

From Compliance to Practice

Mining Companies and the Voluntary Principles on Security and Human Rights in the Democratic Republic of Congo

by

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Paper presented at the Annual Convention of the American Political Science Association, Washington, DC, September 1-5, 2010

Abstract

Transnational institutions, such as the Global Compact and the Voluntary Principles on Security and Human Rights (VPS), commit multinational companies to human rights and social standards on a voluntary basis. The governance literature has identified a credible 'shadow of hierarchy' cast by a central authority as a major precondition for companies to comply with their voluntary commitments. Transnational institutions not only lack enforcement capacities. The local production sites of MNCs are often hosted by states, which only loosely adhere to global rights themselves and are neither willing nor capable of making non-state actors comply with them. Home states have been reluctant to foster binding regulation for the human rights behaviour of 'their' companies abroad.

Our paper investigates the security practices of MNCs and their (non)compliance with voluntary standards. We analyse whether MNCs still honour their commitment to transnational voluntary programs in areas of limited statehood, such as the VPs in the Democratic Republic of Congo (DRC). Combining insights from the literature on compliance, (private) governance, postcolonial states and security/policing studies, we develop a conceptual framework which complements 'top-down approaches' dominating the literature on voluntary programs, business and governance with a 'bottom-up perspective' that puts the entire range of companies' local security practices centre stage. This allows to evaluate corporate security practices beyond the implementation of formal programs (output) focusing on rule-consistent behaviour (outcome) by not only looking for behavioural changes that can be attributed to voluntary programs but also for governance practices that may undermine or even conflict with the requirements of the VPS. An explorative case study on two multinational mining companies in the DRC demonstrates that our integrated, more comprehensive approach paints a more nuanced picture when it comes to corporate compliance with transnational voluntary programs and the evaluation of corporate security practices more generally than much of the literature on business and governance in areas of limited statehood.

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1. Introduction¹

Transnational institutions, such as the Voluntary Principles on Security and Human Rights (VPS), commit multinational companies (MNC) to human rights and social standards on a voluntary basis. The governance literature has identified a credible 'shadow of hierarchy' cast by central authority as a major precondition for companies to comply with their voluntary commitments. Transnational institutions not only lack enforcement capacities. The local production sites of MNCs are often hosted by states which only loosely adhere to global rights themselves and are neither willing nor capable of making non-state actors comply with them. Home states have been reluctant to foster binding regulation for the human rights behaviour of 'their' companies abroad.

Our paper investigates the security practices of MNCs and their (non)compliance with voluntary standards. We analyse whether MNCs still honour their commitment to transnational voluntary programs in areas of limited statehood, such as the Voluntary Principles of Security and Human Rights (VPs) in the Democratic Republic of Congo (DRC). Combining insights from the literature on compliance, (private) governance, postcolonial states and security/policing studies, the first part of the paper develops a conceptual framework which complements 'top-down approaches' dominating the literature on voluntary programs and business and governance, focusing on policy analysis and compliance, with a 'bottom-up perspective' that puts the broader range of companies' local security practices and different perceptions and conflicts around these at the local level centre stage. This allows to evaluate corporate security practices beyond the implementation of formal programs (output) focusing on rule-consistent behaviour (outcome) by not only looking for behavioural changes that can be attributed to voluntary programs but also for governance practices that may undermine or even conflict with the requirements of the VPS. The second part of the paper presents an explorative case study on two multinational mining companies in the DRC. We demonstrate that our integrated, more comprehensive approach paints a more nuanced picture when it comes to corporate compliance with transnational voluntary programs and the evaluation of corporate security practices than much of the literature on business and governance in areas of limited statehood. A bottom-up approach, which takes corporate practices as a starting point reveals the limits and inherent contradictions of transnational voluntary programs and allows to identify sources of corporate *non*-compliance largely overlooked in the literature. The paper concludes with a discussion on avenues for future research on business and governance in areas of limited statehood.

¹ The paper presents findings of Jana Hönke's dissertation "Liberal Discourse and Hybrid Practise in Transnational Security Governance: Companies in Congo and South Africa in the 19th and 21st Centuries" (Hönke 2010) as well as of the project 'Business and Governance in Sub-Saharan Africa', which is part of the Collaborative Research Center 700 "Governance in Areas of Limited Statehood, funded by the German Research Foundation (SFB 700) cf. <http://www.sfb-governance.de/>. We thank Miriam Weihe for her excellent research assistance.

2. Transnational Voluntary Programs, Areas of Limited Statehood and Corporate Compliance

Economic internationalization has fuelled fears of a regulatory race to the bottom, in which global competition induces companies to invest in countries that lack the capacity and the willingness to set and enforce regulations, taxes and other issues affecting the costs of production (Bhagwati/Hudec 1996; Murphy 2000; Lofdahl 2002). Increasingly globalised business place where companies operate across national boundaries and legal jurisdictions, many developing countries lack the capacity to regulate the behaviour of transnational firms operating in their territory or may feel hesitant to do so for fear of putting their investment at risk.

At the same time, we have seen the emergence of transnational institutions that seek to voluntarily commit multinational companies (MNCs) to human rights and social standards. More and more MNCs have signed up to voluntary programs, such as the Global Compact or the Voluntary Principles on Security and Human Rights (Flohr et al. 2010; Prakash/Potoski 2006). And even some of those that have not signed up yet still make reference to the respect for human and social rights. While corporate commitment appears to be less and less the issue when it comes to large and mostly Western MNCs, transnational institutions have been criticized for being corporate cheap talk to evade further regulation (Schäferhoff et al. 2009; Brühl 2007). The lack of effective monitoring and sanctioning powers is seen as a major reason for their weakness (Risse et al. forthcoming). Like states, companies have a strong incentive to renege on their commitment if defection is unlikely to be detected and punished, particularly if they anticipate that others will not comply either (Axelrod/Keohane 1986). Such collective action problems at the international level are reinforced by the weak regulatory and enforcement capacities of many states that host production sites of MNCs. The threat to unilaterally adopt and enforce collectively binding decisions provides an important incentive for actors that are opportunistic and seek to defy the costs of cooperation and compliance (Mayntz/Scharpf 1995; Héritier/Lehmkuhl 2008). Like transnational institutions, areas of limited statehood lack by definition the capacity to cast a credible shadow of hierarchy because governments are not capable, and often not willing, to set rights and monitor and sanction violations. Home states have so far been reluctant to impose legally binding regulation on their companies' social and human rights behaviour in other countries (Muchlinski 2007; Zerk 2006).² This results in a

² The Canadian government, for instance, has opposed binding regulations and after a long process of consultation and debate opted against the recommendations of a multi-stakeholder expert group, for a CSR body that has little resources and autonomy (Drohan 2010). The US, by contrast, passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in July 2010. Section 1502 requires companies whose products contain "conflict minerals", such as tin ore, coltan, wolframite and gold to disclose to the Securities and Exchange Commission (SEC) whether they are sourcing these minerals from the DRC or adjoining countries. If such conflict minerals originated in any such country, the manufacturing company must submit to the SEC a report that describes the measures taken to avoid sourcing these minerals from armed groups in the DRC. The provisions specify that all information disclosed must be independently audited (http://docs.house.gov/rules/finserve/111_hr4173_finsrvcr.pdf, last access August 5, 2010). Global Witness celebrates the act as a step towards binding regulation on HR and 'a huge victory for corporate accountability in the oil, gas and mining industries'

serious dilemma for transnational voluntary programs in areas of limited statehood: On the one hand, the lower the capacity of the state to set and enforce rights and standards, the greater becomes the need for transnational voluntary programs to commit MNCs to the respect of human and social rights. On the other hand, limited statehood implies a weak shadow of hierarchy as a result of which corporate compliance becomes less likely, particularly if home states and transnational institutions cannot or do not want to compensate for weak or wanting enforcement capacities at the domestic level (Börzel 2010).

The governance literature discusses the existence of functional equivalents to the shadow of hierarchy that provide sufficient incentives for companies other than the threat of unilateral imposition of regulation to engage in the provision of collective goods and ensure that they remain committed to the common good and are held accountable when they seek to renege maximizing their individual profit instead (Deitelhoff/Wolf 2010; Börzel/Risse 2010). To what extent competitive advantages on high-end consumer markets, naming-and-shaming campaigns of NGOs, or the mobilization of local communities can make up for the lack of central enforcement power at the international and national level is still an open question. We need systematic comparative case studies that clearly define governance contributions of companies as well as consider negative effects of company security practices. Instead of selecting only cases of successful corporate engagement, this implies focusing on the broader range of governance practices, which might undermine or even conflict with the requirements of transnational programs.³

As an important first step towards re-evaluating corporate security practices and explaining corporate (non-)compliance with transnational voluntary programs, our paper develops an analytical framework that allows for an unbiased mapping of the dependent variable by studying governance practices of companies beyond the formal implementation of transnational voluntary programs. It shall enable us to explore to what extent MNCs operating in areas of limited statehood do not only commit to but also comply with transnational voluntary programs, such as the VPS. Drawing on the bottom-up approach developed in Jana Hönke's work (Hönke 2010) we go beyond compliance to understand the broader range of parallel and often competing security practices companies apply around their production sites.

3. Studying Corporate Security Practices Top-down and Bottom-up

A top-down approach to corporate security practices focuses on the compliance of companies with voluntary programs. Compliance is usually defined as rule-consistent behaviour (cf. Raustiala/Slaughter 2002). Consequently, MNCs are not only required to implement

(http://www.globalwitness.org/media_library_detail.php/1028/en/u.s._passes_landmark_reforms_on_resource_transpare, last access August 5, 2010).

³ http://www.sfb-governance.de/teilprojekte/projektbereich_d/d2/index.html, last access August 10, 2010

transnational voluntary programs by (1) incorporating transnational principles and standards into their corporate regulations amending and repealing conflicting rules, (2) integrating them into their management systems by setting-up the administrative infrastructure and resources necessary to put them into practice, to monitor rule-consistent behaviour, and to sanction violations. While these *output*-related activities are important, MNCs have to make the necessary changes in their governance practices to make their behaviour consistent with the requirements of transnational principles and standards, and refrain from action violating them (cf. Börzel 2002). Many studies neglect this *outcome* dimension, which provides an important, albeit not the only link between the implementation of transnational programs and the solution of the problem addressed by them. While their *effectiveness* does not exclusively depend on the rule-consistent behaviour of companies (after all, the principles and standards could be ill-defined to address rights violations in the first place or companies are not really part of the problem), corporate compliance should help improve the rights situation.

Still, tracing both the output and outcome of MNCs with regard to voluntary programs only provides a partial and even distorted picture of corporate security practices and their affects on human rights and security in host communities. Other governance practices may not be directly related to voluntary programs but may undermine or even conflict with their requirements and negatively affect the security and human rights of local communities. Such corporate practices tend to be overlooked by a top-down perspective. Therefore, we not only assess to what extent the behaviour of MNCs complies with the VPs but examine a broader range of companies' security practices and potential contradictions and conflict between them.

A bottom-up perspective allows to direct attention to this entirety of local security practices by companies Hönke 2010. Drawing on practice approaches in security studies (Leander 2010) and research on plural policing in criminology and area studies (Johnston/Shearing 2003), corporate security practices can be understood as the routinized and institutionalized sayings and doings of company agents seeking to secure operations on a daily basis. Security practices refer to what company agents or members of local communities refer to as security issues (Hönke 2010: 52-53). Key questions are:

- (1) What do local company agents understand as a security issues? There are usually differences between the official understanding, formalized in policies and programs, and the everyday understanding of local management and security staff) and how that relates to perceptions of people living next to a company site;
- (2) How are the security problems identified by a company being addressed on a day-to-day basis? As firms usually combine different reactive and preventive strategies, security practices may range from fencing off parts of a concession area and putting it under surveillance to co-opting local chiefs to social investment in local communities;

(3) How can we understand this hybrid mix of corporate security practices and the myriad of problems and contradictions attached to operations of MNCs in the extractive sector?

Our analytical framework combines a top-down and bottom-up perspective in studying corporate security practices and corporate compliance with transnational voluntary programs.

For each perspective we identify three analytical steps:

Top-down: Making transnational voluntary programs work on the ground

Step 1 – *Transnational demand*: Identify the requirements defined by the voluntary principles and standards, with regard to both procedures and substance. What do they expect companies to do and not to do?

Step 2 – *Company output*: Trace the incorporation of these requirements into corporate rules and management systems and the service agreements with contractors. Does the company make explicit reference to the voluntary program, do the voluntary principles and standards form part of its corporate identity, and have there been any changes after the establishment of/official commitment to the transnational voluntary program? Have new responsibilities, procedures and resources (human, financial, technical) been introduced (e.g. in the internal auditing system) to put the principles and standards into practice, to monitor compliance, and to sanction violations, also ‘down the supply chain’?

Step 3 – *Company outcome*: Assess the changes in company practices necessitated by the voluntary principles and standards and the company’s output. Has the company taken the necessary action to make the behaviour of its employees and contractors consistent with the transnational requirements and the stipulation of corporate institutions and policies? Are new policies put into practice, is the money spent, is new personnel employed and old trained, is rule-consistent behaviour rewarded and non-compliance punished?

Bottom-up: Understanding local security practices in transnationalized context

Step 1 – *Perceptions of security issues*: Analyze what is being understood as security problems by local company agents and by other people living in the vicinity of mining operations. And what is not, vice versa.

Step 2 – *Routine security practices*: Map how companies and other agents they work with, such as Private Security Companies (PSCs) or local chiefs, address these security issues in their day-to-day practices. What do they actually do? By which means do companies attempt to provide security? What is the scope of security measures? In other words, how inclusive do companies aim to provide for security (for whom/where)? Who is targeted, excluded or otherwise affected by these measures?

Step 3 – *The VPs in local context*: Understand the hybrid mix of corporate security practices and the myriad of problems and contradictions attached to operations of MNEs in the extractive sector. What role do the VPs play and what do they omit from the companies and security/human rights agenda? How can non-compliant practices be understood?

4. Mining Companies' security practices and the Voluntary Principles on Security and Human Rights in the DRC

In order to demonstrate the added value of our integrated framework, we conduct two exploratory case studies on corporate security practices and compliance with the Voluntary Principles on Security and Human Rights (VPs) by two mining companies in the DRC.

Since the 1990s, extractive industry has expanded and increasingly operates in areas of weak governance and conflict zones where the allocation of resources and property rights are highly contested and governments and public security forces, with which companies cooperate, are part of security and human rights problems. Mining operations increase the presence of state and private security forces in an area. Protecting the companies' property or extracting private benefit for themselves from the mine and from the local population often entails violent encounters. Artisanal mining poses a particular challenge to MNC since there is an inherent potential for conflict between large-scale operators and small scale miners often working on the land licensed to the company but claiming to have an historical entitlement. The arrival of MNC causes in turn problems for small-scale miners and local communities as they threaten their main and often only source of income while not offering new jobs in the formal industry. Next to access to mineral resources, land, resettlement, and the redistribution of economic benefits is often contested. Potential conflict is exacerbated by the lack of (enforced) regulation or ambiguous legislation that does not take into account the concerns of artisanal operators and the local population, extending conflict to company security forces (Hönke 2009).⁴ Communities and artisanal miners often voice grievances and demands for redistribution of welfare to the company directly. Calling on security forces exacerbates violence. In recent years this has become a challenge to the reputation of a company in its home country and beyond (Hönke 2010: 167-175). A series of such industry-community conflicts and accidents that occurred in the last decade has seriously damaged the reputation of the extractive industry, in particular as these critics increasingly gained attention in international politics (Szablowski 2007a: 75f).

The VPs are the only transnational human rights guidelines directed specifically to oil, gas and mining companies, which face particular problems in balancing security concerns with the respect for human rights and fundamental freedoms, and which have faced particularly strong

⁴ The 2002 DRC Mining Code, for instance, prohibits small-scale mining on concessions which have been licensed to larger mining companies even though it is the only viable source of income for many.

criticism for (complicity with) HR abuses. The non-binding VPs were established in 2000 as a response to several incidents of human rights violations by security forces seeking to protect oil and mining installations of MNC with headquarters in the UK and the US. The initiative had come from the UK and US governments in order to ensure the operation of their key oil companies in Indonesia, Columbia and Nigeria at the time and were thus jointly developed with seven major Anglo-American extraction companies and human rights NGOs (Freeman 2002; Hansen 2009).

While the VPs had been created before the Extractive Industry Transparency Initiative (EITI) and the Kimberley Process Certification Scheme, the VPs have gained less recognition. They may be to date the most comprehensive and specific standard with regard to private business and human rights (Freeman/Hernandez Uriz 2003). But they are not very specific, hardly monitored or enforced, and face many problems with implementation, and it remains to be seen if that will change significantly in the future (Freeman 2005; Ruggie 2010). The VP governance institutions lack any centralized monitoring and sanctioning powers, a fact that reflects the dominant interest coalition of business and government. For this reason, Global Witness, the leading INGO in the area of resource extraction, security, and human rights, did not take part in the VP process, and Safer World left the Initiative in 2007 (Global Witness 2007; Freeman 2005).

Another problem is the limited membership. The VPs had initially been confined to the US and UK governments and seven US and UK companies. 10 additional extractive companies have become members.⁵ Those include some major MNC, but corporate membership remains confined to Northern Europe and North America. And while only seven out of the top 25 international metal mining companies joined the initiative (UNCTAD 2007), less visible small and medium-sized companies, in particular in exploration and trade, are not represented at all. This is also true for the governments involved. Five other governments have joined the initiative, the Netherlands in 2001, Norway in 2003 and only this year Switzerland, Canada and Colombia, the latter being the only host country of MNC that has joined the VPS so far. Neither do important European countries, such as France or Germany, participate nor any of the new major home countries of investors in oil and mining in Africa and elsewhere, such as Brazil, India, Russia, South Africa and China.

Top-Down

The VPs nevertheless shall provide an operational approach for companies on identifying human rights and security risk, as well as engaging and collaborating with state and private

⁵ Current members are AngloGold Ashanti, Anglo American, the BG Group, BHP Billiton, BP, Chevron, Conoco Phillips, Exxon Mobil, Freeport McMoRan Copper and Gold, Hess Corporation, Marathon Oil, Newmont Mining Corporation, Occidental Petroleum Corporation, Rio Tinto, Shell, Statoil, and Talisman Energy (<http://www.voluntaryprinciples.org/participants>, last access Jul 29, 2010).

security forces.⁶ While the VPs themselves are rather broadly defined, guidelines provide some indication of what companies are expected to do in the implementation.⁷ They are divided into three sections covering the internal management system of the company and its external relations with public and private security forces.

Step 1 – Transnational demand

While formulated rather broadly, the VPs contain some more or less specific requirements. First, companies shall integrate the VPs into their management systems, contracts and agreements, preferably prior to starting an operation. This includes most importantly putting a specific human rights policy in place and conducting regular risk and impact assessments based on extensive background information on various criteria (e.g. causes and potentials for local conflict, human rights records of security forces and law enforcement officers, and the rule of law performance of domestic institutions) drawn from and shared with a wide variety of actors, including local and national governments, security firms, other companies, home governments, multilateral institutions, and civil society.⁸ Compliance, hence, requires companies to adopt a human rights policy and adapt their risk assessments to the criteria stipulated by the VPs and develop performance indicators and guidelines for risk and impact assessments (output), and conduct them accordingly (outcome). They may also embed the VPs in their annual performance reviews, develop implementation manuals and training materials (output), and organize implementation workshops and training programs for their employees (and their security contractors, see below) (outcome). Finally, companies shall set-up communication channels (output) and use them (outcome) to share risk assessment information and report human rights violations inside and outside the company.

Second, companies shall help ensure that actions of governments and public security providers are consistent with the protection and promotion of human rights.⁹ This involves making corporate security policies transparent to the public security providers and the public, particularly with regard to the “ethical principles” they are based upon. Next to engaging public security forces into a regular dialogue on the importance of human rights, companies shall engage in capacity-building by supporting human rights training and education for public security forces and help strengthening of state institutions to ensure accountability and respect for human rights. Except for the provision of equipment, no further reference is made on how exactly companies shall engage in human rights capacity- and institution-building. Finally, companies shall report any human rights violations and support state investigations. While

⁶ <http://www.voluntaryprinciples.org/principle>; last access July 29, 2010.

⁷ http://www.voluntaryprinciples.org/files/vp_company_efforts.pdf, last access July 31, 2010. An implementation guidance tool was published by World Bank MIGA in cooperation with Anvil Mining in 2008. Its update and increased use is on the agenda for the next five years (VP 2010 Plenary Meeting Report, 18-19 March 2010, London, http://voluntaryprinciples.org/files/VP_Plenary_2010_Report.pdf, last access August 4, 2010.

⁸ http://www.voluntaryprinciples.org/principles/risk_assessment, last access July 29, 2010.

⁹ http://www.voluntaryprinciples.org/principles/public_security, last access Jul 29, 2010.

being rather vague, compliance with the VPs on public security asks companies to clearly state their security policy and make it publicly available, to establish common communication channels and policies (responsibilities, personnel, time, money) with governments, public security forces, civil society, local communities, and other companies on human rights issues, particularly with regard to responses to human rights violations (whistle-blower protection), and for providing technical and financial assistance to training public security forces and state authorities on respecting human rights (output) and to actively engage in consultation and capacity-building accordingly (outcome).

Third, companies that enlist the assistance of private security companies (PSC) because the host country is not willing or capable to protect the company's production site shall make sure that PSC comply with international and national human rights standards.¹⁰ Using their contractual relationships, companies shall act as enforcement authorities committing PSC to human rights, monitoring their compliance and sanctioning violations, e.g. by blacklisting. To comply with the VP on private security, companies must only contract private security companies if governments are unable or unwilling to provide sufficient public security (outcome). Moreover, companies should have a policy to only contract PSC that have a clear human rights policy, a clean human rights record, and adequately trained personnel (output) and not do business with PSC that do not fulfil these requirements (outcome). Companies should do HR screening, make background checks and consult with other companies, home country officials, host country officials, and civil society regarding experiences with private security (outcome). Finally companies have to have a HR clause, procedures in place to monitor and sanction the human rights behaviour of their contractor, develop HR training programs (output) and use them accordingly (outcome).

Guidance for effective implementation remains, however, limited. An in-country implementation process involving representatives from participant companies, the host government, civil society and local communities shall support compliance with the VPs by helping to formally integrate them into host country policies and practices and by facilitating dialogue between private, public and civil sectors around human rights and security practices.¹¹ Yet, such in-country implementation processes are still the exception.¹² With the exception of Colombia, lack of engagement of home states and the initiative itself with host governments seems the major impediment for effective implementation (Freeman 2005:4).

Participants shall also prepare and submit to the steering committee one month prior to the Annual Plenary Meeting of VP a report on their efforts to implement or to assist in the implementation of VPs. The Reporting Working Group drafted reporting guidelines, which were

¹⁰ http://www.voluntaryprinciples.org/principles/private_security, last access July 29, 2010.

¹¹ http://www.voluntaryprinciples.org/files/vp_columbia_case_study.pdf, last access July 31, 2010.

¹² http://www.voluntaryprinciples.org/files/vp_company_efforts.pdf, last access July 31, 2010.

used as a basis for the 2010 reports for the first time.¹³ In 2007, formal participation criteria were adopted for the first time. In that same year, the requirement that companies or NGOs could participate in the Plenary only if their home governments were also participants was removed, which paved the way toward an expansion of the Voluntary Principles membership. With the amendment of the criteria in 2009, the ‘fractious issue of participation criteria for governments’¹⁴ was finally resolved and interim reporting criteria were agreed upon. Participants are now required to publicly report on the implementation of the VPs or their support for implementation. The participation criteria also detail provisions for the expulsion of participants that fail to comply with the VPs. This, however, requires a unanimous decision by all members. Participants may also raise concerns regarding whether other participants have met the VP criteria or show a sustained lack of efforts to implement the VP.¹⁵ The VP dispute resolution process was used for the first by Oxfam in 2009 time criticizing Newmont for its security and human rights practices. Newmont agreed to an independent review.¹⁶

While VP is seeking to its requirements more precise, VP reports, files and proceedings remain non-public. The VPs rather vague as to what they expect companies to do; and do not specify how companies should fulfil these expectations, which renders a compliance evaluation difficult.¹⁷ And the lack of an internal auditing system that provides for an independent verification of whether VPs are put into practice further undermines the effectiveness of the voluntary program.¹⁸

Due to the limited data available and accessible, there are hardly any studies on corporate compliance with the VPs. The few that exist are not fully independent from the company studied (Jim Freedman Consulting 2006; Kapelus 2006), limit themselves to an analysis of company policies (output) (Hofferberth 2010), are mostly focusing on the politics behind the VPs and the resulting lack of clarity and accountability of the principles themselves (Hansen 2009) or use sporadic positive or negative evidence from different companies and places (Global Witness 2007). Ultimately, however, compliance can only be assessed at the level of individual company operations, particularly when it comes to changes in company practices (outcome).

The next section will therefore present case studies on two mining sites of two major mining companies in the DRC, AngloGold Ashanti (AGA) and Anvil Mining. Both have been subject to international human rights campaigns as a result of which they show a comparatively strong

¹³ http://www.voluntaryprinciples.org/files/vp_company_efforts.pdf, last access July 31, 2010.

¹⁴ Freeman, Benett (2010). *The Voluntary Principles at 10: time to complete the work of construction, get on with the job of implementation*. Institute for Human Rights and Business (http://www.institutehrb.org/blogs/board/voluntary_principles_at_10.html), last access August 5, 2010).

¹⁵ http://www.voluntaryprinciples.org/files/vp_amendments_200905.pdf, last access July 31, 2010.

¹⁶ http://www.voluntaryprinciples.org/files/VP_Plenary_2010_Report.pdf, p. 2, last access July 31, 2010.

¹⁷ http://www.voluntaryprinciples.org/files/vp_company_efforts.pdf, last access July 31, 2010.

¹⁸ http://www.voluntaryprinciples.org/files/vp_company_efforts.pdf, last access July 31, 2010. See UNSG SR John Ruggie’s call for more engagement in his plenary address to the VP meeting 2010 (Ruggie 2010).

commitment to implementing the VPs. Unlike AGA, Anvil has not joined the VPS (but also AGA had worked with the VPs before formally having joined the VPs).¹⁹

AGA was founded in 2004 as a merger of Ghanaian Ashanti Goldfields Company Limited and South African AngloGold Limited. It is the third largest gold mining company in the world with 21 operations across four continents. Listed on 8 stock exchanges and employing 63,364 people in 2009 the company is headquartered in South Africa.²⁰ AGA invested in the para-statal gold company Office of Kilo-Moto (OKIMO) and gained shares in a 10,000km² concession situated in the remote north eastern Ituri area and concentrated around the city of Mongbwalu, close to the Ugandan border. In 1996, it began detailed explorations, the same year in which the cross-border conflict between warring militias and government forces started. AGA left its exploration site in Mongbwalu in 2002 when the war made mining impossible. One year later, AGA returned and entered talks with the Front of National Integration (FNI), an armed militia linked to Uganda, which controlled Mongbwalu at the time. The financial and other support AGA gave to the FNI in 2004 in return for allowing its exploration activities to resume in Mongbwalu, in the same year it joined the Global Compact,²¹ gave rise to significant pressure by the human rights community²² and fuelled the debate on the role of big business in conflict and weak governance zones (Kapelus et al. 2008). In 2005, AGA publicly renounced its financial support for FNI in the DRC as a regrettable mistake and breach of its principles and values but pledged to continue its exploration program.²³ In 2007, AGA became a member of the VPs. Interestingly, a report by Human Rights Watch of 2005 denouncing the activities of AGA in the DRC had claimed that the VPs would have helped the company to make the right decisions when and under which circumstances to start operations in Mongbwalu.²⁴

Anvil Mining, employing 4390 workers in 2008, is an Australian company listed on the Toronto stock exchange.²⁵ It only operates in the DRC (since 2002) where it was, however, the major copper-producing company until recently. Anvil's main operation is a large open-pit copper mine at Kinsevere in a rural area close to provincial capital Lubumbashi. Others are in Kolwezi, and

¹⁹ Interviews by Jana Hönke with manager of community relations (now manager of VPs), AGA, October 3, 2007, Johannesburg; VP manager, Anvil Mining, November 22, 2008, Lubumbashi; and with representatives of conflict prevention and human rights program of INGO Pact in Congo, October 6 and 17, 2008, Lubumbashi.

²⁰ AngloGold Ashanti Annual Financial Statements 2009 (<http://www.anglogold.com/subwebs/InformationForInvestors/Reports09/AnnualReport09/profile.htm>, last access August 5, 2010)

²¹ The first two of the ten principles of the Global Compact require business Businesses to support and respect the protection of internationally proclaimed human rights; and to make sure that they are not complicit in human rights abuses <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/humanRights.html>, last access July 31, 2010.

²² See the report of Human Rights Watch "The Curse of Gold – Democratic Republic of Congo", <http://www.hrw.org/en/node/11733/section/1>, last access July 31, 2010.

²³ http://www.anglogold.co.za/NR/rdonlyres/1BC8B7B3-6363-48B3-AE85-B315606CF248/0/2005Jun01_SAreleaseDRC.pdf, last access July 31, 2010.

²⁴ <http://www.hrw.org/en/node/11733/section/1>, last access July 31, 2010.

²⁵ Anvil Mining Annual Information Form 2008 (http://www.anvilmining.com/files/AIF_2008_clean_FINAL2.pdf). Due to the Financial Crisis the number of employees has been declining sharply as of mid-2008. Anvil is currently employing only 248 people (<http://www.anvilmining.com/files/Anvil-AIF-2009.pdf>, last access August 5, 2010).

until recently the remote Dikulushi mine near Kilwa.²⁶ In 2004, Anvil was involved in human rights abuses carried out by the Congolese army (FARDC) near its Dikulushi Mine. In its attempt to recapture the town of Kilwa, during which serious HR violations, such as summary executions of rebels, occurred, Congolese soldiers used Anvil's vehicles to transport looted goods and corpses. Moreover, the airplanes which Anvil had chartered to evacuate its employees were used for troop transports. Finally, Anvil admitted that it had provided food, tents and pay to Congolese soldiers during the operation. In the military prosecution of the committed war crimes, three of Anvil's employees were charged with aiding and abetting the FARDC in the commission of the crimes in 2006.²⁷ This Congolese military court did find Anvil and its employees not guilty in 2007. Yet, the case received considerable international attention and put Anvil under sustained pressure of human rights groups who did not accept the court ruling due to its lack of independence.²⁸ While the company has not become an official member of the VPS, it has committed itself to apply the principles in its operations. Moreover, Anvil requested an independent audit of its operations in the DRC with regard to the company's performance in meeting the social and ethical standards of the OECD Guidelines for Multinational Enterprises and the OECD Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones (Jim Freedman Consulting 2006).

Although the two MNC differ in size, their activities are of similar importance to the DRC. The governments of their home countries (South Africa and Australia) are not members of the VPs. Both, AGA and Anvil joined the VPs after having being subject of a transnational 'naming-and-shaming' campaign, which testifies to the growing importance of the VPs. Finally, they are mining companies, which, unlike oil firms, have not received much attention in the literature. At the same time, the two companies show some important differences, which should increase the generalizability of our findings. While gold miner AGA has been in the exploration phase in Mongbwalu and Kibali in DRC since 1996, Anvil gained its first contract as early as 1998 and has produced copper and cobalt from the DRC since 2002.²⁹ Moreover, Anvil operates in relatively stable Katanga province which had been controlled by the Kabila governments throughout the Congolese wars. Ituri Province, where AGA works, is still conflict ridden and government has little control. Analyzing the security practices and their compliance with the VPs of the two companies will provide us with a sufficiently broad empirical basis for probing the added value of our analytical framework.

²⁶ <http://www.anvilmining.com/go/corporate/corporate-structure>, last access August 5, 2010. Anvil sold its Dilukushi concession at the beginning of 2010
<http://www.anvilmining.com/files/20100225%20Divestment%20of%20Interest%20in%20AMC%20&%20KSII%20U%20update.pdf>, last access August 10, 2010.

²⁷ http://www.globalwitness.org/media_library_detail.php/560/en/kilwa_trial_a_denial_of_justice, last access August 2, 2010.

²⁸ NIZA/IPIS 2006; Interviews by Jana Hönke with Pact Congo and ACIDH, October 2008, Lubumbashi.

²⁹ Ministère des Mines 2007: Commission de Revisitation des contrats miniers: Rapport de Travaux 1 ; Kapelus et al. 2008.

In the following section, we will evaluate to what extent AGA and Anvil have honoured their commitments and complied with the VPs and will discuss the results in the light of an analysis of the broader range of corporate security practices. Our empirical analysis is based on documents provided on the websites of VPS, AGA and Anvil as well as human rights NGOs that have been active in the DRC. If available, we have also consulted annual reports, business principles, country reports, case studies on human rights and specific site reports. We also draw on extensive field observations and interviews conducted in the DRC by Jana Hönke for her research on hybrid security practices of MNCs in areas of limited statehood Hönke 2010.

Company output

AGA includes a statement on the VPs on its website. However, it is very general and not integrated in the “Corporate governance and policies”. The latter refer to obligations in terms of the US Sarbanes-Oxley Act of 2002, NYSE and JSE Rules, and the King Report on Corporate Governance 2002 not including the VPs; they cover health, safety, environment, and community standards but do not mention human rights. Anvil, by contrast, has adopted a “Code of Business Conduct” in 2007, which prominently features human rights, including a section on security and human rights, which commits Anvil to observing “the principles set out in the Voluntary Principles on Security and Human Rights in relation to security, risk assessment and the maintenance of human rights”.³⁰ Moreover, Anvil’s Corporate Social Responsibility Statement lists the VPS first restating its commitment to the “highest standards of corporate governance, ethical behaviour, and respect for human rights”.³¹

While AGA lacks a specific human rights policy on its website, the company claims that its Environment and Community Affairs Community develops company policy and guidelines “to assist operations in acting in accordance with the group’s business principles and policies”, which should include human rights, and the conduct of a company-wide security review in 2008.³² Equally broad is the reference to a new Global Security Framework (GSF) developed by the newly established Global Security department, headed by the Vice President Global Security, in 2008 and progressively implemented since 2009.³³ The GSF’s nine key processes include “Voluntary Principles, Policy Standards and Compliance” (ibid.). Procedures, standards and best practices have been set-up and constantly reviewed with the help of self-audits to ensure compliance (ibid.). They shall include a code of conduct, operational standards, a risk

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[http://www.anvilmining.com/files/AVM%20CP01%20Anvil%20Code%20of%20Business%20Conduct%20\(vA17290\).pdf](http://www.anvilmining.com/files/AVM%20CP01%20Anvil%20Code%20of%20Business%20Conduct%20(vA17290).pdf), p. 11; last access August 2, 2010.

31 <http://anglogoldashanti.com.au/subwebs/InformationForInvestors/Reports08/AGA-VPHRS.pdf>; last access August 2, 2010.

32 http://www.anglogold.com/NR/ronlyres/C428E0C4-0F0C-4062-BC32-E7D1C9790F32/0/VoluntaryPrinciples2009reportFebruary2010_postauditFinalversion12March.pdf, p. 1; last access August 1, 2010.

33 http://www.anglogold.com/NR/ronlyres/C428E0C4-0F0C-4062-BC32-E7D1C9790F32/0/VoluntaryPrinciples2009reportFebruary2010_postauditFinalversion12March.pdf, p. 1; last access August 1, 2010.

assessment toolkit and accompanying guidelines.³⁴ Moreover, the Sustainability Reviews, which are part of the AGA's Annual Reports (see below), outline both the company's commitments and performance in the areas of ethics and governance, community, occupational safety and health, labour practices, the environment, and HIV/AIDS. The annual performance report explicitly addresses human rights and refers to the VPs as part of AGA's global security framework. The Sustainability Reviews also specify performance criteria on human rights, such as human rights clauses and human rights screening of investment agreements, human rights screening of suppliers and contractors in the application process, employee and security personnel training on policies and procedure concerning aspects of human rights.³⁵ Next to the Sustainability Reviews,³⁶ AGA issues Annual Voluntary Principle Reports since 2008 that broadly outline its HR policies and procedures.³⁷

Similar to AGA, Anvil initiated a comprehensive implementation project to imbed the VPs in the corporate culture and management system. Together with the Multilateral Investment Guarantee Agency of the World Bank, Anvil funded a diagnostic study by a consultant that developed a VPS implementation program for Anvil's operations in Africa, including an implementation toolkit for a mining company operating in a post-conflict African country.³⁸ The toolkit provides a detailed manual on how to systematically put the VPs into practice, including a time-phased implementation plan. Moreover, Pact Congo, an American developmental NGO, drafted a Framework on Security and Human Rights on Anvil's request, which guides the company's incorporation of human rights into its security program.³⁹ Since Anvil is not an official member of VPS, it does not issue a Voluntary Principle Report. Like AGA, the company issues annual Sustainability Reports, which have a short section on risk assessment that also makes reference to the VPs. However, no details are given and the last report available on the website is of 2007. The "Annual Information Form 2009" does not contain any reference to the VPs either.⁴⁰

While risk assessments procedures appear to exist in both companies, there is no information on whether VP criteria are taken into consideration. AGA has developed an internal audit system with a VP check list to review progress on implementing the VPs at local facilities, which

³⁴ <http://www.anglogold.com/NR/rdonlyres/E29B8879-3F6E-43A6-BC5F-E5B46E1EF703/0/VoluntaryPrinciplesFinalReport2008Plenary.pdf>, p. 5, last access August 1, 2010.

³⁵ http://www.anglogoldashanti.co.za/subwebs/informationforinvestors/reports09/SustainabilityReview09/gri_humanrights.htm, last access July 31, 2010.

³⁶ http://www.anglogold.com/NR/rdonlyres/C428E0C4-0F0C-4062-BC32-E7D1C9790F32/0/VoluntaryPrinciples2009reportFebruary2010_postauditFinalversion12March.pdf, and <http://www.anglogoldashanti.co.za/subwebs/informationforinvestors/reports09/SustainabilityReview09/environment.htm>, last access July 31, 2010.

³⁷ <http://www.anglogold.com/Sustainability/AngloGold+Ashanti+and+the+Voluntary+Principles.htm>, last access July 31, 2010.

³⁸ www.miga.org/documents/VPS_Toolkit_v3.pdf, last access August 2, 2010.

³⁹ Jim Freedman Consulting 2006: 17

⁴⁰ <http://www.anvilmining.com/files/Anvil-AIF-2009.pdf>, last access August 6, 2010.

is to be integrated with the incorporation of community standards into the ISO 14001 management system.⁴¹

Equally unavailable are specific information on human rights screening and training of public security forces and private security companies, which are enlisted for protection of its production sites.⁴² In conflict zones, such as the DRC, AGA and Anvil both employ public and private security forces. AGA justifies its reliance on “a fee for services” support by the police, the army and private security companies⁴³ on the basis of threat and risk assessments indicating that security threats are “sufficiently elevated”.⁴⁴ Both companies have developed programs to communicate with and train staff and incorporate the VPs into contracts with public and private service providers. Procedures to report and investigate security-related incidents with human rights implications by public/private security forces relating to the company’s activities have been introduced.⁴⁵

Finally, AGA claims to have recently established a government relations function in order to give public policy strategy a greater focus in the business. And it has developed an engagement strategy for government and a management standard relating to engagement with stakeholders to be rolled in 2010.⁴⁶ Again, no specific information is available. In a similar vein, Anvil and the government of Katanga have signed a Protocol to govern the interaction between Anvil and the Province of Katanga.⁴⁷ To what extent this Protocol provides for communication channels on human rights issues is unclear.

Overall, AGA and Anvil appear to have by and large incorporated the VPs into their corporate policies, management systems and agreements with service providers. The VPs are explicitly referred to and form part of the companies’ corporate identity. Both companies have introduced substantial changes to their management policies and procedures including the dedication of human, financial and technical resources. While the Global Compact also includes human rights principles, human rights only gained prominence after AGA had joined the VPs in 2007, even though they feature less prominently than other standards (yet). Anvil, too, only started to

⁴¹ http://www.anglogold.com/NR/rdonlyres/C428E0C4-0F0C-4062-BC32-E7D1C9790F32/0/VoluntaryPrinciples2009reportFebruary2010_postauditFinalversion12March.pdf, p. 6, last access August 1, 2010.

⁴² http://www.anglogold.com/NR/rdonlyres/C428E0C4-0F0C-4062-BC32-E7D1C9790F32/0/VoluntaryPrinciples2009reportFebruary2010_postauditFinalversion12March.pdf, p. 2, 5, last access July 31, 2010.

⁴³ <http://www.anglogold.com/NR/rdonlyres/E29B8879-3F6E-43A6-BC5F-E5B46E1EF703/0/VoluntaryPrinciplesFinalReport2008Plenary.pdf>, p. 1, last access August 1, 2010.

⁴⁴ <http://www.anglogold.com/NR/rdonlyres/DF052B1E-51DF-47DC-85E2-D8141C8E356A/0/VoluntaryPrinciplesFinalReport2009Plenary.pdf>, p. 2, last access August 1, 2010.

⁴⁵ http://www.anglogold.com/NR/rdonlyres/C428E0C4-0F0C-4062-BC32-E7D1C9790F32/0/VoluntaryPrinciples2009reportFebruary2010_postauditFinalversion12March.pdf, p. 2-3, last access July 31, 2010; Jim Freedman Consulting 2006: 15,17

⁴⁶ http://www.anglogold.com/NR/rdonlyres/C428E0C4-0F0C-4062-BC32-E7D1C9790F32/0/VoluntaryPrinciples2009reportFebruary2010_postauditFinalversion12March.pdf, p. 5, last access July 31, 2010.

⁴⁷ Jim Freedman Consulting 2006: 19

develop a human rights policy based on the VPs after it had been subject to an international campaign, even though it did not become an official member of VPs. How comprehensive the related changes in the corporate policies and management system of the two companies are, however, is difficult to assess given that AGA and Anvil provide rather general information on the measures and actions taken. Overall, Anvil seems to have introduced more comprehensive changes, which, however, might be a foregone conclusion due to the more detailed information given by the OECD audit report.

Company outcome

Unlike Anvil, AGA annually reports on its commitment to and implementation of the VPs to shareholders through its Annual Financial Statements and to all stakeholders through its VP Reports and the Reports to Society. The latter include Sustainability Reviews, which document the company's performance criteria on the various human rights criteria. The company states, for instance, that in 2009 86% of employees and security personnel of AGA received HR training.⁴⁸ The reports also mention that AGA's security departments engage in self-reporting with the company, local authorities and local communities regarding HR violations by employees, contractors and public security forces.⁴⁹ Such incidents are documented in the annual VP Reports. There is, however, no external review of this information. Anvil, by contrast, whose last Sustainability Report dates back to 2007, does not report on these issues. Through its participation in the Katanga security forum, in which representatives of large mining companies, state security forces, the UN mission MONUC and others discuss security and potentially also HR issues, the company exchanges information on incidents of HR abuses (Hönke 2010: 224).

AGA claims to conduct risk and impact assessments in the DRC, e.g. to decide whether to enlist the service of public and private security forces.⁵⁰ To what extent these assessments apply the VPs is unclear. Anvil has not conducted own risk assessments on its own.⁵¹ With regard to integrating HR into contracts with public and private security forces, AGA announced to do a general review of all contracts on the basis of a contractor vetting checklist, as well as the standardization of contract requirements with service providers in 2010. This also includes the briefing of government officials on HR and the training of public and private security forces and personnel employed by contractors and the police and military as well as of community

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http://www.anglogoldashanti.co.za/subwebs/informationforinvestors/reports09/SustainabilityReview09/gri_humanrights.htm, last access July 31, 2010.

49 <http://www.anglogold.com/NR/rdonlyres/DF052B1E-51DF-47DC-85E2-D8141C8E356A/0/VoluntaryPrinciplesFinalReport2009Plenary.pdf>, p. 2, last access August 1, 2010.

50 <http://www.anglogold.com/NR/rdonlyres/DF052B1E-51DF-47DC-85E2-D8141C8E356A/0/VoluntaryPrinciplesFinalReport2009Plenary.pdf>, p. 2, last access August 1, 2010.

51 Jim Freedman Consulting 2006: 18-19

groups and civil society organizations on the company's HR policies and the VPs.⁵² While Anvil's own security personnel is well trained and informed, neither the private security company, Securior, nor the local police and Mine Police, Securior works with, seems to have received any substantial training on human rights.⁵³ Anvil, however, supports an advanced proposal for including some human rights training for Mine Police forces through contracted NGO Pact Congo. Finally, none of the two companies appear to engage in human rights dialogues with local authorities, local communities and civil society. However, both have sought to set up communication channels in neighbouring settlements for discussing with communities.⁵⁴

Whether the VPs have resulted in any changes in the security governance practices of AGA and Anvil, e.g. with regard to their tackling of artisanal and small-scale mining (ASM), is an open question. AGA has developed a new management standard for dealing with conflicts related to artisanal and small-scale mining (ASM), which poses a particular challenge to the exploration sites in DRC and other African countries.⁵⁵ This includes a revision of its policy and standards for dealing with illegal pit and shaft invasions and resettlement and compensation.⁵⁶ The company claims as success the peaceful re-closure of a mine in the DRC that had been invaded by some 1.000 artisanal and small-scale operators. With the help of PACT Congo, the company seeks to implement local development initiatives aimed at ensuring the peaceful co-existence in line with the VPs. Moreover, AGA regularly consults with Cadre de Concertation, a civil society group, that organizes a multi-stakeholder dialogue on ASM and other community-related issues.⁵⁷ However, is precisely this organization that, together with other NGOs, criticizes AGA for its failure to respond to key demands of the local communities, particularly with regard to employment opportunities for artisanal miners and the lack of a transparent resettlement and compensation policy.

AGA does not seem to have established any regular contact or information sharing with the local communities. In 2006, it had set-up the Mongbwalu Forum of Stakeholders, which, however, is not used for advancing VPs. It is not part of the Ituri Stakeholder Forum in the provincial capital Bunia, which organizes important NGOs and social groups. Working closely with INGOs, HRW and Pax Christi, the forum has remained highly critical of AGA's social and

⁵² http://www.anglogold.com/NR/rdonlyres/C428E0C4-0F0C-4062-BC32-E7D1C9790F32/0/VoluntaryPrinciples2009reportFebruary2010_postauditFinalversion12March.pdf, p. 3, 5-6, last access August 1, 2010.

⁵³ Jim Freedman Consulting 2006: 16

⁵⁴ *ibid.* 2006: 17-18

⁵⁵ <http://www.anglogold.com/NR/rdonlyres/DF052B1E-51DF-47DC-85E2-D8141C8E356A/0/VoluntaryPrinciplesFinalReport2009Plenary.pdf>, p. 3, last access August 1, 2010.

⁵⁶ <http://www.anglogold.com/NR/rdonlyres/E29B8879-3F6E-43A6-BC5F-E5B46E1EF703/0/VoluntaryPrinciplesFinalReport2008Plenary.pdf>, p. 2-3, last access August 1, 2010.

⁵⁷ <http://www.anglogold.com/NR/rdonlyres/E29B8879-3F6E-43A6-BC5F-E5B46E1EF703/0/VoluntaryPrinciplesFinalReport2008Plenary.pdf>, p. 5, last access August 1, 2010.

human rights policies and impact.⁵⁸ While it has apparently conducted a risk assessment, AGA has not published a human rights or any other assessment for the Mongbwalu project that includes the participation of affected communities.⁵⁹ To what extent AGA has used the renegotiation of its mining contract with the DRC government to communicate its HR policy and to engage the government in a HR dialogue seems questionable, too.⁶⁰

Overall, available information renders it extremely difficult to assess the behavioural compliance of AGA and Anvil with the VPs. Implementation only started in 2008 and 2007, respectively, and many changes have just been introduced or are still under way.

Bottom-up

The above top-down analysis of company security practices takes a voluntary program, such as the VPs, as a starting point and examines to what extent company policies and practices comply with them. In the following we draw on Hönke (2010) for broadening our understanding of business in local governance. We thereby aim at overcoming two limitations of the top-down perspective. First, top-down studies tend to emphasize (transnational) policy formulation and politics, resulting in a narrow view on the actual security practices of MNC at their production sites and a neglect of local discourses and politics. Second, focusing on corporate governance contributions as defined by the VPs omits from the analysis other everyday security practices employed by MNCs. Using a particular transnational standard, such as the VPs, as yardstick for assessing company behaviour tends to neglect different understandings and expectations with regards to what are and who should care for security and human rights issues in the local arena. It is important in this regard to bear in mind that the VPs emerged as a minimal consensus between two governments, a small number of extractive MNC opposing strict regulation as well as some NGOs.

A bottom-up perspective starts from the other side. We demonstrate in the following how studying local, everyday security practices of the two mining companies, and the conflicts and contradictory understandings of security and rights attached to these, improve our assessment of transnational voluntary programs and enhance understanding of non-compliance and security practices that follow different and often competing norms.

Step 1 – Perceptions of security issues

Anvil's and AGA's security managers in the DRC emphasize threats to company assets and personnel as their main security concern. They list "illegal mining" and all sorts of theft amongst the most serious security challenges faced by the company in the DRC. In the eyes of the

⁵⁸ Interview by Jana Hönke with manager community relations and social development, AGA, October 3, 2007, Johannesburg.

⁵⁹ *Golden opportunity or false Hope?* <http://www.cafod.org.uk/news/anglogold-2010-01-25/panels/related-resources/golden-opportunity-or-false-hope->, last access August 1, 2010.

⁶⁰ In 2007, the DRC government embarked on a review of over 60 mining contracts signed between 1996 and 2003 during the Congolese war, including the contract with AGA.

security department of Anvil, the company is threatened by organized groups, members of the local communities and its own workers. Cobalt, copper cable, cement, petrol and equipment are amongst the things disappearing. In particular, thousands of artisanal miners infiltrate Anvil's concessions and are described as major security risk.⁶¹ While petty theft seems to be less an issue in the smaller exploration sites around Mongbwalu, AGA, too, identifies artisanal miners who 'illegally' mine gold on their concession as major security risk. There are more than 100.000 small-scale miners in the gold mining area, many of them former militias and with strong political allegiances in the area (Kapelus et al. 2008: 127). Company managers thus understand security narrowly as the protection of property and personnel against threats from intruders. Their concern is security as private good.

As other mining companies in the DRC, Anvil's local managers believe that security risks increasingly emanate from the society and local communities in which they operate. Mining sites – as on-shore oil operations such as those in the Niger Delta – cannot be fenced off so easily from the social and political conflicts in which they operate and which they partly cause (Hönke 2010: 169; Szablowski 2007b: 27 - 60). While the situation in Ituri is more volatile, in both areas companies operate in a complex social and political context characterized by the legacy of war and divided by political factions, in which mining companies are part of popular memories of welfare, suffering and political conflict (Kapelus et al. 2008; Hönke 2009). In addition, since the 1990s, transnational NGOs have increasingly targeted Western MNCs with shaming campaigns regarding their human rights abuses and implication/complicity in fuelling inequality and conflict. As therefore reputational risks related to social and security issues have grown over recent years, incidents such as community protest and violence of security forces against the population are now seen by some firms as security issues in the sense that they may negatively impact on shareholder value, profits and contracts (Hönke 2010).⁶²

What are the concerns of the people living in the area these mining companies intervene in? Conflicts erupt, firstly, over access to land and relocation and other issues related to who has to bear the costs of mining and proper compensation. Secondly, people complain about the lack of jobs in the formal mining industry, on the one hand, and over the lack of (legal and un-threatened) access to minerals for small-scale miners (Garrett et al. 2008; Hönke 2010). Both point to the important underlying struggle over how the access to and the benefits from extraction should be distributed. Investment in industrial mining in the DRC might not bring so many changes for those political networks that are in power but rather alter the ways in they

⁶¹ Interview by Jana Hönke with company security manager DRC, Anvil Mining, 22 November 2008, Lubumbashi.

⁶² The International Council of Mines and Metals, a transnational business association representing a number of large MNCs from the mining industry in public relations issues in the area of sustainable development, started explicitly recognising problems related to corporate security practices as an issue in 2003. Since 2005, the association engages with the UNSRSG special representative John Ruggie, and has published guidelines that shall help member companies in managing human-rights and security-related issues, <http://www.icmm.com/page/225/business-and-human-rights>, last access August 6, 2010. Concerning companies in the DRC and Anvil in particular: Interview with security and VP managers, Anvil Mining, October 2008, Lubumbashi, Interviews with Pact Congo October 17 and November 6, 2008, Lubumbashi.

benefit from resource extraction. For competing political networks, and in particular for the local population and migrants who make up the large ASM community, mining activities of MNC change everything and often puts their source of income at risk (see above, also Hönke 2009). Third, and related to the previous points, both companies are met with huge expectations and demands for social benefits. In the context of a state that does not redistribute wealth or provides social services, people expect those actually extracting natural resources from their area to not only compensate them for negative externalities, but also to take responsibility for local development.⁶³ Finally, there are more frequent encounters with security forces, both private and state, because of their high numbers in these areas – making these encounters less violent is a main concern of the VPs.

These different perceptions of security problems demonstrate a fundamental difference between the MNC position and the transnational liberal-economic discourse, on the one hand, and the perceptions of local communities, on the other. The companies use a legalistic argument rooted in liberal-economic discourse emphasizing their private property rights. Security concerns refer to the protection of their private assets. MNC are confronted with a social and political environment that poses much more fundamental question to them than the security of their assets: access to and redistribution of benefits from natural resources.

Step 2 – Routine security practices

How do companies such as AGA and Anvil, who have gained high visibility internationally and do commit to various voluntary initiatives, such as the VPs, address these conflicts and security challenges? They invoke three sets of security practices combining a traditional fortress strategy of deterrence and control with community engagement and indirect rule. All three are embedded in different norms and discourses (Hönke 2010). These can help us to understand company security practices and non-compliance with the VPs.

Fencing off

A first set of security practices evolve around the logic of fortress protection and represents best the distinction between companies as private entities and the state as responsible for issues in the public sphere established by liberal economic thinking. Within this logic of fortress protection, the main strategy of firms is to block themselves off from their environment and thus from theft, small-scale mining and popular protest (Hönke 2010: 201-212, 248-257; see also Haufler/Avant 2008).

Both AGA and Anvil work with private and state security forces for this purpose.⁶⁴ Unlike South Africa, for instance, companies operating in the DRC have to work with state security forces and

⁶³ Interview by Jana Hönke with manager community relations and social development, AGA, October 3, 2007, Johannesburg; Kapelus 2006.

⁶⁴ Interview by Jana Hönke with the security managers of Anvil, November 22, 2008, Lubumbashi; also with security manager AGA, April 3, 2007, Johannesburg.

intelligence on every mine site. Only state security forces are allowed to carry arms (de Goede 2008). Companies may call on special state security forces for robust operations, such as protection against social unrest and armed patrols. In Katanga, for instance, some police stations, and in particular the provincial inspectorate of the PNC in Lubumbashi, hold special contingents of the *Police d'Intervention*, which the firms, as well as the governor can rely on when they feel order is getting out of hand.⁶⁵ Anvil, for instance, called in rapid reaction forces of the police to suppress protest by artisanal miners and 'clean' their concession. Having been evicted from the large new concession owned by Freeport McMoRan, about 7000 artisanal miners worked the riverbanks on the concession of Anvil Mining in Kolwezi. Anvil Mining initially allowed them to stay on the condition that the minerals extracted were exclusively sold to Anvil. Even though Anvil Mining claims there had been no problems, media reports describe how tensions over plans for eventually evicting miners from the concession led to conflict and police intervention.⁶⁶

Using personal networks and pay the state as-you-go

In the DRC, state agents usually use state office for private gains. In the Congolese context, putting people in state office means to give them economic opportunities. Therefore, corporate security practices usually exceed the mine concession and go beyond protecting transport roads and corporate offices. The second set of security practices comprises building relations with key persons in important political networks and positions within the fragmented, personalized and dysfunctional state apparatus as well as with powerful local authorities such as traditional chiefs (Hönke 2010: 228-237).

It is often said that there is no state in so-called areas of limited statehood, such as the DRC. Yet, rather than being absent, the state is dysfunctional, particularly if compared to the Weberian state model or the ideal of a modern welfare state with constitutional democracy (Rotberg 2004; Schneekener 2004). For managing state agents on their concession and for securing contracts, companies depend on maintaining good relations with key people at all levels of the state apparatus. Security issues in the more narrow sense concern the provincial governor and key figures in the local and provincial police; securing the concession and political support for its operation, a company needs to relate to a few key people in government, including the president, Joseph Kabila, and the former minister of mines, today special advisor to the president. Although ultimate prove is hard to get hold of, investing in the lucrative Congolese mining sector hardly works without a "political umbrella" (Global Witness 2006: 42ff). In the case of Anvil, there is proof that the company paid the key brokers of mining deals in Laurent Kabila's AFDL and later the government for several years by putting them on its board

⁶⁵ Interview by Jana Hönke with chief of operations, Congolese National Police, provincial head offices in Katanga, November 7, 2008, Lubumbashi.

⁶⁶ Bavier, Joe. 2008. Police clash with miners in Congo copper heartland. *Reuters*, March 31, 2008. <http://www.reuters.com/article/latestCrisis/idUSL31912922> (last accessed June 23, 2009).

of directors.⁶⁷ In Mongbwalu, it was the militia controlling the area, the FNI, to which the local AGA manager felt obliged to pay 8000 \$ in 2005 (see also above).

On a more profane level, different norms get in conflict every day. When AGA called in the police for investigating a theft that had occurred on the concession, the police officer asked for 50\$ to pay for his expenses to get to the concession and do his work. When being denied the money, he refused to hand over the results of his investigation – without which AGA could not pursue the case.⁶⁸ Such every-day service-by-demand behaviour of state representatives is not an exception from the rule but the norm.⁶⁹ For various historical reasons – having to do with colonialism, previous extraction from the area and patterns of indirect rule, the clientele position of the DRC vis-à-vis the US and other Western countries – the Congolese state works, but as a “shadow state” (Reno 1995). The state is not simply absent. It can often not be circumvented or ignored, in particularly in areas with potential revenues such as mining areas. State agents do not provide collective goods paid for by taxes. Rather, state representatives use their status to get paid by the population – and by companies.

Training & engaging the community

While companies have operated in areas of limited statehood before and some kind of corporate community management – historically through indirect rule through chiefs and paternalism – is not new in such contexts (Hönke forthcoming), the new transnational context mainly affects how companies provide for stability in adjacent areas. The third set of practices contains the proactive engagement with communities and security forces through communication and development initiatives with the former, and training with the latter. These security practices have only recently been introduced in the industry and can at least partly be attributed to the VPs (see section on outcome). We make two points here as to what we learn from looking at the outcome of the VPs in this area from a bottom-up perspective.

The first point relates to the politics of community engagement. Both, Anvil and AGA work with Pact Congo which has set up forums in the communities living adjacent to extraction sites in which issues of concern may be discussed and people are supposed to participate in deciding over social investments. While more in-depth research is required to study the working and affects of these new structures, it can be assumed that they provide new means of managing security risks by co-opting those who may cause trouble – or those who are able to provide stability in the area. Yet, one problem is, that they thereby often get into conflict with pre-existing local power structures and competition over influence and resources While future field work will

⁶⁷ Interview with Bill Turner, CEO of Anvil Mining, broadcast of “The Kilwa Incident”, Four Corners, Australian Broadcasting Corporation, June 6 2005.

⁶⁸ Interview by Jana Hönke with social relations and community manager, AGA, October 3, 2007, Johannesburg.

⁶⁹ See for instance the concise statement by DRC expert Timothy Raeymaekers on this topic (Raeymaekers, Timothy 2009, *Who calls the Congo? A Response to Jeffrey Herbst and Greg Mills*, <http://rubeneberlein.wordpress.com/2009/08/10/who-calls-the-congo-a-response-to-herbst-and-mills/>, last access 10 August, 2010.

provide the basis for examining these points in relation to AGA and Anvil in the DRC, examples from other areas demonstrate how much the corporate need for stability, on the one hand, and requirements for participatory approaches by transnational standards, on the other hand, get into conflict. Companies seem to have a tendency to work with powerful actors in the local arena who are able to provide contract security because of their legal entitlement to land - chiefs with land rights recognised by the law, such as in South Africa (Hönke, 2010; Reno 200x); thereby they sideline other groups and opinions at the local level.

The second point refers to the human rights training prominently mentioned by AGA and Anvil as compliant behaviour with the VPs (see above). In the DRC, however, foreign companies must not get involved in any training of state security forces. For historical fear of state capture and for asserting the new Kabila government and its sovereignty, local, provincial and national police have not agreed on receiving any training. Anvil negotiated that they were allowed to give a briefing on the VPs to the commander in chief of the PNC, who would then decide how to integrate this into the police training. State officials in turn emphasize that they were providing their own training; however, it remains a well-known fact that the state security sector barely receives any (Hönke 2010: 225-27).⁷⁰ Also, there are little structural incentives for police agents to change behaviour. Not receiving any salary, police officers usually ask for money and extort revenue from artisanal mining. Those who gained experience in the Mobutu police force or militias during the Congolese wars are used to repressive regime policing. Overall, the VP requirements seem disconnected from necessary structural reforms.

Step 3 – The VPs in local context

Studying local perceptions of (in)security and corporate security practices from the bottom-up puts the VPs in context and raises several important issues that should be addressed more often and in more in detail by research on companies and governance in areas of limited statehood.

First, the managerial approach of the VPs emphasizing risk assessment, awareness raising, communication and training, is detached from structural problems. There are, for instance, clear limitations to training that have historical roots. Both state security forces are repressive and primarily predatory organs that have historically always been used for pursuing private economic and political goals. Clientelism and bribing go hand in hand with the use of arbitrary violence and frequent human rights abuses by largely untrained, unequipped and often unpaid police officers.⁷¹ This is a long established social system and the problem with working with the state and its security forces inevitably means to risk strengthening parts of that apparatus which

⁷⁰ Interviews by Jana Hönke with the Chef des Operations PNC, Inspection Provinciale de Lubumbashi, November 7 2008, Lubumbashi; Inspecteur et Commandant Police Minière et des Hydro (PMH), PNC, Inspection Générale, November 10 2008, Lubumbashi.

⁷¹ ICG 2006; for the Mobutu era described by Young/Turner 1985; see Hönke 2010: 194-97.

in turn may facilitate extortion and human rights abuses. Companies, such as Anvil in the DRG, emphasize now that they were not providing neither money nor fuel to local police officers (see also the example of AGA and the police officer above). At the same time, however, companies depend on working with state police and state police services for the enforcement of their contract and their property rights (see the fencing-off strategy) as well as for complying with host state regulation (Hönke 2010: 310-311).

The second point relates to the inadequacy of merely describing limitations of the state and local politics – as compared to expectations as to how they should work in Weberian and liberal state theory. The Congolese state does work and we need to understand how it works – in cooperation or competition to various non-state forms of governance. Interestingly enough, recent opinion polls in the DRG showed that the majority of people wants the state, and one reason for that might be that enough people manage to get private gains out of it.⁷² Following the requirements of the VPs, AGA and Anvil get in conflict with a competing norm, the ‘politics of the belly’ (Hönke 2010: 182-188).⁷³ It expects them, for instance, to pay state agents and their services in a ‘pay-as-you-go’ and informal manner and to provide immediate benefits to people affected by their economic activity as distribution of revenues through the state rarely takes place. Compliance is expected by both, sanctions may be more immediate from either side, depending on the company (targeted by campaigns or not, brand) and the issue.

Third, there is another source of competing social knowledge and routine practices that is engrained in a highly transnational field of security professionals specialised in areas of limited statehood (Hönke 2010: 175-182): Security professionals tend to use reactive and ‘hard’ security measures not only because it is implicit to the fact that they protect private property and do not have any public mandate. The professional and social background of these people – many of those working in the DRG have been trained in the South African police force or army – plays an important role. They know how to protect and fight, and have expertise in more ‘preventive’ techniques, such as surveillance, but not with how to deal with complex social situations in order to improve collective security.

The last point refers to the contradictory affect of companies’ security practices on local politics.

5. Conclusion

Transnational voluntary programs, such as the Voluntary Principles, have gained importance for MNCs. Respecting human and social rights, protecting the environment or promoting local communities has become part of a global script, which is codified in a growing number of transnational institutions seeking to keep MNCs socially responsible. MNCs, in turn, increasingly commit themselves to the transnational norms and rules, partly because their

⁷² See above.

⁷³ Hönke (2010) here further develops a concept introduced by Jean-François Bayart (1993).

practices have become subject to public scrutiny and criticism. The naming and shaming by transnational NGOs also helps to make companies honour their commitments. Our case studies on AngloGold Ashanti and Anvil Mining testify to the efforts of companies to become more sensitive to human rights issues while securing their assets in weak governance and conflict zones. From a top-down perspective, which takes transnational programs as a starting point and evaluates corporate compliance with them, MNCs have been making at least partial progress, particularly on the output side. AGA and Anvil have incorporated the VPs into their corporate policies and management systems. They have also changed their security practices engaging in communication with local communities and in human rights training for public and private security forces. Yet, we also find serious problems of non-compliance. Companies' communication and participation structures with communities lack autonomy from the company and are seldom representative of all groups in the areas affected by mining. Protecting company assets through fencing of and deterrence and with the help of state security forces and PSCs goes along with violence. There is a very thin line between working with state security forces in particular and not supporting extortion and repression by them. HR training to police deployed on site does not take place.

Moreover, a bottom-up approach taking the full range of company security practices into perspective, reveals systemic limits of the VPs, which go far beyond vaguely defined performance criteria, weak enforcement mechanisms, and a narrow membership base. Even when making efforts to implement the VPs, MNC remain profit-oriented. They are not turned away by hostile environments ragged by insecurity, corruption, and human rights violations UNCTAD 2007. Although the World Bank lists the DRC as one of the "worst countries to do business in" (World Bank 2008: x), it has received high international mining investments since 2004. AGA and Anvil are there for the economic opportunities, not to promote human rights. Their first priority remains to do business. This necessarily implies conflicts over access to land and relocation and other issues related to who has to bear the costs of mining and proper compensation.

Issues of (re)distribution of wealth and access to resources are not addressed by the VPs. Property rights raise serious issues about the legitimacy of contractual relations between the MNCs and governments. In fact, one may argue that the VPs help MNCs avoid such issues by putting off public pressure and allowing them to continue their operations thereby sustaining existing political regimes and economic structures (Hönke 2010; Reno 2001).

The effectiveness of the VPs can certainly be improved by giving them more teeth, e.g. by making their rules more precise, by stepping-up monitoring and sanctioning procedures or by putting MNCs under (more) NGO scrutiny. Conflicts over property rights and the (re)distribution of economic and political resources, however, will not be solved by the prevailing managerial approach to the governance of business and HR. If the VPs do not account for the political

rationalities and competing norms of the local and transnational context in which MNCs do business, their effectiveness is likely to remain limited. The bottom-up approach thus points to serious limitations of transnational voluntary programs such the VPs. They ignore the global political economy of mining in which MNCs, home and host state governments, transnational expert communities and non-state actors may not only push for soft rather than hard regulation but tend to sustain inequality in access to natural resources and welfare.

Finally, there are some other important issues that emerge in a bottom-up (re)evaluation of corporate security practices and their effects on local collective security and human rights. One concerns the question of how inclusive corporate contributions to security governance are. *Cui bono?* Do companies provide security as private or club good or do companies aspire to extend its reach to the entire community surrounding its production site? And even if they do, what are the effects of corporate security governance on neighbouring communities, i.e. to what extent does the security of one community simply shift the problem to another?

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