

Ethical CORPORATION

April 2018

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Shining a light on cobalt

Car makers in transparency drive

The trust deficit

Mining firms 'ignoring communities'

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Welcome to the April 2018 issue

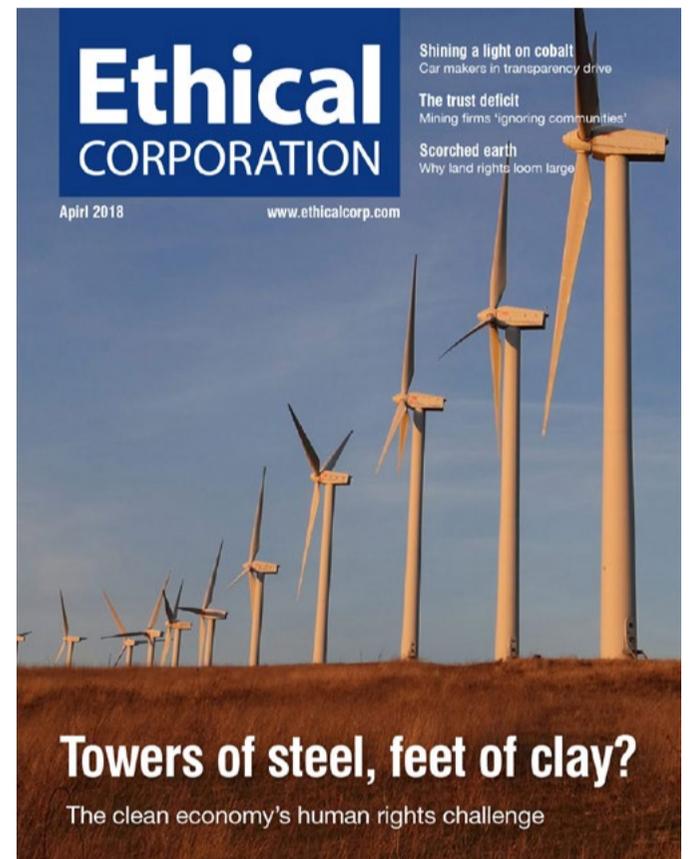
This month in the magazine we do a reality check on the burgeoning clean energy economy and look at the human rights and environmental challenges that will have to be overcome if the world is to move to greater uptake of renewable energy and electric vehicles.

Mike Scott reports on how some of the serious human rights abuses associated with dam projects in the developing world are starting to be seen in the wind industry, which is relatively new but rapidly expanding. He profiles how Siemens, which has seen some of its windfarms being subject to protests, is trying to get to grips with human rights risks through its entire extended supply chain.

As a recent report from CDP on the mining industry makes clear, mining companies are at the start of the value chain for several sectors that are at the heart of the low-carbon transition, including utilities, industrials and transport.

Mike Scott looks at the findings of the newly released Responsible Mining Index, and reports that many extraction companies are finding their greatest challenges lie not under the ground but above it, with a widespread failure by the extractives industry to build trust with the communities where they operate. He highlights examples of best practice from companies including Anglo American, Freeport-McMoRan, Bumi Resources and Cameco.

Meanwhile, Angeli Mehta investigates global efforts to increase responsible sourcing of cobalt, the critical raw material in lithium ion batteries used in electric vehicles, smartphones and laptops. The electric vehicle revolution alone is expected to push demand for cobalt threefold by 2030, yet almost 60% of the world's supply is mined in the Democratic Republic of the Congo (DRC), which is blighted by ethnic conflict and corruption. She assesses whether initiatives such



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as the Chinese-led Responsible Cobalt Initiative and CSR Europe's Drive Sustainability Partnership will be enough to meet the challenge of sustainable batteries. She also reports on how recycling of batteries by companies like Belgium's Umicore is helping to meet demand.

Our second briefing in the magazine is also human rights-related, as we shine a light on the issue of land rights in forest commodity supply chains. Since one-tenth of the carbon stored in tropical forests is in community forests that lack formal recognition, recognising the rights of forest dwellers is key to reducing the risk of deforestation, campaigners say.

Eric Marx reports that although the biggest food brands require suppliers to adhere to the principles of free prior and informed consent espoused by the UN, implementation is thin on the ground. He also reports on how companies like Sime Darby, Unilever and Marks & Spencer are setting best practice by zeroing in on community livelihoods in the palm oil industry.

Finally he looks at REDD+, the UN scheme designed to pay forest-dwelling people to protect forests, where early projects in the Democratic Republic of the Congo have sparked fears that failure to recognise land rights will lead to private sector land grabs and undermine communities' role in fighting deforestation.

I hope you find this month's issue a thought-provoking read.

Terry Slavin



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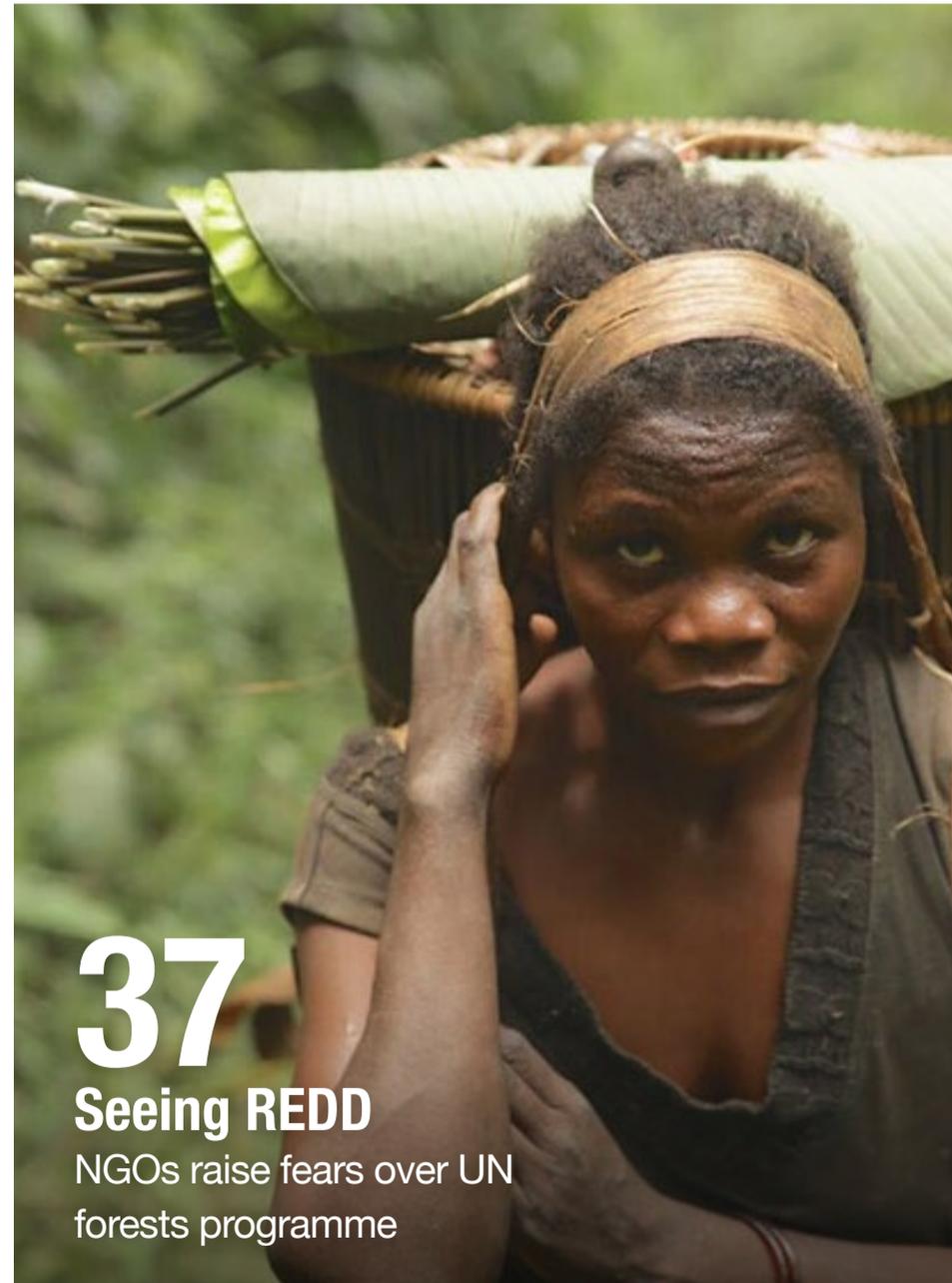
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SOFT_LIGHT/SHUTTERSTOCK

Towers of steel, feet of clay?

The wind industry's rapid expansion will be threatened if it doesn't tackle human rights issues in its extended supply chain, reports Mike Scott

Wind power is one of the undoubted successes of the renewable energy industry's efforts to drive down costs and help to decarbonize the economy. The cost of wind power fell by 18% last year, making it one of the most competitive sources of electricity in many markets around the world, and more than \$107bn was invested in 56GW of new wind capacity in 2017, according to Bloomberg New Energy Finance. Increasingly wind power projects are being built without the need for subsidies, allowing them to become truly part of the mainstream energy landscape.

The industry's important role in the energy transition, and its relative newness, would suggest that it has few human rights issues to deal with. However, as the sector grows rapidly, wind firms need to consider a range of different factors, says Christen Dobson, senior project lead and researcher at the Business & Human Rights Resource Centre (BHRRRC).

"We started working on this about two years ago after receiving allegations related to renewable energy projects. Most of them are related to hydro, but we have started to see more complaints related to the wind sector," she adds.

Wind projects face similar issues to other energy infrastructure projects, whether renewable or not, says Nicoletta Heilsberger, senior manager for sustainability positioning, business and human rights at Germany's Siemens, one of the world's largest wind turbine manufacturers (see [How Siemens is tackling human rights risks deep in its supply chain](#)).

'It is critical to engage with indigenous communities right from the start of the process rather than waiting until the project has been approved'



30 SECOND READ

- Wind power is now one of the most competitive sources of electricity globally. As a renewable energy it has a clean image, but ethical concerns are growing with complaints by local and indigenous communities of dispossession of lands, intimidation, killings, and displacement.
- In Mexico, there has been widespread opposition to wind projects due to a failure to safeguard indigenous rights. Authorities lack resources to defend indigenous people, who are less wealthy than average and poorly educated making stakeholder engagement more difficult.
- Wind projects may also disrupt traditional livelihoods. In Oaxaca, in Mexico, communities allege that wind energy companies have hampered agricultural productivity.
- The industry also faces challenges in its raw materials supply chain – manufacture involves minerals and metals such as cobalt, rare earths, iron ore and chromium. Many mining countries are known to produce these materials in a way that is highly damaging to the environment and local communities.

Renewable energy projects, including dams and wind farms, are associated with serious human rights abuses, including in Central and South America, East Africa and Southeast Asia, according to the BHRRC. In Brazil, the Belo Monte dam currently under construction on a stretch of the Xingu river in the Amazon has drawn fire over its impact on indigenous people who say it will cut water supplies and fishing stocks. The project, which will be the world's fourth largest hydroelectric plant, has faced continual delays over claims it has failed to build a safety net for communities living near the dam.

“Local communities are faced with some of the most damaging impacts including dispossession of their lands, livelihoods undermined, threats and intimidation, killings and displacement, among other abuses,” it says in its [Towards Responsible Renewable Energy report](#).

When the BHRRC sent questionnaires to 50 hydro and wind companies about their human rights policies, it found that only five had a stated commitment to free, prior and informed consent (FPIC) policies, and of those five, three were facing allegations of FPIC violations. “We saw a real need to work with the sector to put human rights at the centre of their strategies,” says Dobson. “We believe strongly that a fast transition to a low-carbon economy is itself a human rights imperative and that these companies are really well positioned to ensure more people have access to energy, but the transition will be more ethical if it takes human rights into account.”

She adds: “In addition to FPIC issues, there are also concerns around land grabs, access to water and water contamination, changes to livelihood and the violation of rights to freely practise culture. It is critical to engage with indigenous communities right from the start of the process rather than waiting until the project has been approved.”

In Mexico, there has been widespread opposition to wind energy projects as a result of the Mexican authorities' failure to safeguard indigenous rights adequately, according to Jimena Blanco, head of Americas research at Verisk

'The low-carbon transition will be more ethical if it takes human rights into account'



Maplecroft. “This opposition means that investing in the sector implies a significant exposure to being associated with human rights violations,” she adds. “Such risks are particularly high in states with a substantial indigenous population and wind power generation potential, such as Oaxaca.”

Mexico scores poorly in Verisk Maplecroft’s Indigenous Peoples’ Rights Index 2018 because, in spite of having a large adequate legal framework, authorities lack resources to enforce the law. Another problem is that many indigenous people are significantly less wealthy than average, poorly educated and cannot read or write Spanish, making stakeholder engagement more difficult. Many earn precarious livelihoods as subsistence farmers, day labourers and service workers.

“Communication difficulties between indigenous communities and external investors create reputational risks in sensitive sectors such as wind energy, particularly if communities later allege that the impact of investment projects was not properly communicated to them in advance,” Blanco says. “In poorer areas, wind energy investors are likely to face unrealistic expectations from local communities regarding the contribution they can make to development, increasing the challenges of maintaining a long-term social licence to operate.”

Wind projects may also disrupt traditional livelihoods, which can undermine relations with indigenous communities. Communities in Oaxaca allege that wind energy companies have hampered agricultural productivity by imposing crop-height restrictions, which effectively bar them from cultivating corn and sorghum, for example, and that wind farms have damaged their livelihoods by creating excessive noise, which frightens livestock, and by generating vibrations, which impact fish populations.

There are also accusations of schemes impeding access to indigenous communities’ sacred sites, displacing them from their ancestral lands and preventing access to areas used to source medicinal plants.

“Wind energy projects will therefore continue to attract opposition from indigenous communities, exposing investors to risks ranging from negative publicity to disruptive and violent social unrest, as well as scrutiny and potential reputational damage,” Blanco concludes.



Indigenous people in New York protesting against development of the Belo Monte hydro dam in Brazil in 2010.

INTERNATIONAL RIVERS/FLICKR

BHRRC found that only five wind and hydro firms have a stated commitment to FPIC, and three of them face allegations of violations



The industry also faces challenges at an earlier stage of development. “The wind sector uses a number of metals and minerals associated with human rights concerns, such as cobalt and rare earths, as well as more common materials such as iron ore and chromium,” says Joseph Wilde-Ramsing, senior researcher at Dutch NGO SOMO, also known as the Centre for Research on Multinational Corporations.

In a report for the charity Action Aid, SOMO says that “many of the world’s largest mining countries are known to produce minerals required for wind turbines in a way that is highly damaging to the environment and local communities. Companies that use the minerals to manufacture wind turbines are directly linked to those risks through business relationships in their supply chain.”

In one sense, says Wilde-Ramsing, “we are at the start of the potential problems to come. The wind sector is a relatively small player at this stage, but it is going to grow exponentially and so it will play a significant role. These are old problems, but wind is a new player.”

Much of the world’s cobalt comes from the Democratic Republic of the Congo (DRC) and cobalt mining in the central African country is associated with child labour, forced labour and in some cases armed conflict, Wilde-Ramsing says, while there are significant environmental pollution issues around the mining of some rare earth metals in China, the world’s biggest producer. (See [Electric car makers in drive to remove human rights stain from cobalt](#))

Wind energy companies, Wilde-Ramsing says, “are at the very initial stages of awareness of their links to these issues. A lot of the manufacturers are not really doing the due diligence to determine what their links might be and have not mapped their supply chains from a human rights perspective.

“This is not the due diligence these companies are expected to undertake under international norms, such as the UN Guiding Principles on Human Rights. They need to do human rights due diligence to identify the risks to people and planet from their supply chains and they should use their leverage with their business partners to try to improve conditions on the ground,” Wilde-Ramsing says. “Their influence may be limited now but it will increase as the industry grows.” ■



Cobalt mining in DRC is associated with human rights and environmental problems.

AMNESTY INTERNATIONAL



Mike Scott is a former Financial Times journalist who is now a freelance writer specialising in business and sustainability. He has written for The Guardian, the Daily Telegraph, The Times, Forbes, Fortune and Bloomberg

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AMNESTY INTERNATIONAL

Electric car makers in drive to remove human rights stain from cobalt

Angeli Mehta reports on the global efforts to improve sustainability of the raw material that underpins our clean energy future

Electric vehicles promise a greener, cleaner future but first their manufacturers have some investment to make in their sustainability. The lithium ion batteries in electric vehicles, smartphones and laptops require a critical raw material – cobalt. The electric vehicle revolution alone is expected to see [demand for cobalt](#) soar threefold by 2030 compared with what was mined in 2016.

Cobalt rarely exists on its own in the earth's crust but is combined with nickel or copper, which are smelted to produce the shiny silvery-grey cobalt.

That cobalt has come under the spotlight in the past couple of years is thanks largely to efforts by Amnesty International. “What’s troubling is the number of years this was a black hole: companies were completely unaware of where cobalt was coming from,” says business and human rights adviser Joshua Rosenzweig.

Almost [60%](#) of the world’s supply is mined in the Democratic Republic of the Congo (DRC), one of the poorest countries on Earth, blighted by ethnic conflict and corruption.

The DRC’s people get little benefit from the country’s rich resource. An investigation by [Global Witness](#) revealed that more than \$570m of revenues mining companies paid to the state disappeared between 2013 and 2015, thanks to corruption and mismanagement.

‘What’s troubling is the number of years this was a black hole: companies were completely unaware of where cobalt was coming from’



30 SECOND READ

- Demand is soaring for cobalt, a key material in lithium ion batteries, which power electronic vehicles, smartphones and laptops.
- Amnesty International has highlighted concerns over cobalt mining and says car and electronics firms are not doing enough to take action over human rights risks. With China now the biggest important of cobalt, challenges in the supply chain need to be tackled urgently.
- Almost 60% of cobalt is mined in the DRC – 20% by ‘artisanal miners’, many of them children, working in dangerous conditions. Industrial mining is also beset with problems, such as poor labour conditions.
- The Responsible Cobalt Initiative aims for supply chain transparency. However, tackling issues like child labour can be difficult when livelihoods are at stake.
- Cobalt mining also poses environmental concerns around water extraction, pollution and contamination – the urine of people living near mines has been found to contain cobalt and other metals. There is also the prospect, by 2025, of exploitation of rich ocean floor deposits.

A new code that will increase taxes on mining companies was signed into law last month, although arguments persist over implementation, and there’s little optimism the situation will change.

To compound these unhappy circumstances, 20% of the DRC’s cobalt is mined by hand, so called artisanal mining, a word that belies the dangers of the effort and the child labour that helps support it.

In 2017 a team from the [University of California, Berkeley](#), published a detailed study of over 2,500 households in the Congo’s copper belt. They found 90% of cobalt miners work in artisanal mining. Around 12% of under-18s worked in the mines, and many of them in the most dangerous of places – underground. What’s driving children to work is poverty.

Nor is industrial mining without blemish. Rosenzweig points to forced evictions, labour conditions, the use of security to keep artisanal miners away from the fringes of the mining perimeter, and environmental impacts. It’s also dangerous: seven workers were killed in 2016 at Glencore’s operations in the Katanga region after a mine wall collapsed.

Supply chain inaction

Last year, [Amnesty](#) followed up with car and electronics companies on their efforts over nearly two years to identify their cobalt suppliers. It’s verdict? That only Apple and Samsung SDI had taken “adequate action” to identify their suppliers, although it criticized both for failing to make public their assessments of human rights risks associated with cobalt production.

Apple was the first company to map its cobalt supply chain to the mine level, and says it “goes beyond what’s required by law to help smelters report, assess, and mitigate risk in their business practices”. Its efforts are informed by the due diligence framework of the Organisation for Economic Co-operation and Development (OECD). This is not legally binding but sets out the common position of OECD members and others, including the DRC. Apple is also working with NGOs to eliminate child labour.

Amnesty International says only Apple and Samsung SDI have taken adequate action to identify their cobalt suppliers



MATEJ KASTELIC/SHUTTERSTOCK

Electric vehicles herald a greener future, but manufacturers have to tackle issues in their raw materials supply.

Amnesty is highly critical of car companies like VW, General Motors, Chrysler, Daimler, Renault, and BYD, which it says have taken “minimal action”.

Amongst those that have taken “moderate action” is Tesla, which disputes this rating, and insists the overwhelming majority of its cobalt comes from sources outside the DRC, through its battery supplier Panasonic.

A spokesperson told Ethical Corporation: “We spend a lot of time trying to make our supply chain as environmentally sound as possible, and ensuring that working conditions in our supply chain are safe and humane, and that workers are treated with respect and dignity.”

There’s an urgency to deal with challenges in the cobalt supply chain before demand is so high it’s impossible to police. China is the biggest importer and refiner of cobalt and the largest battery producer for electronic vehicles (EVs), so it’s no surprise that it’s identified cobalt as of strategic value as it transitions to green technologies. Observers worry that national interests could trump other concerns.

Refiners and smelters are crucial in supply chain tracking, as they’re the last point at which the origin of the cobalt can be identified, before industrial and artisanal-mined ore are blended together through the refining process.

“As long as there is a crack in the system someone will push cobalt through it,” asserts Rosenzweig.

‘We have to go beyond due diligence. It’s not enough to have a checklist. Who is going to improve the situation and take responsibility?’



Responsible Cobalt Initiative

The setting up last year of the Responsible Cobalt Initiative (RCI) is a hopeful sign. Chinese cobalt refiners Huayou, Jinchuan, and XTC New Energy Materials are joined on the downstream side by BMW, Dell, Jiana Energy, Apple, Volvo and Daimler.

So far, 26 companies and three Chinese industry associations are involved. Its newly appointed executive secretary Christina Feng, who until last year handled raw materials sourcing for Microsoft, says it's crucial to join upstream and downstream efforts. RCI is yet to develop a workplan, but aims to deliver supply chain transparency with an internationally acceptable audit standard for refiners; to work on the ground with artisanal miners, and to provide a single voice to communicate with cobalt users.

"I believe in this work," says Feng. "The companies who joined us agree they need to take the responsibility to tackle the challenges. They want to work on this."

One of RCI's founders, Huayou Cobalt, which mines and refines cobalt from the DRC, was heavily criticized by Amnesty. In a presentation in China last year, its director of sustainability, Bryce Lee, said many of its downstream customers had asked it to stop sourcing cobalt from artisanal mining. But he didn't believe that was the right thing to do.

Lee suggested that a free market and a lack of capacity and will to implement due diligence on child labour makes it challenging to outlaw. Huayou, he said, had the most success at old industrial sites, where artisanal miners have permits to operate; it's much harder to tackle issues of child labour where mining is done within the confines of villages.

Huayou has worked with NGO Pact to develop responsible sourcing, and these efforts have been independently audited. Its auditor's report, however, called for Huayou to provide documentation and evidence of taking action when warnings were flagged up.

Like Huayou, NGOs don't want the artisanal mining sector to go away, as livelihoods would be destroyed. But they want an end to bad practices.



VASIN LEE/SHUTTERSTOCK

Apple was the first company to map its cobalt supply to mine level.

Amnesty is highly critical of VW, General Motors, Chrysler, Daimler, Renault, and BYD, which it says had taken minimal action

“It would be great if we could give all those people safe and lucrative jobs,” says Rosenzweig.

It’s often said that “the proof of the pudding is in the eating” and this is palpably true for the flurry of overlapping supply chain initiatives that have been launched by various industry groupings over the past year.

Apart from RCI, these include a risk assessment framework for large-scale producers, and the launch of an electronic tagging pilot by UK supply chain auditors RCS Global.

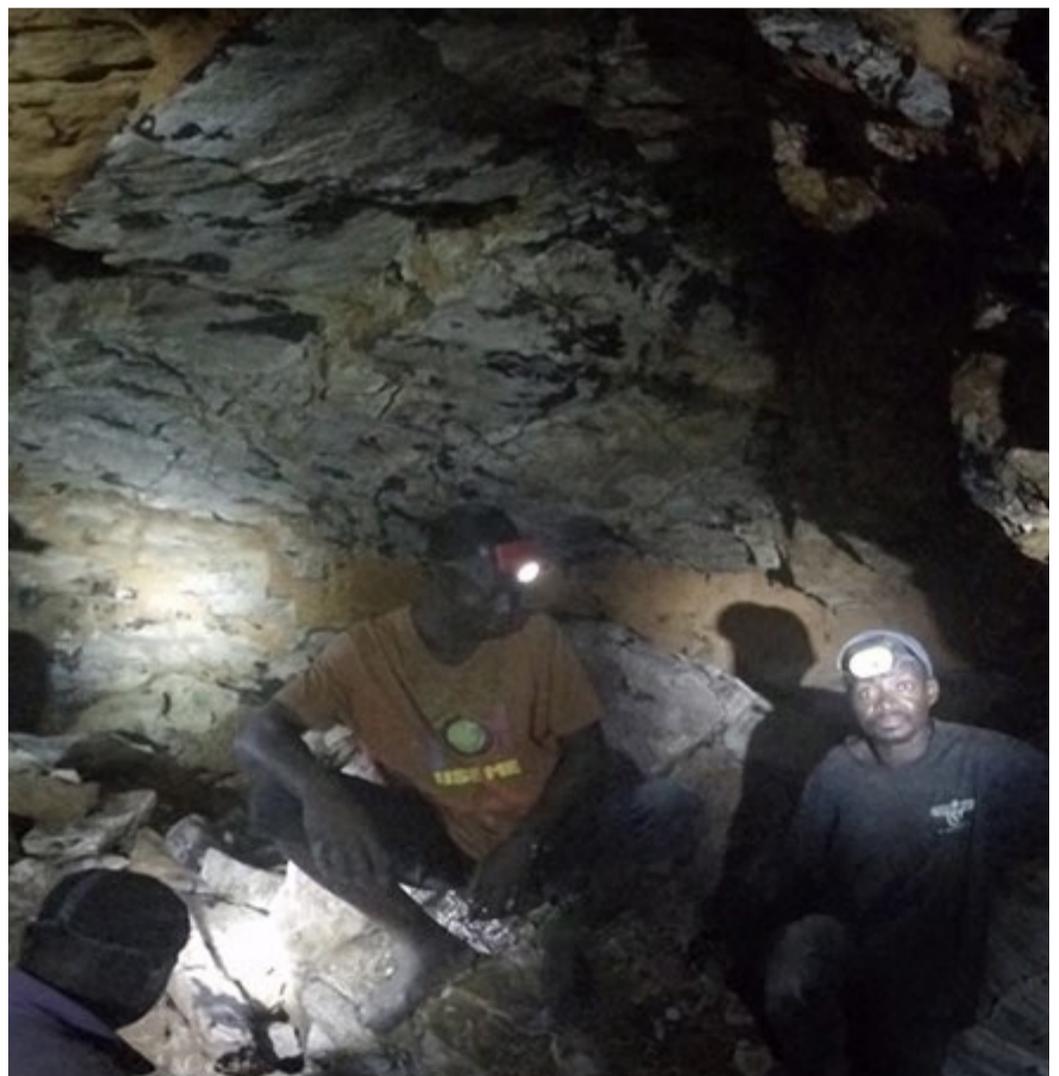
Its aim is to establish precise provenance claims for cobalt from five artisanal and semi-mechanized mines in the DRC. Child labour, or incidents like a mine cave-in, would be recorded onto an online dashboard and instantly visible to anyone along the supply chain. RCS has yet to reveal the industrial participants (said to include two car companies), or exactly how such continuous monitoring will be achieved.

Leading automotive manufacturers have set up the Drive Sustainability Partnership, which aims to push for sustainability throughout their supply chains. They are developing a Raw Materials Observatory to identify and tackle ethical, environmental and human rights issues in raw materials sourcing. Fifty key raw materials common to the group have been assessed by sustainability analysts Dragonfly Initiative. The manufacturers’ group is finalising common actions for the top 17 materials, of which cobalt is one, and talking to potential partners.

Stefan Crets, executive director of CSR Europe, which is co-ordinating the partnership, says the goal is to work out what can be done together. “We have to go beyond due diligence. It’s not enough to have a checklist ... Who is going to improve the situation and take responsibility?”

What’s crucial now, he says, is to move from an “atomized approach to a cross sectoral approach”. Encouragingly others have already asked to be involved, including the electronics sector, through the Responsible Business

'As long as there is a crack in the system someone will push cobalt through it'



Cobalt miners working underground in the DRC.



Alliance. Crets also sits on the board of the Responsible Cobalt Initiative, so will have a broad overview of international efforts.

“We need to join the dots,” agrees Michèle Brühlhart, director of innovations at the Responsible Business Alliance (RBA). She identifies refiners and smelters as the chokepoint. The RBA has published an initial list; and some of those refiners have completed risk-readiness self assessments. It also intends to co-ordinate auditing efforts with the RCI. But it’s going to take time, she cautions, to build capacity in the DRC. “We don’t want to create disincentives for actors to be engaged by creating hard-to-meet expectations without providing a path for them to get there.”

Environmental issues

While efforts directed at human rights and child labour risks in the supply chain are to be welcomed, discussion of environmental concerns are often quickly brushed over. Water extraction and pollution are real issues. People inhale both the dust that is constantly thrown up by heavy trucks traveling on unsurfaced roads, and radioactive materials, such as uranium, that naturally occur in the region’s soils and are exposed through mining.

Various studies have found elevated concentrations of metals including cobalt, copper, and lead in the urine of adults and children living close to mines. Respiratory problems are common. CSR reports from mining companies like Glencore talk about environmental stewardship but provide little detail on impacts and actions. (See [Mining companies ‘failing to tackle trust deficit’](#))

Even before the sustainability of land mining is tackled, there is the prospect of exploitation of rich deposits of cobalt formed over millions of years on the ocean floor. This resource is particularly abundant in the western Pacific, with deposits of some 50m tonnes: that’s around seven times the economically mineable deposits on land. According to the [World Economic Forum](#), exploitation is expected by 2025.

The issues raised by cobalt mining suggest worldwide industry and governmental actions are required. It’s crucial that all the supply chain initiatives, as well as the newly formed Global Battery Alliance, which boasts members from the UN to industry, will implement a seamless approach to delivering sustainable batteries. ■



A bank of lithium ion batteries used in electric vehicles.

FISHMAN64/SHUTTERSTOCK



Angeli Mehta is a former BBC current affairs producer, with a research PhD. She now writes about science, and has a particular interest in the environment and sustainability.
@AngeliMehta



Cobalt supply challenges fuel efforts to recycle batteries

Recycling lithium ion batteries from electric vehicles, smartphones, laptops and many other gadgets, as well as developing new battery chemistries, will go some way towards addressing the demand for cobalt, and other vital metals. Spent batteries will be abundant: according to the [World Economic Forum](#), 11m tonnes of them will be discarded by 2030.

From August this year, Chinese electric vehicle (EV) manufacturers will be responsible for recycling or repurposing car batteries. Although fine details are still being worked out, the measures also require battery manufacturers to ensure products are standardized so they can be easily disassembled, and that they work with electric vehicle manufacturers on a tracing system for all battery components. The first of China's electric vehicles are likely to come to the end of their life this year.

China's largest EV manufacturer, BYD, has begun construction of a battery recycling plant in Shanghai. According to a spokesperson, the company has introduced ways to utilize batteries removed from decommissioned electric vehicles, recycling some for use in base stations, battery storage power stations and other facilities. Batteries that cannot be re-used are disassembled.

UK consultant Creation Inn estimates that by 2025, 23-24% of cobalt will be recycled, the bulk of that in China. Managing director Hans Eric Melin suggests that this won't have a huge impact on the supply chain or pricing because of the expected growth in demand for cobalt.

Such is the demand for cobalt, he adds, that recyclers and battery makers are converging on limited supplies. Shenzhen based GEM – China's largest recycler, which provides cobalt to battery makers – has been trying to secure a deal to take a third of mining firm Glencore's output for a three-year period because it can't supply enough cobalt from recycling. Meanwhile one of its customers – battery maker CATL – has taken a majority stake in another recycler, Guangdong Brunp Recycling Technology.

Belgian battery materials and recycling company Umicore doesn't believe cobalt supply will be a problem in the first wave of electrification but certainly will, beyond that. It has developed smelting technology to recover battery metals that it says minimizes energy consumption.



Plastics and other organic compounds, including solvents and electrolytes from dismantled batteries, are burned as a gas to produce heat for the process. The gas is cleaned so there are no harmful emissions.

Recovery rates for key metals like cobalt is 95%, and the cobalt can be reused in battery materials and other applications. Umicore's pilot plant at Hoboken, in Belgium, can treat 7000 tons of rechargeable batteries each year, but it expects the plant to grow after 2020, when the first of Europe's electric vehicle batteries reach the end of their lives.

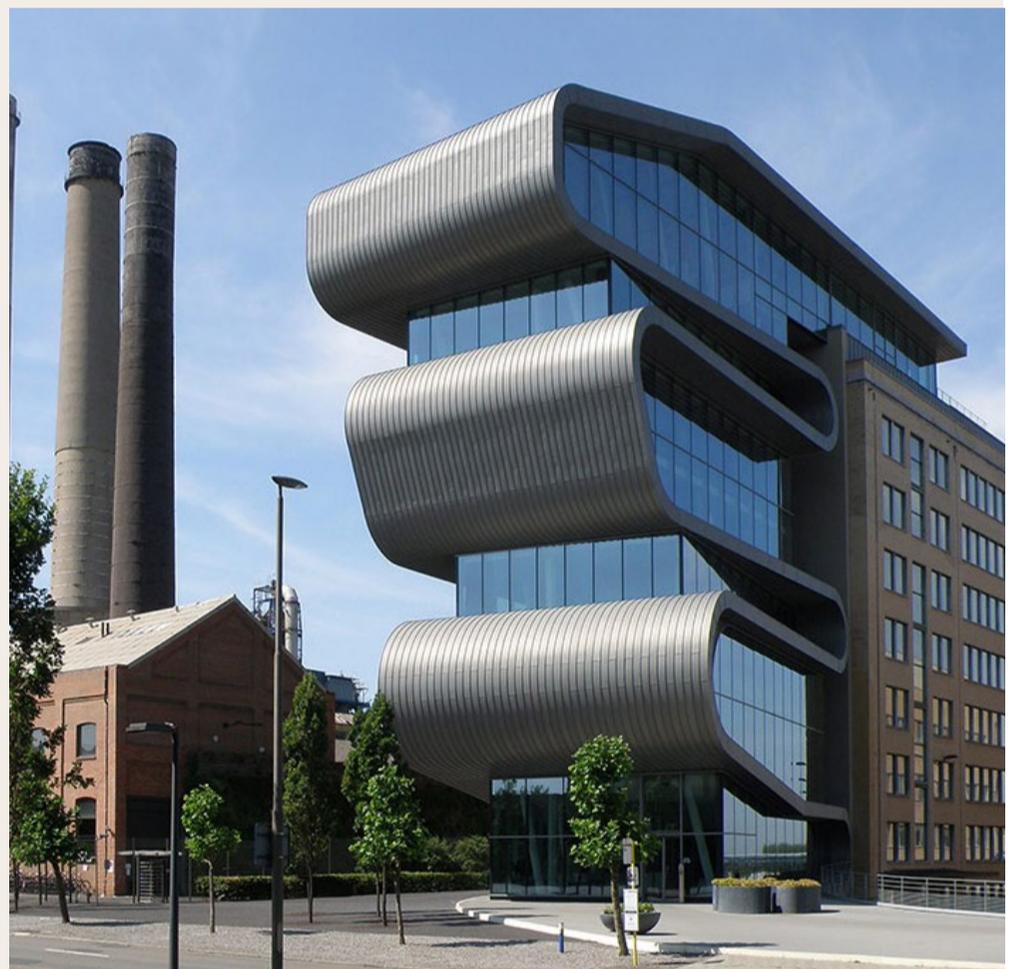
Maarten Quix, Umicore's head of battery recycling, points out that it is equally important to recover metals from batteries in smartphones and laptops, but that there is still a lack of consumer awareness that valuable materials can be recovered and re-used. Metals are infinitely recyclable without losing their properties.

Other efforts include Nissan's partnership with power management company Eaton to repurpose its Nissan Leaf electric vehicle batteries as home storage units after their first life in cars is over.

New battery chemistries also offer solutions. In a lithium ion battery, lithium ions flow back and forth between one electrode (the anode) and the other (cathode), as the battery is charged and discharged. Advances in energy storage and safety have largely been driven by changing recipes and structure of the cathode.

Cobalt was the first material used, but costs have meant manufacturers have increasingly substituted nickel, manganese and aluminium. New chemistries are promised this year that will use 80% nickel, 10% manganese and just 10% cobalt.

Tesla says its vehicle batteries already use less cobalt than other car makers. Whether cobalt can be done away with entirely is a hot research topic: at the end of last year [US researchers announced](#) they'd developed a battery that replaced cobalt with iron, potentially delivering not only a much cheaper battery, but one with much greater capacity too.



UMICORE

Umicore's pilot plant at Hoboken, in Belgium, can treat 7000 tons of rechargeable batteries each year.

Angeli Mehta

[View online](#)

MATEJ KASTELIC/SHUTTERSTOCK

Mining companies ‘failing to address trust deficit’

The Responsible Mining Index, published this month, identifies a widespread failure by extractives firms to monitor and share ESG performance with communities. Mike Scott reports

Mining is a challenging business, but many extraction companies are finding their greatest challenges lie not under the ground but above it: dealing with their impacts on local communities.

These cover the full gamut of environmental, social and governance (ESG) issues, ranging from pollution and water use to the effects on local communities, including labour conditions, the level of tax that firms pay and bribery and corruption concerns.

According to Dutch NGO the Responsible Mining Foundation, which this month published the inaugural Responsible Mining Index ranking the top 30 mining companies on their performance on six different ESG issues, many mining companies have established responsible policies and practices on specific issues. But it says few companies have taken a systemic approach to addressing the full gamut of their impacts, or follow up their own policy commitments with effective, company-wide action. The index states there was: “Little or no action on some issues on which companies would be expected to act, such as monitoring the impacts of mining on children, tracking whether community grievances are being dealt with appropriately, or checking that workers’ wages meet or exceed living wage standards.”

An assessment of 127 mining sites found that the vast majority provide little or no data on key issues of direct interest to local communities

**30 SECOND READ**

- Many mining companies have responsible policies and practices on ESG issues, according to the Responsible Mining Foundation. However, few are systematically addressing their full impact or taking effective action. Critically, there is a widespread failure to monitor and report their performance to key stakeholders.
- Mtwalo Msoni of Publish What You Pay says mining groups often fail to communicate with local communities or make misleading promises that lead to mistrust. Consultation processes too have not always been as good as they could have been.
- Mining companies need to invest in building skills in local communities and in supporting local businesses that can provide services to the mines, particularly social enterprises. An example of this is in Arizona where US firm Freeport-McMoRan established a training institute on the reservation of the San Carlos Apache tribe.
- Mining companies can also counter the perception that they are not contributing enough to the communities by increased transparency on tax.

Critically, it identified a widespread failure by mining companies to monitor and report their performance to key stakeholders. The NGO, which assessed 127 mining sites, found that the vast majority “provide little or no data on key issues of direct interest to local communities, workers and other stakeholders. This includes information on how a site is managing local employment, local procurement, grievance, water use and biodiversity impacts.”

Luke Balleny, manager for the role of mining and metals in society programme at the International Council on Mining & Metals (ICMM), says that in the age of social media transparency is key to companies retaining their social license to operate.

“Now it is crucial to have the local population on side,” said Balleny. “They are not only local stakeholders but make up a substantial proportion of a mine’s employees.”

In addition, a trend towards more decentralized government has given more power to local authorities, which have a closer connection to their communities.

In Colombia, AngloGold Ashanti, which leads the Responsible Mining Index for working conditions and ranks high for environmental responsibility and community well-being, was granted permission by the central government to develop the La Colosa gold mine, but the local authorities took the government to court.

The country’s Constitutional Court overturned the government’s sole authority to approve mining projects, and the mayor of Cajamarca, the local municipality, held a referendum on whether the \$2bn project should go ahead. According to Reuters, 98.8% of Cajamarca residents voted against, and AngloGold put the project on hold.

“It was a wake-up call to everyone in the industry, that you can get the right permits but if you don’t have the support of the local community, your project will struggle,” Balleny says.

Mtwalo Msoni, national co-ordinator for Zambia of NGO Publish What You Pay, says that mining groups either fail to communicate with local commu-

‘It was a wake-up call that you can get the right permits but if you don’t have the support of the local community, your project will struggle’



MARK AGNOR/SHUTTERSTOCK

Mining companies need to invest in local communities and support local businesses that can provide services and supplies.

nities or make a lot of promises before projects open. “It is these promises that eventually lead to mistrust and conflict between the mining company and local community,” he says.

Balleney agrees that managing expectations is crucial, especially in the early stages of a project, “Communities often expect money to start flooding in as soon as a project has been agreed. But mines won’t make profits until maybe five to 10 years after they start operating and they won’t start operating until five to 10 years after planning starts.”

Consultation processes have not always been as good as they could have been, Balleney concedes. “People want not just to be ‘consulted’ but to be listened to and have their opinions taken into account. You have to start building trust from a very early stage, long before you start digging holes in the ground.”

Mining companies must invest in building skills in local communities and in supporting local businesses that can provide services to the mines, particularly social enterprises “because they guarantee multiplier effects within the broad community,” says Msoni.

One of the companies that has shown best practice in this is US-based Freeport-McMoRan. The [Responsible Mining Index](#) highlights how its subsidiary PT Freeport Indonesia (PTFI) has provided skills development to indigenous Papuans, training more than 3,800 and placed over 2,600 apprentices into permanent employee and contractor positions.

‘People want not just to be consulted but to be listened to and have their opinions taken into account. You have to start building trust from a very early stage’



Its US parent company used the model to establish a training institute in Arizona on the reservation of the San Carlos Apache tribe, to increase the skills and employability of Apache students.

Tax

Another way that mining companies can counter the perception that they are not contributing enough to the communities where they operate is through increased transparency on tax, according to Balleny.

“If companies are transparent, it is a first step to building trust, it reduces the potential for bribes and it helps citizens to hold the government to account. Companies feel they have a good story to tell about how much tax they pay and that it makes sense to be open about it.”

In addition, there is a raft of regulation that encourages greater transparency, including the [EU’s Accountancy Directive](#), which requires large oil, gas, mining and logging companies listed and registered in the EU to disclose their revenue payments to governments around the world on a country by country basis.

When countries sign up for the Extractive Industries Transparency Initiative, a global standard promoting open and accountable management of oil, gas and mineral resources, companies operating in those countries have to disclose how much tax they pay and to whom.

Anglo American, which scored among the top three on the Responsible Mining Index report on all six categories, produces an annual report on tax and economic contribution, and won the PwC Building Public Trust Through Tax Reporting award in 2015 and 2016.

Jan Klawitter, international relations manager at Anglo American, told Ethical Corporation’s supply chain conference last year: “The lack of trust between communities, governments and extractive companies is a significant issue. Tax takes you into a socio-political conversation and it’s really important for our social licence to operate. It’s about the difference you can make on the ground. Providing livelihoods, running enterprise development schemes, localising supply chains is what makes the difference.” ■



ROMERITO PONTES

The aftermath of Brazil’s worst mining disaster, when a dam containing 40m litres of extraction waste collapsed in 2015, killing 19 people.



Mike Scott is a former Financial Times journalist who is now a freelance writer specialising in business and sustainability. He has written for The Guardian, the Daily Telegraph, The Times, Forbes, Fortune and Bloomberg



CAMEOC

How a little local knowledge can go a long way for mining companies

One area where miners could make a big difference relatively quickly is in procurement, where companies often ignore local suppliers in favour of companies from their home markets. “Procurement is often the single biggest payment a mining group makes, so it has the biggest impact in creating revenue and jobs,” says Jeff Geipel, managing director of NGO Mining Shared Value.

The main concerns for companies are quality, volume and reliability, he adds, but there are many things they could buy locally but do not because procurement departments are not incentivized to find local suppliers. “There is a lack of information on local suppliers and there are quality concerns, to be sure, but sometimes that is used as an excuse. One company operating in Africa used to import chickens from Brazil. There’s no way that’s cheaper for the company – but if you change it, any cost savings will come over the longer term. There may be upfront costs.”

Historically, local procurement has not been dealt with well, he adds, “but companies have come quite a long way in the last few years”. The Responsible Mining Index highlights how Bumi Resources’ KPC subsidiary in Indonesia has developed a procurement migration programme to switch, where possible, from foreign to local and national suppliers, and from national to local suppliers.

“In 2015, the company migrated the supply of eight commodities (ranging from mining equipment to stationery) and one service. Items migrated from national to local suppliers include, for example, uniforms, chalk, traffic signs, flags and stationery.”

Governments, too, are starting to take the issue more seriously, through initiatives such as the Africa Mining Vision, which has led to a raft of updated mining codes that stipulate local content requirements.

It is also a live issue in Canada, where natural resource development is in remote northern areas populated by aboriginal people, according to a report by Mining Shared Value and the Canadian Council for Aboriginal Business.



The report argues that Canada’s ability to leverage its natural resource endowment, which contributes one fifth of Canada’s GDP, will be compromised unless the mining industry and government give aboriginal businesses a greater share of the proceeds.

“Aboriginal people are demanding long-term benefits from resource development, rather than one-time revenue payments,” it says.

Seeking out aboriginal staff and suppliers has significant business benefits, including boosting supply chain reliability and bolstering the social licence to operate, the report says. Aboriginal suppliers are easier to contract flexibly and at short notice, reducing transportation costs and inefficiencies associated with bringing in service providers and supplies from distant cities in Canada’s south.

Imperial Metals’ Red Chris Development Company subsidiary works closely with the Tahltan Nation Development Corporation (TNDC) at the Red Chris copper mine in British Columbia. It says: “There is immense value in the fact that TNDC’s diverse service offerings are located within 80km of the operations, much closer than bringing in supplies from Terrace [seven hours by road] or Vancouver [two hours by plane], particularly in the winter.”

Aboriginal people’s local knowledge can also be invaluable, while the availability of a young workforce is a boon to an industry where 25% of its workers are due to retire by 2024.

Saskatchewan-based uranium miner Cameco is Canada’s largest industrial employer of aboriginal people, with more than half its mine site employees made up of local residents in an area that is predominantly populated by aboriginal people.,

The company, the second-largest uranium mining company in the world, also prioritises local procurement, with 70% of the services used in the mines purchased from northern businesses, many of them aboriginal-owned, and employing aboriginal staff.

Darrel Burnouf, manager of northern business development and community relations for Cameco, says this approach has even led to business opportunities abroad, with an Australian company choosing it as a partner “because of what we do with aboriginal companies and the workforce in northern Saskatchewan”.



Imperial Metals worked with the Tahltan Nation Development Corporation at the Red Chris copper mine on building its access road.

IMPERIAL METALS

Mike Scott

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ENVIRONMENTAL INVESTIGATION AGENCY

Brands ‘neglecting land rights’ as key weapon in battle to save forests

The biggest food brands require suppliers to adhere to principles of free prior and informed consent, but implementation is thin on the ground, reports **Eric Marx**

Any effective approach for curbing deforestation and climate change should clarify and secure community land rights. This proposition, known as FPIC (free, prior and informed consent) is pushed by environmental activists and human rights groups as the next ground upon which business practice could soon evolve, amidst a recognition that none of the companies that pledged to protect forests are on track to achieve their 2020 “zero-deforestation” targets.

The momentum is fueled by increased threats to forest-dwelling communities, with nearly half of the 281 human rights activists who lost their lives in 2016 murdered for protecting land and environmental rights, according to Oxfam.

Last month UN Environment launched the [UN Environmental Rights Initiative](#) to address “the ongoing threats, intimidation, harassment, and murder of environmental defenders around the world”. It called upon the private sector “to move beyond a culture of basic compliance to one where the business community champions the rights of everyone to a clean and healthy environment”.

Erik Solheim, head of UN Environment, said: “Those who struggle to protect planet and people should be celebrated as heroes, but the sad fact is that many are paying a heavy price with their safety and sometimes their lives. It’s

‘Those who struggle to protect planet and people should be celebrated as heroes, but the sad fact is that many are paying a heavy price’



our duty to stand on the side of those who are on the right side of history.”

There is credible scientific data that forest-dwelling communities – including indigenous peoples, women and other minorities – can do the job of protecting forests better than anyone else if given property rights and management responsibility. In the Brazilian Amazon the deforestation rate is 11 times lower in indigenous peoples' and community forests. In the Guatemalan Peten it is 20 times lower, while in the Mexican Yucatan it is 350 times lower, according to an Oxfam report last year, [Pathways to Deforestation-free Food](#).

Since one-tenth of the carbon stored in tropical forests is in community forests that lack formal, legal recognition, recognising their rights is key to reducing the risk of deforestation, the report argues.

Conflict over land rights is taking a heavy financial as well as environmental toll. [Mongabay](#) reported this month that a study commissioned by the Indonesia Business Council for Sustainable Development found that tribes such as the Suku Anak Dalam, who have been locked in conflict over encroaching palm oil plantations for three decades, are paying up to 60% of their income to buy food and services they once got for free from the forests. Another study, analysing data from conflicts in five oil palm plantations across Indonesia, found that the companies, which were not named, were paying \$500-\$15,000 per hectare to manage the conflicts.

In October, a new global institution, the International Land and Tenure Facility, will be launched. Backed by Sweden and Norway, the facility will invest \$10m a year for the next decade in titling projects in tropical forests in Asia, Latin America and Africa.

Support is there from the UN and some governments to head in this direction, but what about the private sector?

FPIC first came to the fore in 2003 with the World Bank and extractive industries review. Two years later it moved in to the food and beverages sector via the Roundtable on Sustainable Palm Oil. It has since been



30 SECOND READ

- The momentum behind FPIC (free prior informed consent) has been fueled by increased threats to forest-dwelling communities. Nearly half the 281 human rights activists murdered in 2016 were protecting land and environmental rights. Meanwhile, none of the companies that pledged to protect forests are set to achieve 2020 ‘zero-deforestation’ targets.
- Environmental activists and human rights groups, as well as UN Environment, are calling on the private sector “to move beyond a culture of basic compliance” and to champion the rights of everyone to a clean and healthy environment.
- One-tenth of the carbon stored in tropical forests is in community forests that lack formal, legal recognition; recognising their rights is key to reducing deforestation.
- FPIC first came to the fore in 2003 with the World Bank and extractive industries review. In voluntary certification schemes it is applied to all peoples and communities that have rights to lands and resources, and is now referenced in most corporate zero-deforestation policies.

There is credible data that forest-dwelling communities can protect forests better than anyone else if given property and management rights



GREENPEACE

Recognising the rights of communities and indigenous peoples can help reduce deforestation.

adopted by international financial institutions like the World Bank and International Finance Corporation, as well as other commodity certification schemes. It is required practice for all UN agencies, and specific guides for implementation have been developed for its Development Programme (UNDP), programme for Reducing Emissions from Deforestation and Forest Degradation in Developing Countries (UN-REDD), and Food and Agriculture Organization (FAO).

“There is an enormous amount of guidance out there,” said Margaret Wachenfeld, a senior research fellow at the Institute for Human Rights and Business (IHRB) who contributed to the Corporate Human Rights Benchmark (CHRB), a new scoring system unveiled last year analyzing agricultural products, apparel and extractives industries. The benchmark lists several FPIC indicators with regards to land transactions and what is deemed good performance.

While there is no generally accepted definition of FPIC, in the context of forest supply chains “free” means there has been no coercion. It is “informed” when a complete disclosure of all information related to the plans is made in a language and medium that is comprehensible and easily accessible by the affected communities. “Prior” means the consent is sought and obtained during the early conceptualisation and development phases of projects and activities. And “consent” can only be granted if the relevant communities have the choice to accept or refuse the project at hand.

In voluntary certification schemes FPIC has begun to be applied to all peoples and communities that have informal, collective or customary rights to lands and resources, said Dr. Marcus Colchester, a senior policy advisor at the Forest Peoples Programme, a London-based human rights organization.

National legal frameworks often don't recognize customary rights. Permits and investments are then handed out without consideration of communities and livelihoods



But national legal frameworks often don't recognize customary rights. Permits and investments are then handed out without consideration of communities' rights and livelihoods, presenting a stumbling block to proper FPIC implementation, said Colchester.

The evolving best practice in this area will have check-in points to determine changed conditions on the ground. It should include grievance mechanisms and third-party monitors – often staffed by locals – but, above all, companies need to do their own due diligence, said Wachenfeld.

“That's one big lesson,” she added. “The biggest MNCs [multinational companies] have learned to look behind the concession and ask whether everything is fine. You cannot accept what the government says. You have to find people on the land and you have to engage with them.”

FPIC is now referenced in most corporate zero-deforestation policies, according to Aditi Sen, Oxfam America's senior policy adviser on climate change, and author of the [Pathways to Deforestation-Free Food report](#).

The report, an analysis of FPIC and land tenure commitments made by the 10 biggest food and beverage companies and three of their key suppliers, finds that while all companies analyzed require suppliers to adhere to the principle of FPIC, its implementation remains “challenging”.

It cites Kellogg, Nestlé and Unilever for their efforts to track the number of smallholder farmers in their supply chains and/or having targets for engaging smallholder farmers. But none have policies aimed at ensuring farmers earn a living income or commitments to offer transparent, stable and fair sourcing relationships to small-scale producers.

At a minimum, companies should honour the UN Special Rapporteur's call for businesses to adopt a zero-tolerance policy on attacks against human rights defenders.

The report also urges companies to endorse the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests (VGGT), published by the UN's Food and Agriculture Organization in 2012. Of the 13 companies studied by Oxfam, only Nestlé, Unilever, PepsiCo, Coca-Cola, Cargill and Wilmar have a land policy that endorses the VGGT.

The point is you have to go beyond risk-mitigation, said Sen. “You have to take these sustainability policies in the bloodstream of the company.” ■



AMMIT JACK/SHUTTERSTOCK

A Huaorani hunter in the Waorani reserve in Ecuador



Eric Marx is a Berlin-based journalist covering issues ranging from green energy to sustainable sourcing, climate change and transparency. He has served as a correspondent for ClimateWire News and as an energy reporter with Montel newswire

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Zeroing in on community livelihoods in the palm oil industry

Unilever, Marks and Spencer and Sime Darby are at forefront of working with governments and communities to meet their zero deforestation commitments, writes Eric Marx

Human rights concerns about the failure to establish free prior and informed consent (FPIC) are high in Liberia's fast-growing palm oil industry. According to Ali Kaba of Liberia's Sustainable Development Institute, the Liberian government's decision to award 50% of publicly owned land – where most Liberians live though they have no legal claim – to foreign investors under long-term leases for agro-forestry, logging and mining between 2005 and 2010 has led to many people being forced off their land.

“The companies started to obtain free and informed prior consent but most of it was through the government intimidating community leaders,” Kaba told a press conference in London in 2016. “People are losing most of their farmland, which is increasing food insecurity. Women are having to walk two hours to collect water, when they used to take half an hour. Logging activities are creating water pollution, and it is creating social fragmentation between leaders in communities.”

Problems establishing FPIC have prevented Malaysian company Sime Darby, the world's biggest producer of certified palm oil, from developing the concession of 220,000 hectares it was granted by the government in 2008.

‘The companies started to obtain free and informed prior consent but most of it was through the government intimidating community leaders’



But Simon Lord, the company's chief sustainability officer, said in an interview that the company is now trialling something he calls participatory mapping, an engagement with local communities that recognizes customary land rights, and draws in different groups of land managers and stakeholders to achieve multiple social and environmental objectives.

"It's beyond what you would consider FPIC," he said. It is also a departure from the High Carbon Stock Approach for assessing the conservation value of forests, a methodology agreed between NGOs and companies in the Roundtable on Sustainable Palm Oil last year, but more suitable for the mixed landscapes of Indonesia and Malaysia than Liberia's dense forest.

Sime Darby's approach, which Lord calls the Evergreen model, defines a new conservation value for low-carbon scrub areas, and focuses on livelihoods by giving knowledge and tools to smallholder farmers. That goes for both the commodity crop, palm oil, as well as security crops that enable a pivot away from slash-and-burn agriculture to static farming.

That includes diversifying income streams and providing value to farmers, with a first step being the recognition of customary rights and the possibility of getting land title.

"Now you have a land title and a guarantee from the company that we will buy your fruit," said Lord. "With those two in hand you can go to a bank and take out a loan using microcredits."

Lord is contrite about Sime Darby's early efforts to establish FPIC, which led to complaints being filed against the company by thousands of aggrieved villagers, Lord said the company is now intent on leading by example.

Aditi Sen, Oxfam America's senior policy advisor on climate change, says partnerships like the one being developed by Sime Darby will emerge as important ways for companies to meet their zero deforestation commitments.

At COP21 (the 2015 Paris Climate Conference), Unilever and Marks & Spencer announced that they would take a "jurisdictional" approach to sourcing, preferentially buying from areas that have forest and climate policies that address deforestation and livelihood issues comprehensively.



ENVIRONMENTAL INVESTIGATION AGENCY

Indigenous people from Indonesia, Liberia, Colombia and Peru on an EU visit highlighting abuses linked to palm oil cultivation.

Sime Darby's approach defines a new conservation value for low-carbon scrub areas, and focuses on livelihoods



FABIAN PLOCK/SHUTTERSTOCK

Sime Darby is trialling 'participatory mapping' in Liberia's dense forest to establish FPIC.

For Unilever this approach, which it also calls “production-protection”, has entailed working with local governments in Indonesia to improve the yields and livelihoods of smallholder farmers, in exchange for their support in the fight against deforestation.

Billed as the first public-private agreement between sub-national governments and an international buyer, the programme aims to certify roughly 600 palm oil smallholders, according to the Roundtable on Sustainable Palm Oil (RSPO) and Indonesian Sustainable Palm Oil (ISPO) principles and criteria.

It maps palm oil smallholders in at least three villages, helping farmers obtain land certificates, business licenses and environmental permits. Also part of the effort is the carrying out of baseline assessments of palm oil farmer organizations in two villages. The programme covers 1,400 hectares of land and, if successful, will be expanded to other areas in the district, said Unilever.

Dr Marcus Colchester, a senior policy advisor at the Forest Peoples Programme, called the jurisdictional approach “a big step forward in terms of corporate commitments, which embrace company, conservation and community needs simultaneously”.

He points out that while the High Carbon Stock Approach is a step forward in that it ensures lands are set aside for communities' food security, livelihoods and wider development needs, its methodology is voluntary, while jurisdictional approaches aim to make standards mandatory “with the direct involvement of local government at the scale of entire districts, provinces, or even states,” Colchester said.

Sen said if jurisdictional approaches are designed in ways that ensure that local land users – especially small-scale farmers, indigenous people and women – are actively involved in planning and decision making, it offers the potential to holistically address risks related to climate change, livelihoods and social conflicts over access to and control over natural resources. ■



Eric Marx is a Berlin-based journalist covering issues ranging from green energy to sustainable sourcing, climate change and transparency. He has served as a correspondent for ClimateWire News and as an energy reporter with Montel newswire

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IF NOT US THEN WHO?

NGOs fear UN payments scheme for forests will lead to land grabs

Eric Marx looks at Democratic Republic of the Congo, where REDD+ projects have been criticised for failing to uphold the rights of forest communities

Land rights is emerging as a big issue in the UN's REDD+ programme to reduce deforestation, with concern focused on a tract of 9.8 million forested hectares in the Mai-Ndombe province in the Democratic Republic of the Congo (DRC).

Mai-Ndombe contains an exceptionally high concentration of advanced REDD+ projects, as well as enormous amounts of tropical forest carbon. At least 20 projects are under way or planned, covering 12.3 million hectares, with an investment of more than \$90m.

Under REDD, which stands for “reducing emissions from deforestation and degradation”, a company can earn carbon credits if it can generate an activity that reduces emissions or sequesters carbon – by, for example, reducing shifting slash-and-burn agriculture, energy wood production (charring) or small-scale and artisanal logging.

The “+” was added to the original REDD programme in 2010 because it added new requirements having to do with poverty alleviation, biodiversity preservation and the enhancement of ecosystem services such as clean water.

According to the UNFCCC, 39 countries, 27% of those that signed up to the Paris Agreement in 2015, said they plan to implement REDD+ projects

NGOs say Mai Ndombe sets a bad precedent and the payments-based system will lead to ‘green-grabbing’ by the private sector



as their main contribution to cutting greenhouse-gas emissions from land use.

But NGOs that are monitoring the existing REDD+ projects in Mai-Ndombe say it sets a bad precedent and the payments-based system will lead to “green-grabbing” by the private sector rather than boost local communities’ ability to protect forests.

They point out that in the case of the DRC, as in most of the countries that are preparing to participate in REDD+, legislation does not provide a clear structure for how the various rights to forest relate to forest carbon “ownership”, nor how overlaps would be treated in terms of income from REDD projects.

“REDD+ was created to both halt deforestation and benefit local communities – yet the current projects in Mai-Ndombe fail to address both objectives,” said Marine Gauthier, a lead author on a new report issued by the Rights and Resources Initiative (RRI), a coalition of more than 150 organisations working to advance forest tenure, policy and market reforms.

As such, said Gauthier, communities would not gain from the programmes’ benefits, which are tied to land and resources rights, in spite of their generations of stewardship over these forests.

The report comes at a critical moment, as the countries that fund the World Bank’s Forest Carbon Partnership Facility (FCPF) prepare to make a decision on a payment agreement that would insert millions of dollars into REDD+ programmes in DRC.

“If the programme in Mai-Ndombe is approved without ensuring that local peoples’ rights are respected, it would set a terrible precedent for REDD+ and make a bad situation worse,” said Alain Frechette, researcher and director of strategic analysis at RRI.

“Strong indigenous and community land rights and a clear understanding of who owns forest carbon are vital prerequisites for climate finance to succeed in its goals of reducing poverty and protecting forests.”



30 SECOND READ

- The UN’s REDD+ programme aims to reduce deforestation alongside requirements around poverty, biodiversity and ecosystems. Under the scheme, a company can earn carbon credits if it can generate an activity that reduces emissions or sequesters carbon.
- However, land rights is increasingly an issue, with concern focused on the Mai-Ndombe province in the DRC, which has around 20 projects. An RRI report claims communities will not gain from REDD+ and alleges numerous FPIC infractions.
- According to the UNFCCC, 39 countries plan to implement REDD+ projects, but NGOs say that in most of those, including DRC, the legislation around forest carbon ‘ownership’ is unclear.
- In response to the RRI report, the World Bank says discussion of tenure issues is an integral part of its Forest Investment Program projects.
- RRI says of the 50 developing countries preparing to participate in REDD+, only Brazil, Costa Rica, Ecuador, Peru and Vietnam have established legal frameworks to regulate their trade in carbon.

‘Strong indigenous and community land rights and a clear understanding of who owns forest carbon are vital prerequisites for REDD+ to succeed’

In its report on Mai-Ndombe, RRI alleges numerous FPIC infractions, including opaque and unrepresentative LDCs, the absence of women's participation in decision-making bodies, and a benefits-sharing mechanism that is susceptible to mismanagement by local elites.

“None of the development plans or micro-projects have any legal basis in land tenure,” the authors write. LDCs are not entities with land rights and, as such, are too weak to defend the interests of the communities, let alone conflicts resulting from increased REDD investment, land speculation and migration.

In response to the RRI report, the World Bank pointed to its own FPIC (free, prior, and informed consent) rules, in effect in the DRC as guidance since 2014, and only recently passed into law in November 2017 by the DRC national government.

“Local participatory land use planning, including the discussion of tenure issues, is an integral part of the FIP [Forest Investment Program]” said a World Bank spokesperson.

The activities are developed and implemented on the ground by WWF, together with local land chiefs and village councils, also known as local development committees (LDCs). After consultation on activities with LDCs, the LDC, represented by the chief, can choose to sign up (with contracts typically signed between the chief and the project co-ordinator).

According to World Bank guidelines, the village land chief then grants a piece of land that is shared among participating households to create new sources of revenue. In many cases, fast-growing acacia trees are grown on these parcels of land, allowing households to produce and sell charcoal, with intercropped cassava plants yielding nutritional leaves and root vegetables that can also serve as a cash crop for sale in markets in the capital, Kinshasa.

In its 75-page report RRI targets companies including Wildlife Works Carbon (WWC), a private company that has been running a conservation concession in Mai-Ndombe since 2010. Having verified its emissions reductions in 2015, WWC now stands as the only REDD+ project in DRC with certified carbon credits ready to sell in voluntary carbon markets. That it has not found many buyers thus far is at least partly attributable to reports like the one put out by RRI, said WWC's president, Mike Korchinsky.



SERGEY URYADNIKOV/SHUTTERSTOCK

The bonobo is an endangered great ape and a native of the Mai-Ndombe region of DRC where nearly 20 REDD+ projects are planned.

‘There are 50,000 people in our concession, and none of them that live inside the forest have to move. None of them will ever have to move’

“Their agenda is legal tenure, and they believe legal tenure for forests has to be allocated before this programme moves forward,” said Korchinsky.

By Korchinsky's reckoning, WWC has complied with all the REDD+ social safeguards. The company's FPIC compliance has been independently audited on three occasions. Korchinsky says the outcome has been the construction of health care clinics and schools, as well as the enhancement of food security through diversification from cassava to tomato, eggplant, onions and bean crops.

The programmes were carried out in demonstration gardens, with community consent gained according to the World Bank LDC model, which has clan representatives entering into contracts after protracted discussions that aim to disclose all information before the projects start. Communities also receive a 2% share of proceeds, per World Bank guidelines.

“There are 50,000 people in our concession, and none of those who live inside the forest in our concession have to move,” said Korchinsky. “None of them will ever have to move. They live there.”

The situation in DRC is not unique. A second paper released by RRI, which analyzes the legal systems of 24 of the 50 developing countries preparing to participate in REDD+, found that only Brazil, Costa Rica, Ecuador, Peru and Vietnam have established national legal frameworks to regulate their trade in carbon. Of these, only Brazil, Costa Rica and Peru have also established legal definitions for carbon rights, noted the report authors.

Costa Rica, which has had a Payment for Ecosystems Services Programme in place since 1996, has a forestry law that stipulates that **land owners receive payments** based on a management plan designed by a professional forester charged with monitoring its implementation.

Since 2002 the country has paid more than 4,400 farmers and forest owners. In the last 10 years those payments have been linked directly to greenhouse gas mitigation activity and the issuance of tradable carbon credits – with civil law provisions fully describing the legal nature of the transaction.

“The model is there for other countries to clarify these rights,” said Frechette. Countries need to institute legal frameworks establishing and



WRI

Forest regeneration in Costa Rica, where a Payment for Ecosystems Services Programme has been in place since 2002.

‘None of the people who live inside the forest in our concession will ever have to move’



regulating carbon rights. This starts with the recognition of tenure for indigenous peoples, thus allowing them to contract and receive payment directly for ecosystem services (PES) such as water provision, biodiversity protection, and general forest conservation activities.

What they shouldn't do, he added, is misconstrue largely procedural FPIC rights with more substantive tenure rights.

“FPIC does not require the recognition of communities' customary land and resource rights,” said Frechette. “Nor does it grant communities the authority to contract, and hence make decisions on the use, benefits, management and governance of a given forest or land area.”

What's next

That there are big differences between Costa Rica and DRC goes without saying. One has a legal system on par with some western European countries; the other is a post-conflict state whose natural resources sector is commonly associated with widespread corruption.

For Mai-Ndombe, which officially became a province in 2015, 10 years after the national government first drew its boundaries, the governance challenge is huge.

DRC's Forest Code already recognizes the legal right of indigenous peoples and local communities to ownership of forest areas, and yet only a small portion of eligible claims have been recognized by the provincial government.

Meanwhile, researchers report a new phenomenon of “landless peasants” flowing into the province because of high unemployment in Kinshasa. Land conflicts are said to be on the rise just at the moment when a new crop of private companies are positioning themselves to receive REDD+ funds.

Is it “chaos” with potentially “disastrous outcomes” for indigenous and local people, as the RRI has characterized the REDD+ programmes? Should World Bank donors put the brakes on DRC REDD+ until after land rights are secured? Or is RRI being overly alarmist to try and fast-track through an unrealistic, if important, agenda?

The alternative, it would seem, could mean abandoning the country and its people.

Whatever the outcome, the contentious nature of land rights issues in implementing REDD+ looks unlikely to be resolved soon. ■



LAURA OTÁLORA/THE WORLD BANK

The World Bank says recognition of land rights is integral to its projects in DRC.



Eric Marx is a Berlin-based journalist covering issues ranging from green energy to sustainable sourcing, climate change and transparency. He has served as a correspondent for ClimateWire News and as an energy reporter with Montel newswire

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