



Business Principles for Sudan during the Interim Period

"Private companies operate in many conflict zones or conflict-prone countries. Their decisions – on investment and employment, on relations with local communities, on protection for local environments, on their own security arrangements -- can help a country turn its back on conflict, or exacerbate the tensions that fuelled conflict in the first place." Kofi Annan to the Security Council, 15 April 2004.

INTRODUCTION

Sudan's January 2005 Comprehensive Peace Agreement opened the way for strong economic growth. It opened up many opportunities for private enterprises to contribute to a peaceful development of the country, while achieving their economic objectives. The question is, how to do that.

It has become widely accepted among the international business community that companies are responsible, not just for their actions, but also for their impact on society. There is a strong business case for social and environmental responsibility. There is even a stronger business case for peace and justice. Violent conflict and an arbitrary legal environment are bad for business. It is fully legitimate that companies seek to promote peace and the rule of law. Sudan poses both challenges and opportunities for businesses to do so.

In the past, civil wars and undemocratic rule have made it highly problematic for companies to be a force for good in Sudan. The upstream oil business stands out for having been at the centre of warfare and gross human rights violations for many years and will have to thoroughly rethink the way it operates. A Comprehensive Peace Agreement will not immediately solve all of Sudan's ills and companies will have to do more than respecting national law and regulations. Non-equitable development, myriad internal strife, corruption, a culture of violence, racism, centre-periphery antagonism, and a legacy of oppressive, arbitrary and unaccountable governance will continue to present stiff challenges. The agreement between the Government and the SPLM will not settle all of Sudan's internal conflicts. Solid companies have a strong social and economic basis; to build that in Sudan, they will

have to seek partnerships for conflict prevention, peace building and post-conflict reconstruction.

The question is which principles and activities to adopt in Sudan's specific circumstances. This document proposes an answer. It identifies five priority principles, drawn from three sources, International Law, authoritative voluntary standards for business behaviour, and the provisions and purpose of the Peace Agreement (for details, see below in "Normative Framework"). For many companies these contain nothing new, as they are already committed to respect human rights, combat corruption and promote peaceful development. To ensure respect for these principles in post-war Sudan, we propose a set of 13 activities. Not all companies are expected to carry these out. Companies that are small or have a short-term presence will usually have a modest impact on society and some of the proposed activities may be irrelevant to them. One activity is essential for all companies, though, to make an impact assessment. To know what you're doing is the key to responsible action and the basis for internal and external assurance that a company is on the right track.

The international community is engaged in Sudan's peace process. Its members cannot accept to let public policy goals be frustrated by private interests. They will have to ensure that their national enterprises which are active in Sudan have the necessary commitment, understanding and guidance to support the public interest. These principles provide this guidance. To assure understanding, home governments will have to inform their enterprises about international standards, the peace process and related dimensions of doing business in Sudan, for instance through concerted action at the embassy-level and encouragement of companies to make adequate impact assessments. To assure commitment, appeals for voluntary action will not always suffice. Not all companies wish to take the public interest into account and unacceptable behaviour needs to be thwarted by their home and/or host governments.

The European Coalition on Oil in Sudan (ECOS) is a group of over 80 European organisations working for peace in Sudan. It was established at the request of Sudanese friends and partners because they saw that oil, rather than bringing peace and prosperity to the people of Sudan, caused massive human suffering. A peace agreement has created the opportunity for oil companies to work in a responsible manner. The underlying principles for such a policy are generic, and we therefore designed principles that apply to all sectors, all regions and all companies, hoping they will contribute to mobilise the potential of the entire private sector to shape a prosperous and peaceful Sudan.

The list of pressing issues is long in Sudan. We chose to prioritise those that are directly related to business concerns and where private actors can make a difference: human rights, peace and security, non-discrimination and accountability.

THE BUSINESS PRINCIPLES

Principles

1. Within the company's sphere of activity and influence, promote, respect and protect human rights and fundamental freedoms, including social, economic and cultural rights, land rights, and the rights and interests of indigenous peoples, minorities, and other vulnerable groups.
2. All business activities are assured to be conducive to peace and equitable development, and to the realisation of the provisions and purpose of Sudan's Peace Agreement.
3. No discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, while actively promoting that the local population sees itself equitably represented, at all levels, in the local work-force.
4. Combat bribery, extortion and all other forms of corruption.
5. Within the company's sphere of activity and influence, promotion of transparent and accountable public financial management.

Activities

1. Prior to any investment decision and at regular intervals, the company will assess its impact on and contribution to the communities that surround its operations and the wider society, with regards to development, peace, security, human rights – including social, economic and cultural rights – and the environment, taking into account its impact on the physical and economic security of the population, on local and national strife and rivalries, and on the realisation of the provisions and purpose of the Peace Agreement. The assessment will draw upon external experts and local communities, and involve government and civil society organisations. It will contain recommendations for action, consultation, and dispute settlement. The company commits itself to share the assessment with its stakeholders, to implement its recommendations, and to evaluate and update it on a regular basis.
2. The company establishes mechanisms for consultation, dialogue and partnership-building with its stakeholders – including relevant authorities, civil society organisations, communities – resulting in an economic, social and peace action programme, that conforms nationally agreed principles and policies.
3. Establishment of procedures to ensure that the own activities – and to the extent possible those of fellow consortia members, subcontractors and other business partners – do not result in, benefit from, or otherwise contribute to human rights abuses.
4. Monitor and document all breaches of the final Peace Agreement and of the ius cogens that occurs within the operational environment and report the findings to the appropriate authorities, or, if this fails to resolve the issue, international governmental and/or non-governmental human rights bodies.
5. When appropriate, considering the company's sphere of activity and influence, engage high-level Government officials in active dialogue about human rights on a regular and timely basis.
6. Within the company's sphere of activity and influence, assurance of safety and freedom of movement.
7. For companies that are active in regions with a history of violence, a shaping of the company's security set-up along the lines of the Voluntary Principles on Security and Human Rights
8. Use of all leverage and influence with the Government and at other venues to encourage the adoption of a comprehensive and transparent revenue management

regime; and be alert to those circumstances in which revenue allocation is a potential conflict risk, while promoting that agreed rules and transparent procedures for allocation are in place.

9. Full disclosure of all provisions in cash or in kind equipment or services for military, security, or dual use purposes.

10. Not make payments or otherwise support political or religious parties, factions, organisations, their representatives or related interest groups, or take part in any party politics.

11. Openly fight against bribery, extortion and other forms of corruption and not, directly or indirectly, offer, promise, give, accept, condone, knowingly benefit from, or demand a bribe or other undue advantage to obtain or retain business or other advantage and ensure that remuneration of agents is appropriate and for legitimate services only. Where relevant, a list of agents employed in connection with transactions with public bodies and state-owned enterprises should be kept and made available to competent authorities. Management control systems are adopted that discourage bribery and corrupt practices. Financial and tax accounting and auditing practices are adopted that prevent the establishment of "off the books" or secret accounts or the creation of documents which do not properly and fairly record the transactions to which they relate.

12. The company will make the ability to uphold and promote these principles and activities a crucial factor in its decisions to enter into or remain in business relationships.

13. The company will report, on a yearly basis, its impact on and contribution to development, peace, security, human rights and the environment, covering the above mentioned principles and activities, an evaluation of the economic, social and peace action programme, and the status of the recommendations of the impact assessment.

NORMATIVE FRAMEWORK

The three sources for these principles and activities are international law, Sudan's Comprehensive Peace Agreement, and authoritative voluntary business principles.

A International Legal Principles

An exhaustive list of relevant international legal instruments can be found in the Preamble to the UN Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights (U.N.Doc. E/CN.4/Sub.2/2003/38/Rev.2 (2003)). From these instruments, we distilled four principles that any individual or other organ of society must address with the most urgency:

1. Within their respective spheres of activity and influence, every individual and all organs of society have the obligation to promote, secure the fulfilment of, respect, ensure respect of and protect human rights recognised in international as well as national law, including the rights and interests of indigenous peoples and other vulnerable groups.

2. Nobody shall engage in benefit from war crimes, crimes against humanity, genocide, torture, forced disappearance, forced or compulsory labour, hostage-taking, extra judicial, summary or arbitrary executions, other violations of humanitarian law and other international crimes against the human person as defined by international law, in particular human rights and humanitarian law.

3. Security arrangements shall observe international human rights norms as well as the laws of the country or countries in which they operate.

4. Every individual and all organs of society shall respect the public interest, national development objectives, and the rights of local communities affected by their operations.

B The Comprehensive Peace Agreement

Sudan's Comprehensive Peace Agreement contains a important set of values and norms to determines the outlines of the public interest during the pre-Interim and Interim periods. It includes several principles that are relevant to the private sector. They translate into the following general business principles:

1. To promote quality of life, dignity and living conditions of all the citizens without discrimination on grounds of gender, race, religion, political affiliation, ethnicity, language, or region.
2. To contribute to the rehabilitation and reconstruction/construction of the social and physical infrastructure in a post-conflict Sudan.
3. To be sensitive to historical injustices and inequalities in development between the different regions of the Sudan that need to be redressed.
4. To take into account the religious and cultural diversity of the Sudanese people.
5. To ensure representation of all the people of the Sudan in the work force, utilising affirmative action and on the job training to achieve equitable targets for representation within an agreed time frame and the provision of educational opportunities for war-affected people.
6. To provide, as appropriate, compensation/reparations for those who have suffered loss as a result of conflict.
7. To recognise customary land rights and/or law

In addition, the Wealth Sharing part of the Agreement gives specific guiding principles for the oil industry:

"Sustainable utilisation of oil as a non-renewable natural resource consistent with:

- a) the national interest and the public good;
- b) the interest of the affected states/regions;
- c) the interests of the local population in affected areas;
- d) national environmental policies, bio diversity conservation guidelines, and cultural heritage protection principles."

These are partially specified for primary resource extraction as follows.

- a) To study and record land use practices in areas where natural resource exploitation occurs.
- b) To consult with persons enjoying rights in land and to seek their consent in respect of decisions to develop subterranean natural resources from the area in which they have rights, and to share with them in the benefits of that development.
- c) To provide compensation to persons enjoying rights in land on just terms arising from acquisition or development of land for the extraction of subterranean resources from the area in respect of which they have rights.
- e) To assess appropriate land compensation, this need not be limited to monetary compensation.
- f) To respect the right of the communities in whose areas development of subterranean natural resources occurs to participate, through their respective states/regions, in the negotiation of contracts for the development of those resources.
- g) To include the state in which development of subterranean natural resources occurs in the negotiation of contracts for the development of those resources.
- h) Persons whose rights have been violated by oil contracts are entitled to a just compensation. On the establishment of these violations through due legal process

the Parties to the oil contracts shall be liable to compensate the affected persons to the extent of the damage caused.

C Voluntary Business Principles

Companies are obliged to promote respect for the principles underlying international human rights law. Over the past years, government and business organisations have launched several voluntary processes to promote desirable behaviour. The following ones have gained considerable authority:

- The Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development. Another relevant OECD document, which is not voluntary, is the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- The United Nations Global Compact initiative which challenges business leaders to embrace and enact nine basic principles with respect to human rights.
- The Voluntary Principles on Security and Human Rights for the Extractive Industries. These principles are supported by the United States, United Kingdom, the Netherlands and Norway, all of them deeply committed to the Sudan peace process, while France, the home of Total which holds the largest oil concession in Sudan, is well-disposed towards the principles. Security arrangements being crucial to the peace process and a major challenge for any business activity in Sudan, the Voluntary Principles offer a proven standard for the extractive industries, in which other companies may also find useful guidance. The US and EU efforts to bring peace could benefit from a combined initiative to promote respect for these principles in Sudan.

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