

Statement by Voluntary Principles Participants on Memoranda of Understanding Between Companies and State Security Forces

Mining and oil companies frequently operate in environments that pose significant security challenges for myriad reasons. In many countries, security for these large extractive industry projects is provided, at least in part, by state security forces, be they police or military forces. In some instances, violence and even abuses in and around extractive industry projects have been perpetrated by state security forces.

By their nature, state security forces are accountable to the sovereign government, and not to companies. Oil gas and mining companies can seek to mitigate or even avoid potentially negative outcomes with proper planning and coordination, as well as by working with other stakeholders to set forth collective expectations before a situation emerges. Memoranda of Understanding (MoUs) between companies and state security forces are a critical tool to ensure that key expectations and decision-making processes and procedures can be established and agreed to – in writing – before potentially dangerous conflagrations occur.

MoUs form an integral part of the implementation guidance of the Voluntary Principles on Security & Human Rights (VPSHR or VPs), the key international initiative that sets forth best security practice for companies in the oil and mining sectors. The VPSHR is a multistakeholder initiative involving governments, extractive companies (oil and mining), and NGOs. The VPSHR contains a set of principles on how companies will ensure the provision of security and seek to prevent human rights abuses. Participants within the VPs work together to build good international practice and share lessons learned so companies can operate in a way that is respectful of human rights even in the most challenging of environments. The VPs have been highlighted as a strong example of how human rights principles can be applied to security-based operations at the business level recognizing the specific sectors and operating contexts and the respective roles of government, companies, and civil society organizations. The VPs represent a solid and practical foundation which align with broader principles outlined in the the United Nations Guiding Principles on Business and Human Rights.

It is widely recognized that one of the most challenging aspects of the VPSHR for companies to implement is the company relationship with public security forces. This is primarily because the inappropriate conduct of such forces can have an adverse impact on a company's operations and the neighboring community, yet the forces operate under the command of the sovereign government, not the company. The company's lack of any form of command and control over public security forces reinforces the need for a framework which clearly defines terms of reference for engagement with forces.

A MoU can be used to address this challenge by allowing the company and public security forces to delineate their respective duties and obligations with respect to the provision of security in and around the relevant operation, and agree on principles surrounding issues, such as equipment transfers, which can have a bearing on human rights. Beyond the mere terms of the MOU, the process itself is valuable, as it affords companies an opportunity to discuss with public security forces a range of human rights-related issues, and has the potential to generate opportunities for training for the public security forces. This dialogue has become a key way (and best practice) for companies to ensure they are implementing the VPs.

MoUs are not easy to negotiate, but they are recognized as an important tool in the VPs toolkit. They should not be viewed in and of themselves as imputing to the company legal liability for actions of a sovereign government's security forces. In fact, a company's use of such a document may demonstrate a company's lack of control over public security forces, as one of its key purposes is to obtain an assurance by the public security forces of their commitment to human rights principles.

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