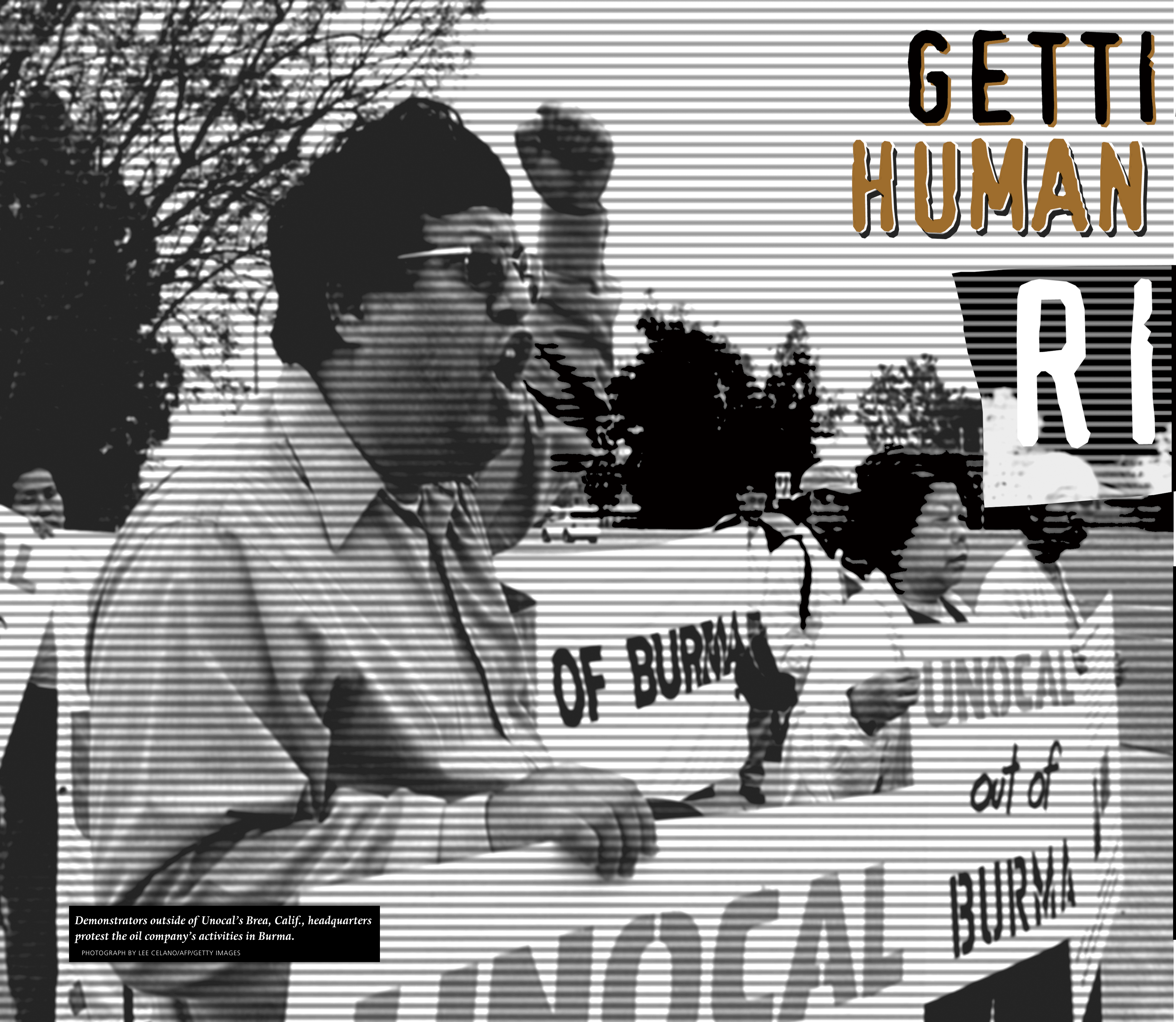

Demonstrators outside of Unocal's Brea, Calif., headquarters protest the oil company's activities in Burma.
PHOTOGRAPH BY LEE CELANO/AFP/GETTY IMAGES

GETTING HUMAN RIGHTS RIGHT

BY JENIK RADON, MARGO TATGENHORST DRAKOS, & TAREK FAROUK MAASSARANI

WHEN MULTINATIONAL CORPORATIONS VIOLATE HUMAN RIGHTS IN HOST COUNTRIES, THEY NOT ONLY INFLICT SUFFERING ON SOME OF THE WORLD'S MOST VULNERABLE PEOPLE, THEY ALSO HOBBLE THEIR OWN BOTTOM LINES. AND SO CORPORATIONS MUST MONITOR THEIR HUMAN RIGHTS IMPACTS MORE CLOSELY. DRAWING ON THEIR LEGAL, POLITICAL, AND SCHOLARLY BACKGROUNDS, THE AUTHORS SUGGEST FIVE CORE PRINCIPLES THAT CORPORATIONS SHOULD FOLLOW TO ASSESS AND REDUCE THEIR HUMAN RIGHTS FOOTPRINT.

IN 1996, UNOCAL BECAME THE FIRST CORPORATION IN U.S. history to go to trial for committing human rights abuses abroad. During the 1980s, the oil giant and its partners had hired local military forces in Burma, now called Myanmar, to secure a pipeline carrying natural gas from the Andaman Sea into Thailand. These army units forced locals to work on the pipeline; raped, robbed, and murdered civilians; and displaced entire villages.[1]

In U.S. federal and California state courts, peasants from Myanmar squared off with Unocal officials, accusing the oil giant of forced relocation, slave labor, rape, torture, and murder. The Supreme Court of California ruled in favor of the peasants, noting that Unocal "knew or should have known that the military did commit, was committing, and would continue to commit these tortuous acts." After nearly a decade of litigation, the oil giant agreed to a secret multimillion-dollar settlement.

Human rights abuses not only cause untold suffering in the communities where they take place, they also exact high costs from the corporations that perpetrate them. If Unocal had foretold how its actions in Myanmar would eventually affect its bottom line, the company might have avoided costly litigation and devastating press. More generally, when companies heed human rights concerns in their project planning, daily operations, management decisions, and overall business strategy, they reduce the risk of leaving a legacy of discontent.

Although recent measures, such as the Equator Principles and the United Nations-backed Global Compact, urge corporations to consider human rights when planning their projects, they suggest only first steps. Multinational corporations need full-fledged human rights impact assessment protocols, just as many already have social and environmental impact assessment protocols. Unfortunately, corporations and industries vary so much that it is impossible to design a human rights impact assessment that would apply to all of them. Nevertheless, our scholarship and experiences suggest five core principles that corporations should follow when monitoring their human rights impact: 1) include all stakeholders; 2) distribute impacts fairly; 3) get good data; 4) base decisions on data; and 5) share findings.[2]

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Our combined scholarship covers the waterfront of human rights, environmental, and social impact assessments. And our practical experiences range from negotiating pipeline treaties in the Caucasus, to advocating human rights in the Middle East, to writing legislation for newly independent Estonia. Although we draw most of our examples from the extractive industries, including oil, gas, and gemstones, our five core principles apply across the spectrum of multinational corporations.

INCLUDE ALL STAKEHOLDERS

To understand the human rights implications of their actions, corporations first need to identify the interests of all potentially affected stakeholders – especially those not at the table where the deals are done. These stakeholders include the host communities, downwind neighbors, laborers, civil society groups, ethnic minorities, and women. Many of these groups are poor, and do not speak the languages of Wall Street and Washington.

To help the process along, corporations should bring anthropologists and human rights experts on board. They can then use surveys, town hall meetings, and focus groups with stakeholders to foresee and forestall problems. More than a formality or a sales pitch, these interactions give corporations a genuine opportunity to assess and avoid human rights issues. (See "The Five Indignities" on p. 58 for common human rights abuses.)

In its operations in Burma, Unocal disregarded the peasants who would later sue the company. Oil company representatives declined multiple requests to meet from the Burmese Karen and Mon ethnic groups who lived along the pipeline. The corporation also turned down invitations to visit refugee camps and hear eyewitness accounts from the victims of the project. Had Unocal actively involved the local public as stakeholders in the project, the company would have heard directly and firsthand what the Supreme Court of California said it should have known – namely, the human costs of its project. Unocal instead took the position that those not at the negotiating table need not be consulted.

Even when corporations try to involve their most vulnerable stakeholders, they often fail because they do not adequately accommodate local cultures and histories. The World Bank, for example, agreed to oversee the Chad-Cameroon Petroleum Development and Pipeline Project, whose corporate partners include ExxonMobil, Petronas, and Chevron. In an attempt to involve the southern Chadians in the pipeline construction, the bank arranged almost 900 village meetings, distributed a 19-volume information pamphlet among libraries, and produced an informational video.

But the turnout at the village meetings was low because the armed guards who escorted ExxonMobil representatives to the meetings were members of a northern militia that was attacking southern Chad. The pamphlets similarly fell flat because most Chadians are illiterate and libraries are scarce. And the informational video fared no better because it was produced in a dialect that many southern Chadians do not speak. Because the World Bank's top-down initiative was not tailored to the people on the ground, the voices of the most endangered stakeholders did not travel to the decision makers.

In contrast, when corporations ask well and listen carefully, their projects get local support and even valuable input. The Waihi Gold Mining Company, for example, allowed the public to participate during the planning, approval, and construction phases of its Martha Hill gold mine in New Zealand. A local townsperson chaired regular meetings of company representatives and residents. The company and community representatives concluded that these opportunities for public discussion improved relationships between the parties, leading to the community's acceptance of the project, as well as its perception that the impact assessment was credible, unbiased, and fair. Nearly 20 years after pouring the first gold, the mine continues to operate with an extended lifetime granted by New Zealand's government.

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DISTRIBUTE IMPACTS FAIRLY

The spirit of fairness underlies the idea of human rights. Discrimination, or even an unintentionally uneven distribution of a project's costs and benefits, engenders hostility and reinforces volatile ethnic and economic disparities. When corporations ignore the socioeconomic and political dynamics within a locale, and instead deal only with government elites – many of whom are corrupt – they increase their chances of harming – or at least failing to help – their most vulnerable stakeholders.

In 1988, for example, as Unocal and its partners were constructing the Burmese pipeline, a military regime called the State Law and Order Restoration Council (SLORC) seized control of Burma. After ejecting the democratically elected government, SLORC renamed the country Myanmar and launched violent campaigns against ethnic minorities and resistance groups. The recent attacks on Buddhist monks in Myanmar are a legacy of this junta.

When Unocal partnered with SLORC, the corporation legitimized the party's rule. While party officials in the capital city of Yangon reaped the benefits of the pipeline, the Karen and Mon ethnic groups suffered abuse and terror. In other words, the spoils went to the established elites and the costs went to the impacted communities.

In contrast, the Chinese government integrated social, economic, cultural, and health safeguards into its construction of the Xiaolangdi Dam on the Yellow River in Henan Province. China is infamous for its poor environmental, social, and human rights standards. Its Three Gorges Dam project, for example, has displaced more than 1 million people and several thousand archeological and cultural sites, with little recompense. Yet for reasons that are unclear to observers, the government took a tack with the Xiaolangdi Dam project decidedly different from that of the Three Gorges Dam.

Although the Xiaolangdi Dam controls deadly floods and created a 75-mile-long reservoir in the arid region, its construction displaced more than 180,000 people. To distribute the costs and benefits of the dam fairly, the state government first hired specialists to assess impacts ranging from changes in income to health effects. The specialists determined that the dam would improve the affected population's quality of living over the long term. In the short term, the government established a special fund to guarantee minimum incomes, as well as a mechanism through which stakeholders could file grievances and complaints with the provincial government. Granting substantial loans, the World Bank ($4 billion) and the Export-Import Bank of the United States ($55 million) voiced their enthusiasm for this project, in contrast to their reaction to the Three Gorges Dam.

GET GOOD DATA

For reliable and current information, corporations must enlist rigorous fieldwork and draw upon credible, independent sources, such as published social science research and human rights reports. The people gathering these data must understand the corporation's proposed project, human rights standards, and local conditions. They should include such overlooked experts as anthropologists, linguists, and local elders. And pay for these experts should be on par with that of engineers, lawyers, and accountants. Otherwise, management will often unconsciously dismiss the input of such experts as "cheap" advice. Corporations must also take measures to safeguard the integrity and independence of human rights impact assessments to avoid both real and perceived conflicts of interest, especially when auditors work on the company's tab.

To assess and mitigate the human rights impact of the Chad-Cameroon pipeline project, for example, the World Bank established an international advisory group and an external compliance monitoring group. Yet the members of these two groups were foreign advisers who were unfamiliar with the complex north-south hostilities in Chad. In the end, the pipeline project exacerbated ethnic divisions, failed to improve basic living conditions, and helped the government strengthen its military capabilities.

Conversely, Australia's Electricity Commission of New South Wales (Elcom) both sought and used high-quality data when it planned a major electricity transmission line. Although the risks of electromagnetic radiation were not well understood at the time, Elcom researched this issue, as well as other engineering, economic, social, and environmental factors. Upon reviewing the study, a local community group originally opposed to the Elcom expansion approved the new route. And when electromagnetic radiation became a popular concern, Elcom was able to obtain court approval for its project.

BASE DECISIONS ON DATA

Having obtained good data from reliable sources, corporations must then use it in their decision making, as well as in their internal codes of conduct, staff trainings, enforcement and accountability mechanisms, and policies addressing discrimination, labor, security, the environment, and indigenous peoples. In short, human rights impact assessments must be an integral part of companies' business plans.

Unocal enlisted some of the best advisers available while building the pipeline in Burma, but then did not use the data they produced. The Control Risks Group, a consulting firm; Human Rights Watch; Greenpeace; and Unocal's own CEO, Roger Beach, all reported on SLORC's various transgressions against civilians. Transparent use and dissemination of these data might have prevented the human rights abuses that occurred on Unocal's watch. Yet the corporation apparently disregarded the information.[3]

The World Bank similarly failed to act on its findings. When the bank discovered that Chad-Cameroon pipeline revenues were not making their intended way to the education, health, and development of the southern Chadians, there were no consequences. Instead, the bank gave the Chadian government a $25 million welcome bonus, much of which officials spent refurbishing ministers' offices, sending military equipment to fight rebel groups, and committing other human rights violations. The bank then awarded the government of Chad a $260 million debt relief package to be used toward good governance and social programs. As the debt relief was in effect, the incumbent president arrested all of his election opponents, torturing one badly. The World Bank did not counter the government's argument that Chad was a sovereign nation and therefore alone decides its fate.[4]

SHARE FINDINGS

The findings from human rights impact assessments are useful not only for companies and impacted communities, but also for other stakeholders. They can help businesses, governments, and nongovernmental organizations (NGOs) identify, address, and even prevent human rights violations. Additionally, when corporations honestly disclose both the process and results of their assessments, they gain the trust and goodwill of all involved.

Moreover, as Unocal discovered, hiding the results of human rights impact assessments is bad business. Instead of publicizing its internal reports of possible human rights abuses in Burma, Unocal released glowing press briefs, such as one stating that "local people welcome the jobs, the training, and the benefits to the local economy." Unocal also responded to a New York City law imposed on firms doing business in Burma by writing: "There is a civil war going on [in Burma] as it has for 50 years. There are consistent reports of human rights violations, many of which are traceable to the war. On the other hand, the war is 150 to 200 miles from the pipeline project, where no such violations have taken place."

PHOTOGRAPH BY CARLOS VILLALON/NEWSMAKERS/GETTY IMAGES

A man stands near a burning oil pit in La Victoria, Ecuador. Indigenous groups filed a U.S. class-action lawsuit against Texaco for contaminating the area.

In contrast, De Beers, the world's largest diamond producer, led an international initiative to curb the sale of "conflict diamonds" when it learned that the African diamond trade was legitimizing violent rebel groups and funding civil wars. The resulting initiative, called the Kimberley Process, makes public the origins and shipping histories of diamonds from more than 45 nations. This initiative contributed to the ultimate demise of the brutal regime in Sierra Leone and the cessation of civil war in Angola. "De Beers knows all too well the deleterious effects that conflict and political instability often have on potential large-scale investors," the company wrote in testimony before a U.S. House subcommittee. "Having spent hundreds of millions of dollars on advertising its product, De Beers is deeply concerned about anything that could damage the image of diamonds as a symbol of love, beauty, and purity."

MANAGING RIGHTS

Corporations are embedded in social and political environments, and so they must minimize their human rights footprint. When they conduct human rights impact assessments that adhere to the five core principles we identified – that is, when they include all stakeholders, distribute outcomes fairly, get good data, make decisions based on good data, and share findings – they can predict and even prevent violations. Doing so not only demonstrates respect for regulations and upholds moral standards, but also protects profits.

Embracing human rights standards is not only sound business judgment, but also good corporate citizenship. As the public increasingly expects corporations to adopt socially responsible practices, corporations that do so will appeal to pension funds, institutional investors, and other entities that must deliver persistent and consistent long-term results.

To honor human rights in host countries, corporate executives first need to understand those rights and norms, and then pledge to uphold them in internal governance policies. They should also sign on for voluntary initiatives such as the Global Compact. In consultation with human rights specialists, the company should then develop a human rights impact assessment protocol that is applicable to its business. The Human Rights Impact Resource Centre, the International Centre for Human Rights and Democratic Development, and the Business & Human Rights Resources Centre are a few of the resources that corporations may turn to for further guidance.

In the end, corporations must embed their consideration for human rights in their management structure, and not simply relegate it to public relations or compliance departments. Responsibility for human rights should rest with the president or chief executive officer, or at least with the vice president for development or operations, with the board of directors' approval. If the human rights impact assessment is tangential to the management process, findings will merely sit on the shelf and collect dust, rather than guide management and strategy. □

THE FIVE INDIGNITIES

International human rights standards can be a confusing patchwork of treaties, declarations, scholarly interpretations, and philosophical proclamations. Yet at their core lies the simple notion of human dignity. The indignities that industries in the developing world commit fall into the following five categories:

Involuntary Resettlement. To make way for large-scale facilities and infrastructure, corporations often resettle local communities – without giving displaced villagers information, the opportunity to provide feedback, or adequate compensation. To give companies like China National Petroleum Corp. access to drilling, the Sudanese government forcibly removed local people, as well as their cattle and crops.

Use of Corrupt Security Forces. Multinational corporations regularly employ guards for their facilities and infrastructure. These guards are often government or paramilitary forces that are antagonistic to local populations. In Aceh, Indonesia, ExxonMobil hired military forces to secure its natural gas facilities, despite warnings that the guards would subject local populations to forced labor, torture, and even murder.

Fueling Conflicts and Dictatorships. When large-scale extraction of natural resources begins, the new source of revenue often legitimizes and empowers existing, sometimes autocratic, regimes. Too often these governments misappropriate these revenues, with devastating consequences. As a result, nations rich with natural resources, such as Nigeria and Indonesia, are often trapped in corruption, poverty, and conflict.

Environmental Degradation. A project's toxic leaks, gas flares, and poisonous wastes not only spoil the environment, they also jeopardize public health. Beginning in 1971, Texaco built oil wells in areas of the Ecuadorian rain forest where indigenous communities lived. Texaco's contamination of the rivers that these communities used for nourishment, hygiene, and transportation has brought misery to the local population.

Economic Disruption. Large-scale projects can exact harmful impacts on local economies by creating a boomtown effect, eroding traditional culture and social cohesiveness. After Shell and other multinationals discovered oil reserves in Nigeria, petroleum grew to more than 80 percent of the government's revenues and 90 percent of its foreign exchange. Rampant corruption and autocratic regimes have followed. *–J.R., M.T.D., & T.F.M.*

1 The U.N. special rapporteur on Burma recently reported that the Burmese military continues to confiscate land, displace villagers, and violently suppress local opposition. Further, forced labor is so widespread and persistent that the International Labour Organization has threatened to take the matter to the International Court of Justice.

2 For a discussion in more depth, see Tarek Maassarani, Margo Tatgenhorst Drakos, and Joanna Pajkowska. "Extracting Corporate Responsibility: Towards a Human Rights Impact Assessment." *Cornell International Law Journal* 40 (2007): 135-169.

3 Jenik Radon. "'Hear No Evil, Speak No Evil, See No Evil' Spells Complicity." *Compact Quarterly* no. 2 (2005).

4 Jenik Radon. "Sovereignty: A Political Emotion, Not a Concept." *Stanford Journal of International Law* 40 (2004): 195-210.