomine.com/countries/
Annex 3 - Vigeo methodology

Vigeo's assessment of CSR performances

Vigeo defines corporate social responsibility as a managerial commitment to consider the rights, interests and expectations of its stakeholders. A company should take these rights, interests and expectations fully into account, with a view on continuous improvement of performance and risk management. We posit that the principles and objectives that define corporate social responsibility constitute strategic drivers for a corporation’s sustainability, thus affecting the company’s reputation, human capital, operational efficiency and legal security. We consider that the more tightly a corporation integrates corporate social responsibility principles in its managerial behaviour, the better a corporation is able to control its risks and to turn them into catalysts towards a sustainable business performance.

Internationally recognized standards are the foundations of Vigeo's reference model

Vigeo's reference model is composed of a precise reference model of sustainability drivers based on internationally recognised standards (conventions, treaties, and/or guidelines from International Institutions) in relation to their sector.

Managerial dimension analysis

We analyse management systems through a 3-step process:
- Relevance of the Policies
- Coherence of Implementation
- Effectiveness of Results

The relevance of a company’s policies is measured by the visibility of the objectives, the completeness of their content, and the managerial support for these objectives. The coherence of implementation is measured by the tangibility and adequacy of the means allocated within the global perimeter of operations. The effectiveness of the results is measured by consulting and analysing key performance indicators.

How to read Vigeo's evaluation of CSR performance?

The score for each sustainability driver (0 to 100), such as the prevention of corruption, the respect for human rights or community involvement, is established by consolidating the individual scores assigned to the relevance of policies, the coherence of implementation and the results. This approach allows us to appreciate an individual company's performance as well as compare this performance to the performance of other companies in order to create benchmarks by country, by sector or by views - Policies, Implementation, and Results. On each of these variables, the evaluation reveals innovative practices, controversies and more generally, the terms and the level of interest displayed by the company under review towards the CSR objectives for which companies should be accountable.
Vigeo rating: the leading European expert in responsible performance

Vigeo rating measures the performances and risks of companies in 6 fields of social responsibility: environment, human rights, human resources, community involvement, business behaviour and corporate governance.

Building on more than 15 years of experience, Vigeo rating offers a wide range of services for investors and assets managers aspiring to a sustainable and responsible investment performance.

Our research services are used by 150 clients and partners worldwide, including institutional investors, asset managers, UN PRI signatories, financial institutions, international organisations, NGOs and academic partners.

Our products and services facilitate:
- the integration of environmental, social and governance (“ESG”) risk and performance factors in investment processes,
- the creation and management of Socially Responsible Investment (“SRI”) funds: ethical, best-in-class or thematic funds,
- the exercise of shareholders’ rights and engagement with companies on ESG issues.

This study was written by:

**Jordi Lesaffer**  
Research Manager  
jordi.lesaffer@vigeo.com

**Frederic Ghys**  
Analyst  
frederic.ghys@vigeo.com

**Vy Nguyen**  
Analyst  
vy.nguyen@vigeo.com

**Jean-Philippe Rouchon**  
Analyst  
jean-philippe.rouchon@vigeo.com

Under the supervision of:

**Fouad Benseddik**  
Director of Methodology and Institutional Relationships  
fouad.benseddik@vigeo.com  
T +33 (0)1 55 82 32 73