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**Increased media scrutiny:  
Risks related to Multinational Companies'  
engagement of disenfranchised stakeholders**

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# **Part 1: Introduction and framework**

## **Introduction**

“Steelworkers strike for basic rights at Iron Ore company of Canada”, “Oil Companies Complicit in Nigerian Abuses”, and "Enough is enough - cries from West Papua and Nigeria”.

Headlines like these, where big businesses make the little man suffer, are increasingly filling up newspaper columns (Covering Oil, 2006). Under the heading of Corporate Social Responsibility, more and more print, radio, and TV news about (questionable) moral and ethical corporate behaviour are published. Critical stories about companies’ dealings with the environment, stakeholders, human rights, and other issues, which were previously thought of as the companies’ ‘private business’, are now shared with the public through the media (Kjær, 2006).

It is a development which has grown in the last decade, and one which will continue to grow. Danish editors say that they expect Corporate Social Responsibility to become an area where they will rearm and deliver more critical news coverage in the years to come (The Copenhagen Centre, 2007). This development carries with it a significant change. People with previously no voice, like the Canadian steelworkers, the Nigerians or the citizens of West Papua, now have the possibility to be heard, and companies experience pressure to straighten up behaviour which could before be ‘hidden’ (Margonelli, 2007).

This study will focus on one area of Corporate Social Responsibility, where companies are at increasing risk of negative media coverage; namely the companies’ relationship with local communities.

I have identified this area to be crucial by combining various parts of my professional experience. It is a subject that I deal with every day in my job as communications manager for Health, Safety, Security and Environment at the Danish company A. P. Moller – Maersk. The company operates in 130 countries, industrialized as well as developing, and therefore faces the challenges of dealing with a wide variety of local communities.

In my job, I see how important the relationship with local stakeholders is to a company’s operations, and I also see how closely operations can be scrutinized by the media as well as how this media coverage can affect a company.

Furthermore, as a journalist, I have covered business news and developed a strong interest in the question of what role companies should play in society; which responsibilities and moral duties they have.

One could say that by being on ‘both sides of the table’ I have experienced first hand the many dilemmas and conflicts in this field, and that has made me keen to thoroughly understand this conflicted area, which will only become more crucial – for the media as well as for the companies – in the years to come.

In the following pages, I will examine what in particular puts companies at risk of negative media coverage when talking about their relationship with local communities. Consequently, this thesis is different in nature from many other journalistic theses. In the past, and still, many concentrate on content analysis of media products. Increasingly we also see ‘field studies’ or ‘newsroom studies’ where the researcher analyses the working conditions or procedures from the journalists’ point of view. This thesis, however, looks at things not from a product perspective, and not from the journalists’ perspective, but rather from the sources’ – in this case the companies’ – point of view. This will, hopefully, provide insight into a part of the journalistic process, which is less often described, yet crucial in order to understand the background to the stories that appear in the media.

The research carried out points to some general tendencies which all increase the likelihood of companies being exposed in the media on topics related to moral and ethical behaviour. These tendencies, which all put pressure on companies, are: change in business news, increased use of cases, and development in the law.

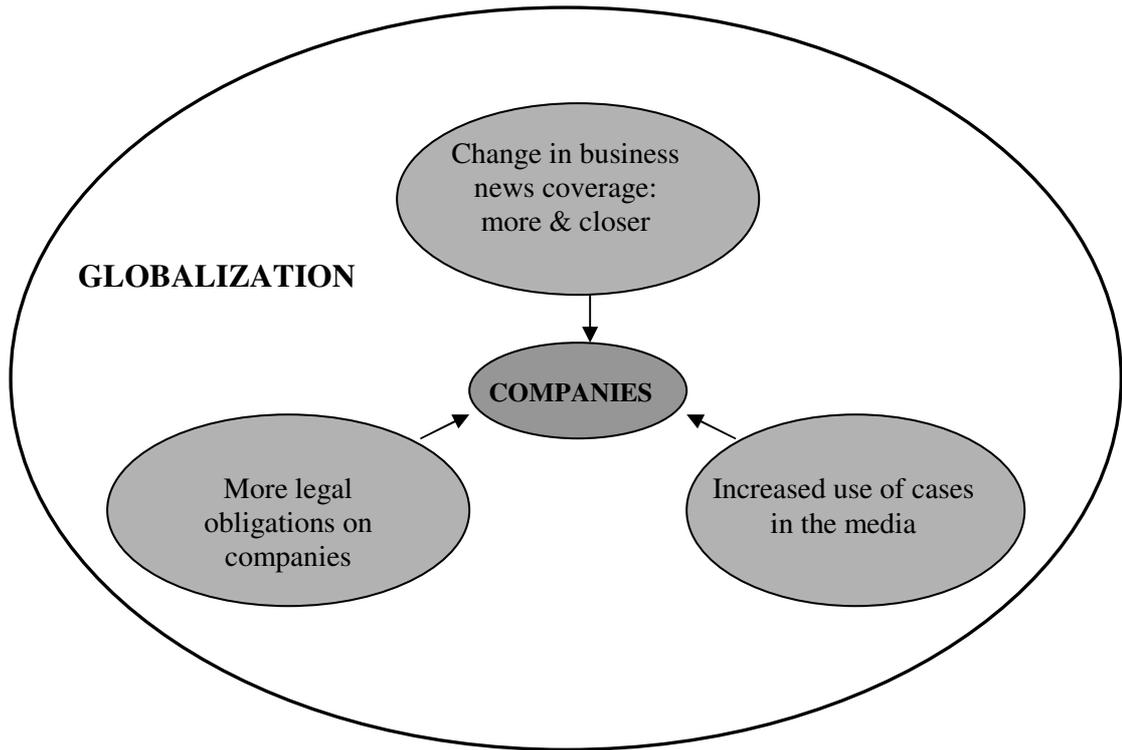
First, there is a change in the way media cover businesses. Business news take up more space in the media than previously and the media goes increasingly close; what was previously seen as something only concerning companies and shareholders are now seen as having public interest. Thus, companies experience more areas of their business being investigated by the media in an attempt by the media to bring company practices to public debate. The Enron case, where accounting fraud led to millions lost, a suicide, and finally, in 2001, bankruptcy, is a good example of how “dry” business news now truly hit the front pages.

Second, the media increasingly use cases when telling a story (Harr, 2007; Bro, 2004). Often a good case is a case that can play the part of a victim – a role, which local populations who are subject to adverse corporate behaviour are well cast for. Thus, the media's use of 'the little man' in victim based case stories can cause severe image problems for companies and puts extra strains on the companies to communicate well with the local population, because it is a stakeholder group which otherwise is likely to play the 'victim role' in stories about irresponsible corporate behaviour.

And third, international law, particularly international human rights law, put ever more obligations on companies to engage and respect the rights of the local populations. This is a development which the companies must take seriously, because, as will be shown later, an increase in legal obligations puts them at risk of further media scrutiny. Also, NGO's increasingly support local communities in their struggles against companies. This is done by supplying stories to the media about ill treated communities and by supporting the communities when they stand up the companies (e.g. by helping fund law suits). All together, it increases the pressure on the companies, which have to deal with the potential risks of negative media coverage.

A common, overarching theme for these tendencies is globalization. Globalization affects both media coverage, international law, and companies just as the development in ach of these respective areas – e.g. that more companies are operating in multiple countries – increases the speed of globalization.

The tendencies that put pressure on companies can be illustrated like this:



A type of company particularly exposed of having their moral behaviour scrutinized by the media is the multinational companies – McDonald’s tax payments, Nike’s sweat shops, and Walmart’s labour conditions are just some examples.

Multinational companies (companies with subsidiaries in multiple countries) are growing in both number and size, and the sheer magnitude of the companies make those interesting subjects for journalistic investigation. For these companies the tendency for media to investigate companies’ moral behaviour can also pose an even more imminent threat than for companies operating solely in their home country: Many multinationals are operating in countries and locations where they are unfamiliar with the rules of the game. What is ethical behaviour or good communication in the home country might not be so in another, and this leaves the company at great risk of committing mistakes in the ‘moral grey area’, leaving them open to criticism.

For the purpose of this study, I have used the extractive industry as a case. The extractive industry is interesting because in many ways, it incorporates the essence of today’s globalization: it operates internationally, big money is involved, the industry has to deal with a wide variety of stakeholders, and the reason for the industry’s current prosperity is a rapid economic development in both developing and industrialised countries causing energy demand – and prices – to soar.

The media has run many stories on the extractive industry (EIU, 2007). Revelations such as Shell's trouble in Nigeria with accusations of human rights abuses and subsequent kidnappings and killings of Shell-employees is one of the most infamous cases, but many others have also hit the front pages, and I see the extractive industry as one that is, and increasingly will be, a crucial battleground for many actors – journalists, companies, local communities, and the international society.

What makes the extractive industry particularly interesting for this study is that it increasingly operates in areas where people with limited or no experience with neither the extractive industry nor the media, such as indigenous people, live (Daes, 2004), and the encounter of big business and the 'old fashion lifestyle' of indigenous people can make for many good case stories in the media.

To be able to pin point what specifically makes companies vulnerable to bad press in terms of dealing with stakeholders, this paper identifies and analyzes the problems in the relationship between companies and communities focusing on the communication and engagement efforts made by the company.

Poor stakeholder identification, poor external communication, internal lack of skills in companies, and a lack of respect for the stakeholders' traditions are identified by people working in the field as the most significant obstacles to a constructive stakeholder engagement. The paper will show how an improved and more elaborate engagement of local stakeholders, in the following addressed as *disenfranchised stakeholders*, can help prevent future conflicts between companies and their disenfranchised stakeholders. This is indeed important in order to lower the risks of being portrayed in the media as a socially irresponsible company.

This paper takes a step further than the general consensus and claims that companies have a legal obligation to respect the disenfranchised stakeholders. This, however, is not a commitment that only benefits the stakeholders. Respecting the stakeholders' rights and thereby developing a good relationship with them can be not only an economically prudent choice, but also a chance for the company to create a good reputation; something which tends to give companies leeway in the media (Jones et al., 2000).

The paper will examine the following:

*1. In the light of global journalistic developments, what are the problems in the way companies in the extractive industry engage disenfranchised stakeholders today?*

*2. And what are the obligations on companies to recognize the rights of disenfranchised stakeholders?*

After presenting the definitions and methodology applied, the paper will discuss the theory used as a basis for the development of the thesis. This includes theories of media lobbyism, media networks, and soft power. Next, the paper presents the findings of a qualitative study in order to identify the inherent stories that can lead media coverage on problems of the extractive industry's engagement of disenfranchised stakeholders. Then, the paper sets out the legal obligations that apply to companies in order to respect the rights of their disenfranchised stakeholders. Provisions within national law as well as international law will be examined. The legal development is examined because it is an important factor in determining which actions companies need to take and because legal development has a great potential to spur on media interest in an issue. Further, corporate benefits stemming from increasing engagement with the disenfranchised stakeholders in the planning of operations will be presented. Finally, recommendations for how to minimize the risk of bad press by improving the relationship with disenfranchised stakeholders will be discussed.

The fact that the subject of this study is of an international nature has been a determining factor for choosing to conduct and convey this study in English. The challenge is international and faced by multinational companies and so therefore most of the people that will take an interest in this study will not be familiar with the Danish language, and since my goal is for this study to be of actual practical use, I have communicated in English.

## Definitions

### *Disenfranchised stakeholders*

R. Edward Freeman is often presented as the father of stakeholder theory. He defines stakeholders as: “Any group or individuals who can effect, or is affected by the achievement of the organization’s objectives” (Freeman 1984: 25). The definition used in this paper is similar to Freeman’s definition, however, it is broader than the above definition in that the term stakeholders here refers to anyone whom the company is *able* to affect. Hence, the people do not actually have to *be* affected in order to be perceived as stakeholders as long as it is *likely* that they will be affected at some point. The paper thus argues that people who are not currently affected by an operation, but who are likely to be so in the future, in this case should be considered stakeholders too.

The term *disenfranchised* stakeholders refers to stakeholders who live physically close to the area of an operation. The defining characteristic of the disenfranchised stakeholders is that they are exactly that, disenfranchised from the company, meaning that they do not have any regular contact with the company, and nor do they typically have strong influence on decisions made by the company. Furthermore, disenfranchised stakeholders are defined as a group of people who do not have a strong voice or a powerful position in the country or region in which they live and therefore do not have a strong influence on political decisions. A typical example of disenfranchised stakeholders is a group of indigenous people who represent a minority in the country in which they live.

### *Multinational companies*

A company can be defined as a multinational company “... if it has a certain minimum size, if it controls production or service plants outside its home state and if it incorporates these plants into a unified corporation strategy” (Engström 2002: 2).

In this thesis the terms ‘multinational corporation’ and ‘companies’ are intertwined, and where nothing else is stated, the word company is to be understood as a multinational. ‘MNCs’ will be used as an acronym.

### *Corporate Social Responsibility*

William C. Frederick, often sighted as the originator of the term CSR, defines CSR as twofold: There is Corporate Social Responsibility (CSR1) and Corporate Social Responsiveness (CSR2). CSR1 deals with a company's moral obligation to do good and CSR2 deals with how companies can communicate their 'doing well'. This paper will concern it self with both versions of CSR in that it will both discuss the moral and legal obligations on a company and also how a company should – and should not – communicate this part of their business to stakeholders.

Since the paper focuses on companies' relationship with stakeholders, the definition of Corporate Social Responsibility (CSR) will also be focused on this relationship too. The paper uses a definition equivalent to that of the philosopher Vos who states that "CSR is defined as the obligations or duties of an organization to a specific system of stakeholders" (Djursø 2006: 20).

## **Methodology**

### **This section contains:**

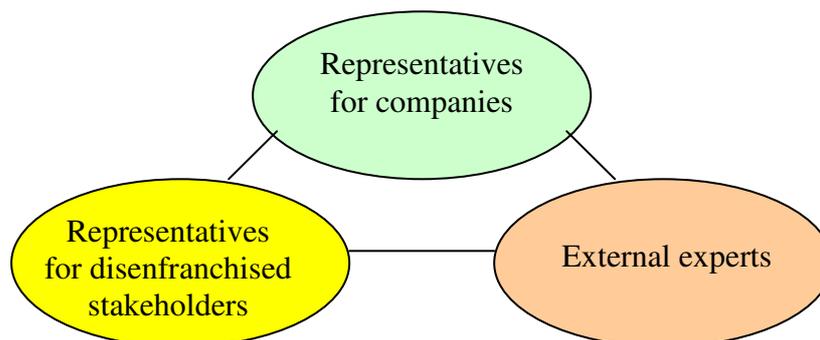
- Overview of respondents
- Presentation of findings from interviews
- Presentation of interview guide
- Presentation of selected theory

This study is an explorative project seeking to uncover which problems and challenges are related to the MNC's engagement of disenfranchised stakeholders – be it media pressure, legal obligations, or others. Exploration is an important first step in any field because it sets the frame for future research; however, it can hardly ever stand alone. Future research looking into e.g. the quantitative side of this issue such as how many companies experience these problems is also very relevant. It would also be interesting to do a similar study of other industries' work with CSR and stakeholder engagement. The increasing global focus on CSR presents this possibility to broaden the study to

industries such as the apparel industry or the transport industry. Such a study would be able to show to what extent various industries would be able to learn from each other across industry borders. In other words, this study should be seen as a first step, not as the end.

I have based my empery on personal interviews with 11 experts on CSR and stakeholder engagement in the extractive industry. To secure a nuanced coverage of the issue I have chosen representatives from companies, disenfranchised stakeholders, and external experts such as consultants and scholars in the field for the analysis. The 11 sources I have interviewed are obviously but a fraction of the people that would be relevant to interview, but I believe they provide a solid foundation to begin to identify the problem of my chosen area.

**Triangulation of respondents:**



**Table 1: Overview of people interviewed (respondents)**

<b>Category</b>	<b>Name</b>	<b>Workplace; title</b>	<b>Type of interview</b>	<b>Date of interview</b>
<b>Company</b>	Barnaby Briggs	Shell; <i>Social Impact Assessment Manager</i>	Face to face	28 March 2006
	Anita Roper	Alcoa; <i>Director of Sustainability</i>	Face to face	27 June 2006
	Donal O'Neill	Shell; <i>Vice President of External Affairs and Social Performance. Managing director of Shell's operations in Venezuela and Nigeria (retired).</i>	Face to face / Phone	16 March 2006 (+ running consultations)
	Lauren Compere	Newmont Mining; <i>former, now Chief Administrative Officer for Boston Common Asset Management</i>	Phone	14 July 2006
<b>Disenfranchised Stakeholder</b>	Pablo Mendoza	Aguinda*; <i>Activist</i>	Face to face	11 April 2006
	Luis F. Yanza	Aguinda*; <i>Activist</i>	Face to face	11 April 2006
<b>External expert</b>	David Shilling	Interfaith Center on Corporate Responsibility; <i>Director of the Global Corporate Accountability Programs</i>	Face to face	21 June 2006 26 June 2006
	Julie Tanner	Christian Brothers Investment Services; <i>Corporate Advocacy Coordinator</i>	Face to face	24 March 2006
	Steven Heim	Boston Common Asset Management; <i>Director of Social Research</i>	Phone	7 July 2006
	Margaret Jungk	Danish Institute for Human Rights; <i>Head of the Human Rights &amp; Business Project</i>	Face to face	(running consultations)
	Paul J. Martin	Columbia University; <i>(Then) director of Human Rights Institute</i>	Face to face	(running consultations)

\*Aguinda is the name of a group of Ecuadoreans, including several indigenous tribes, that is suing Chevron-Texaco for environmental damages in the Equadorian Amazon.

## **Interview method**

Since most of my problem statement focuses on uncovering the known challenges in MNC's CSR work, I made sure that all interviews would provide me with answers to a number of predefined questions. These were in brief:

To representatives for companies:

- how does your company identify disenfranchised stakeholders
- how do you communicate with disenfranchised stakeholders
- what is your relationship with disenfranchised stakeholders
- who in the company carries out the stakeholder engagement

To representatives for disenfranchised stakeholders:

- how did the company initially approach you
- how does the company communicate with you
- what is your relationship with the company
- who in the company are you in contact with

To representatives for external experts

- how do companies typically identify disenfranchised stakeholders
- how do companies typically communicate with disenfranchised stakeholders
- what is the typical relationship between companies and disenfranchised stakeholders
- who in the company typically carries out the stakeholder engagement

Because I did not only want to examine known challenges, but also had an ambition to uncover whether the extractive industry's stakeholder engagement was made difficult by until now unknown challenges, I applied a quasi structured interview guide for my interviews. The advantage of this method was that I could let my respondents speak relatively freely and thereby get the interview's issues uncovered in a way that seemed most natural to the respondents. This made it possible to have a discussion which was very close to their daily work. Many of them gave very specific examples of situations they had encountered, and this way I uncovered their personal experience with the challenges they were facing without transferring my own prejudgements to the respondent's statements. My role as an interviewer was therefore to make sure that I

uncovered all predefined hypothesis and that the respondents then had the possibility to talk about their experiences.

The disadvantage of the quasi structured method is that because issues are not uncovered in the same sequence based on the same formulation of the questions across all respondents, there can be some bias in the weighting. This can make it difficult to compare the empery from the different respondents, but I have seeked to compensat by securing a level of similarity through the predefined questions described above.

### **Problems identified during interviews**

After concluding the interviews, I identified all problems and challenges mentioned during the interviews. This resulted in the identification of 29 problems/mistakes that companies make:

1. Do not do proper stakeholder identification
2. Forget people/groups on stakeholder list
3. Do not accept all who claims to be a stakeholder as a stakeholder
4. Do not engage critics on stakeholder list
5. Advisory group become a “club of friends”
6. Do not listen to community
7. Start engagement process too late
8. Do not follow up on stakeholder engagement
9. No personal interaction
10. Expect people to understand matters immediately
11. Written material to illiterate people/in language unknown to them
12. No experience with engagement
13. Not skill set in company/not know what tools are needed
14. Only engineers in company
15. Stakeholder engagement is academic concept
16. CSR isolated in the company/too few resources in local company
17. Reluctance in company to do engagement
18. Do not respect stakeholders, their traditions and authorities
19. Do not recognize stakeholders’ capacities, but think in terms of philanthropy
20. Impose structure on stakeholders
21. Scared to make internal problems public

22. Fear of engagement getting out of control (demanding too many resources)
23. Workers are scared of stakeholders' reactions
24. Company acts defensive
25. Industry do not agree on FPIC
26. If company is doing well, do not think it has issues
27. Cooperation with the military
28. Problems with the host government
29. Create jealousy in the population

I then used an open coding strategy to find connections and corresponding definitions of the problems, and this, in combination with the theoretical framework, resulted in the creation of six over all categories of problems to which all the 29 identified problems belonged:

#### **Problem categories identified after interviews**

1. Poor stakeholder identification
2. Poor external communication
3. Lack of respect for local traditions and societal structures
4. Lack of internal knowledge and qualified staff
5. Fear of consequences
6. Others (for problems that did not fall under any of the above five categories)

Subsequently, I created an overview of how many respondents had identified problems in each problem category in order to show how widespread each problem category was. This is shown in table 2.

The left column of table 2 lists all the problems mentioned during the interviews as well as the six over all categories the problems fall into.

The subsequent eight columns show which respondents that identified which problems. An X shows that the respondent listed on top of the column identified the problem in the left column during the interview. The X was subsequently copied to the over all problem category to show that this category had been identified. If a respondent identified more than one problem in a problem category, this still only counted for identification of that problem category once. In the column furthest to the right, the number of respondents that have identified a problem category has been added up, and

thus the column shows the total number of respondents, who identified a problem in that problem category during the interview.

**Table 2: Identification and prioritization of problems**

<b>Problems identified</b>	Mendoza, Aguinda, Ecuador	Yanza, Aguinda, Ecuador	Briggs, Shell	Compere, Newmont Mining/ Boston Common Asset Management	Heim, Boston Common Asset Management	Roper, Alcoa	Schilling, Interfaith Center on Corporate Responsibility	Tanner, Christian Brothers Investment Services	Total
<b>Poor stakeholder identification</b>	<b>X</b>	<b>X</b>	<b>X</b>			<b>X</b>	<b>X</b>	<b>X</b>	<b>5</b>
1. Do not do proper stakeholder identification	X	X						X	
2. Forget people/groups on stakeholder list	X	X				X			
3. Do not accept all who claims to be a stakeholder as a stakeholder	X	X	X						
4. Do not engage critics on stakeholder list	X	X				X	X		
5. Advisory group become a "club of friends"						X			
<b>External communication problems</b>	<b>X</b>	<b>X</b>	<b>X</b>		<b>X</b>	<b>X</b>	<b>X</b>	<b>X</b>	<b>6</b>
6. Do not listen to community	x	x	X		x	X	X		
7. Start engagement process too late						X	X		
8. Do not follow up on stakeholder engagement			X				X		
9. No personal interaction			x			X			
10. Expect people to understand matters immediately						X			
11. Written material to illiterate people/in language unknown to them						X		X	
<b>Internal lack of knowledge and staff</b>			<b>X</b>	<b>X</b>		<b>X</b>	<b>X</b>	<b>X</b>	<b>5</b>
12. No experience with engagement				X					
13. Not skill set in company/not know what tools are needed				X		X	X		
14. Only engineers in company						X	X		
15. Stakeholder engagement is academic concept			X						

16. CSR isolated in the company/too few resources in local company			x			X	X		
17. Reluctance in company to do engagement						X		X	
<b>Lack of respect for stakeholders</b>	<b>X</b>	<b>X</b>	<b>X</b>			<b>X</b>		<b>X</b>	<b>5</b>
18. Do not respect stakeholders' traditions and authorities	x	X				X		x	
19. Do not recognize stakeholders' capacities, but think in terms of philanthropy			x					X	
20. Impose structure on stakeholders	X	X						x	
<b>Fear of consequences</b>						<b>X</b>		<b>X</b>	<b>2</b>
21. Scared to make internal problems public						X			
22. Fear of engagement getting out of control (demanding too many resources)						X			
23. Workers are scared of stakeholders' reactions						X			
24. Company acts defensive								X	
<b>Others</b>				<b>X</b>		<b>X</b>		<b>X</b>	<b>3</b>
25. Industry do not agree on FPIC				X				X	
26. If company is doing well, do not think it has issues								X	
27. Cooperation with the military						X		X	
28. Problems with the host government								X	
29. Create jealousy in the population				X				X	

*O'Neill, Jungk, and Martin are not included in table 2, because they were used as sparring partners in the beginning phases and to test hypotheses on in the final stages of the study.*

On the basis of table 2, I identified four categories of problems - Poor stakeholder identification, Poor external communication, Lack of respect for local traditions and societal structures, and Lack of internal knowledge and qualified staff – to be the most widespread problems in companies' engagement of disenfranchised stakeholders, since they were the ones identified by most respondents.

My final considerations in terms of methodology were how to deal with the discussion of the development of international law, which early in the process stood out as an important aspect.

I decided to base the discussion of legal obligations for companies to respect human rights under national as well as international law on well known literature on the subject of corporate responsibility. I did this because the credibility of well known literature can be an advantage when analysing a field that is developing fast.

Particular emphasis has been put on the report by the Council for Human Rights Policy, *Beyond Voluntarism – Human rights and the developing international legal obligations of companies*, which shows how international rules that protect human rights create binding legal obligations on companies. The report is compelling because it is written by authors with much experience in the area and reviewed by several external consultants with a background in international law as well as in human rights. Further, the study draws on literature examining the rights of peoples, and indigenous people as well as the enforcement of these rights. Human rights documents are used extensively in order to explain the obligations of companies as well as the rights of the disenfranchised stakeholders. The secondary literature used is mainly up-to-date literature on CSR written by key scholars such as Avery, Kamminga, and Engström. Furthermore, I have included some older literature on the conflicts faced by MNCs to ensure that the conflicts described are general conflicts experienced by the companies and not just a snapshot of the conditions the past few years. The primary of these texts is ‘Multinationals under fire: lessons in the management of conflict’ by Thomas N Gladwin and Ingo Walter from 1980.

The discussion of economical advantages for the companies to engage in a relationship with the disenfranchised stakeholders takes its starting point in case studies of the benefits of CSR.

On the basis of the analysis as well as with reference to current literature on stakeholder engagement and negotiation theory, the final discussion gives a proposition as to how companies can improve their engagement of disenfranchised stakeholders in order to put themselves at less risk of negative media coverage. The theoretical foundation for this discussion is social learning theory such as it is presented by Albert Bandura.

## Theory

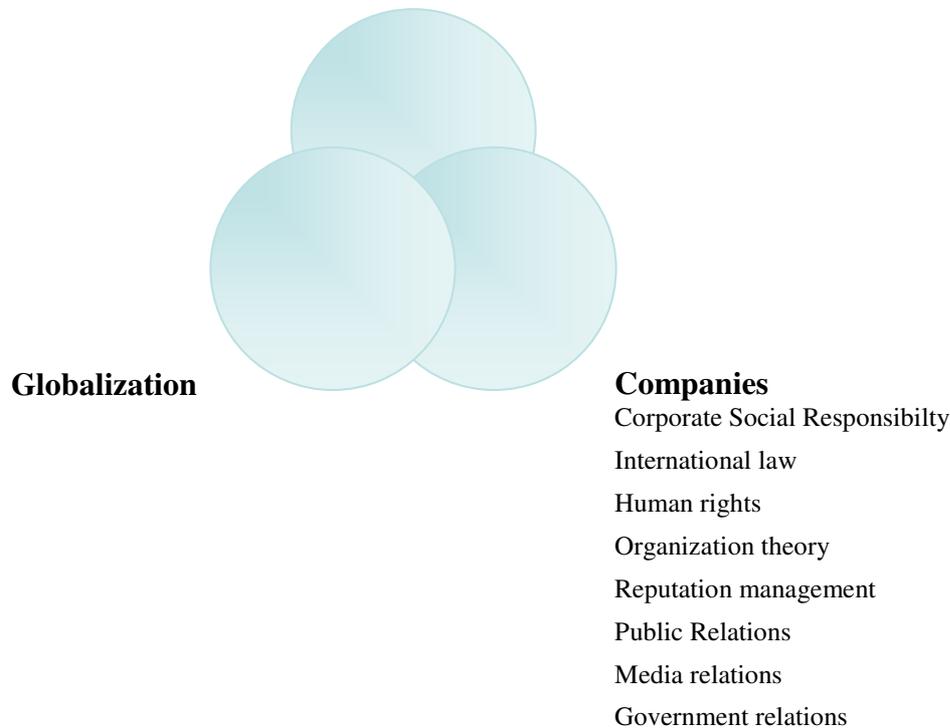
**This section contains:**

- Overview of theory areas
- Theory on coverage of business news
- Theory on the use of cases
- Theory on soft power
- Theory on globalization of media

The theory used for this study has a macro and a micro level. On the macro level the theory covers globalization, journalism/media, and companies since these are the overall subjects for this study. Under each of the three main areas; journalism/media, globalization, and companies, is a micro level.

As mentioned previously, this study concentrates on companies (the sources) and therefore most literature supporting this study falls under one or more of the micro level categories related to 'Companies'. In order to understand the context of this study, however, it is important to understand how the frameworks of 'Journalism/media' and 'Globalization' influence the framework and context in which 'Companies' exist. Thus, the theory discussed in this section will focus mainly on theory related to journalism/media and Globalization, whereas the subsequent parts of the study will concentrate on Companies.

## Journalism/media



### Theory on journalism/media

When trying to understand the role of businesses in media coverage today, the theory put forth by Peter Kjær in *Business news and the definition of business and society* (Kjær, 2006) is relevant, because it discusses the development of business journalism and thus the role companies play in daily media coverage.

According to Kjær, business news has grown considerably in the amount of space they take up in the news from 1960 until today. There are many reasons for this development, but in particular two reasons are crucial, namely on the one hand the big corporate scandals in the 1990's (such as Enron) and on the other hand the rise in private pension schemes and investment funds which has given the average news consumer a more personal reason to be interested in business news.

Besides growing in terms of space allotted in the daily news outlets, the nature of business news has, according to Kjær, also changed since the 1960's. Today, unlike forty years ago, business news increasingly deals with issues such as consumer

interests, environment, and moral issues. These are issues that were previously thought of as a company's internal business and not something which the public would be interested in nor entitled to learning about. Now, however, these issues are no longer "safe" from the media, since the media to an increasing extent covers such areas. In other words, ever more areas of company operations are subject to media scrutiny, and if we look at the subject of this study, companies' engagement of disenfranchised stakeholders, the increased scrutiny of such areas can serve as an argument for why a bad relationship with disenfranchised stakeholders has become increasingly dire to large companies.

Another central development in the coverage of business news as shown by Kjær is that companies today are being challenged on their legitimacy.

In the articles from 2000, the legitimacy of corporations is constantly being challenged; something that was not happening in the 1960 and the 1980's.

The companies now struggle to prove that their business strategies, their products, etc. are legitimate and valuable. Where the businesses previously had the final say in interpreting their own business in the media, companies increasingly need to fight over interpretation rights with 'the market'. This entails, as Kjær shows, that a company can no longer just inform its stakeholders that it is behaving correctly; instead, the company is bound to engage in continuous dialogue with the stakeholders in order to convince them of this. This is a challenge which some companies in the extractive industry have already taken to heart as is exemplified in the purpose of British Petroleum's (BP) 2003 campaign: " *Rather than relying on 'green-washing' and positive spin, the company's current public relations crusade, targeted primarily at NGO's and the press, seeks to clarify its standpoint and to offset the potential for misunderstanding*" (Arena, 2004, p. 30).

The necessity of fighting over interpretation rights is a central aspect in Joseph Nye's theory on soft power. Nye's work is primarily related to nation states; however, many of the mechanisms are transferable to the corporate world. Like Kjær, Nye sees reputation as ever more important and he too sees a struggle over the creation and the destruction of credibility (Nye, 2004).

According to Nye, there are three dimensions to soft power: daily communications, strategic communication, and lasting relationship building with key individuals. It is

particularly this third and final dimension that is of interest to this study of companies' relationship with disenfranchised stakeholders. Nye maintains that wielding soft power is far less unilateral than employing hard power, i.e. companies cannot just tell it stakeholders that something is a good idea; they have to engage in a multilateral discussion in order to come to such joint conclusion. On a positive note, Nye contends, soft power can reduce antagonism and should not be seen as "*just matter of ephemeral popularity; it is a means of obtaining outcomes that (the companies) wants*" (Nye, 2004).

Another relevant theory to understand the implications of a company's communication with disenfranchised stakeholders in a media context is the framework of 'media lobbyism', such as presented by Harr.

According to Harr organisations/companies are built on values, visions and some trade marks bringing them from their values to fulfilling their vision. Surrounding this is the company's worldview. A worldview is a term used to describe how the company sees the world – the company's picture of the world. The company will try to export its worldview to its surroundings, but this is a very delicate exercise because in the process of communicating it, the worldview is subject to interpretation from the surroundings. How the worldview is decoded or interpreted is crucial for the company's reputation and its possibilities for acting in the public sphere.

Of particular interest in this context is what Harr refers to as the *strategic basis* for media lobbyism. Harr describes organisations/companies as having four types of stakeholders, which all to some extent should be convinced of a company's legitimacy: their own support base (members, investors, etc.), decision makers (typically politicians), trendsetters (editors, scholars, etc.), and the general public (Harr, 2006). The general public can refer to larger public audiences such as all citizens in a country as well as to smaller audiences such as a neighbourhood. The general public has great importance for an organisation's/a company's liberty of action (Harr, 2006), if, for the purpose of this study, one sees the general public as a company's disenfranchised stakeholders, it is possible to recognize the impact, which the general public's interpretation of a company's world view, can have on the company's potential space of manoeuvring.

What makes communicating a worldview particularly challenging is that action speak louder than words. Thus if a company acts in a way that is not compliant with its worldview, it is the action is more likely to be remembered by the public than is the worldview the company is trying to communicate.

Another challenge put on companies by the media is illustrated through the theory of media networks (MandagMorgen, 2004) and how these networks determine how a company is portrayed in the media – which role it is given in a story. The theory on media networks shows how there is a new playing field open for institutions such as organisations, politicians, and companies to use when wanting to get their message across, namely that of creating media networks. Creating a media network means to be able to gather the key persons needed to make a case in the media. The key persons needed to make such a case are: a Marker of Strength (some one who exemplifies a problem – e.g. a disenfranchised stakeholder suffering from pollution caused by a company), a Translator of Strength (some one who puts the problem of the Marker of Strength into perspective, an expert – e.g. a professor), a Translator of Action (some one who places the responsibility and demands action – e.g. an NGO), and a Responsible Actor (some one on whom the responsibility for the problems of the Marker of Strength can be placed – e.g. a company).

The media networks are increasingly overtaking the importance of ‘Old Boys Networks’ (networks of men that know each other and therefore help each other reach professional goals) (MandagMorgen, 2004) – which larger companies often excel at – and because NGO’s often have a strong network with Markers of Strength (= potential victims with a problem), the NGO’s will have increased advantages over companies in order to set the media agenda.

Disenfranchised stakeholders are well cast for the role of Marker of Strength because they put a human face on the conflict, whereas the role as Responsible Actor will typically be given to the company. Thus the company is put in a situation where pressure is put on it to act to fix the problems of the Marker of strength. The ‘David vs. Goliath’ is another way to describe such dramaturgy of a story (Harr, 2006)

Combined with Kjær’s findings that ever more areas of company operations are open to scrutiny, this theory shows how companies are facing ever more areas to be given the role of the Responsible Actor and thus being portrayed as some one of whom demands

can be made. This puts extra pressure on the companies to minimize the risk of negative media exposure in order to avoid these demands.

### **Theory on globalization**

To create the framework for this study it has also been relevant to examine the media's importance in the context of globalization in general and of the extractive industry in particular. Overall, the theory applied shows an agreement that foreign press from developed, democratic countries is a crucial player in attracting attention to problems in developing and undemocratic countries (in which the extractive industry often operates) because of the freedom of speech which the press in democratic countries enjoys.

In 'Covering Oil', the Open Society Institute contends that the media has a key role to play in the question of bettering conditions in resource-rich countries, where the extractive industry typically operates:

*"The citizens of resource-rich countries – the actual owners of their countries' natural wealth – bear a special responsibility to push their governments toward transparency and spending that responds to public needs. And for that citizenry to be informed, it is up to journalists to convey reliable, accurate information about how their government is managing the development of the country's natural resources. In order for this to happen, journalists themselves must be well informed and able to report and write freely"* (Open society Institute, 2005, p.7).

This view is shared by Liza Margonelli in 'Oil on the Brain' and in fact, Margonelli goes a step further by showing how the media not only inform the general public about conditions in oil rich communities, but also – through TV, cell phones, etc. – is being used to keep the communities enlightened about company behavior. In other words, the media acts as a messenger for both the general, international audience, but also for remote communities (Margonelli, 2007).

That the media can and should play a role in such global challenges is supported by Nobel Prize winner in economics, Joseph Stiglitz who in 'Covering Globalization' contends that the media is of critical importance to corporate governance (Schiffrin, 2004). In particular, he believes that foreign press is crucial in this context.

*"Interestingly, there is some evidence that a foreign press may be particularly effective, less likely to suffer from what we referred to earlier as "national bias" and less*

*beholden to powers with the country that would resist exposure”* (Schiffrin, 2004, p. 14).

The above mentioned works all cite the important role the media play in international affairs. This assumption is challenged to some extent by Cate, who contends that drawing attention to a problem – e.g. company misbehavior in oil extraction – is one thing; another is whether media coverage and the following attention actually changes things. In relation to the debate of foreign media, Cate claims that foreign media attention might be enough to draw attention to a problem but if not sustained it will not be sufficient to generate a response from the accused party (Cate, 1996). In other words, media attention might change matters, but only if sustained and not through a one-time thing.

All in all, though, there seems to be agreement that the media has a role to play in international affairs and thus also in the development of the extractive industry as well as the industry’s engagement with disenfranchised stakeholders.

## **Part 2: Identification of problems**

## What are the problems of engaging disenfranchised stakeholders?

### **This section contains:**

- Presentation of the four problem categories identified
- How engagement problems increase media exposure

In order to understand why companies increasingly risk exposing themselves to public criticism through the relationship with the disenfranchised stakeholders; the potential problems within this relation must be identified. It is therefore necessary to examine in which parts of an operation the stakeholder engagement is disrupted, carried out inadequately, or simply not carried out at all. Below, the typical mistakes that companies make in terms of disenfranchised stakeholder engagement as well as the consequences thereof are identified and discussed. The biggest challenges for companies in terms of stakeholder engagement, as perceived by people working on the issue, fall within the following four categories:

1. Poor stakeholder identification
2. Poor external communication
3. Lack of respect for local traditions and societal structures
4. Lack of internal knowledge and qualified staff

In the following, the paper discusses each of the 4 major problems identified.

### **Problem 1: Poor stakeholder identification**

Poor stakeholder identification is chosen as the first problematic area to be described, because it is the task which companies typically engage in (or fail to engage in) first. The main problems in this category are:

- Companies do not identify stakeholders / forget stakeholders
- Companies do not accept everyone who claims to be a stakeholder
- Companies do not include critics on stakeholder list

### **Companies do not identify stakeholders / forget stakeholders**

The first mistake many companies make in terms of stakeholder engagement is not identifying its stakeholders. By not doing stakeholder identification, a company is unable to know who it is obliged to engage, and is therefore not likely to be able to adequately engage the disenfranchised stakeholders.

Some companies get around their stakeholder identification process by solely counting the groups or individuals to whom they have given money and take this process for identifying its stakeholders. This is problematic, because it can lead companies to overlook important stakeholders, such as people living near a project, as these local stakeholders might not have received money from the company.

*“When I look in CSR-reports, sometimes the company lists every NGO they gave money to as a stakeholder – it doesn’t seem to have any recognition that an identification process is necessary. In many cases, I think that is a very poorly defined area and that causes a lot of risk.”*

Julie Tanner, Christian Brothers Investment Services, interview

Other companies simply make no attempt at all to do stakeholder identification, and either way it causes a lot of potential risk. Chevron Texaco’s launch of a project in Ecuador is an example of this risk, which began decades ago and has grave consequences still today: Several indigenous groups were living in the project area when Chevron Texaco’s operations began in the 1960’s, yet these disenfranchised stakeholders were not informed nor included in the project, because, as Chevron Texaco officially claimed, the company did not know any indigenous people were living in the area (Mendoza 2006). The truth of this statement has been widely questioned. For example, linguistic researchers had carried out research in the area earlier (Kimerling 1991), and it seems likely that they would have encountered the indigenous tribes. However, had the company sent someone to thoroughly survey the area in order to identify stakeholders before starting its operation, it would in all likelihood have found the communities, but this did not happen. The company began its operations in 1964, and out of nowhere the indigenous tribes saw their surroundings change, suddenly including helicopters, fences, people cutting down trees, barriers leading right through villages, and pipelines built next to their cottages. This angered

and frightened the indigenous tribes, and the anger has persisted (Interview, Yanza, 2006). To this day the indigenous people have refused to take part in any communication with the company, and the tribes have sued Chevron Texaco for damages caused by the project – a law suit which looks to be dire for the company both in terms of monetary compensation to the communities and in reputation damage. In 2007, the judge handling the case ordered an assessment of the damages and the independent expert carrying out the assessment in a report released in April 2008 cited \$8.3 - \$16 billion in damages.

The lawsuit and the naming and blaming of Chevron Texaco would not have been as aggressive, had the indigenous people been identified and engaged by the company in due time (interview, Yanza, 2006). The strife with Texaco has become a principle matter for the indigenous people; now they want Chevron Texaco to pay (Kimerling 2006). Altogether this has caused a severe blow to Chevron Texaco's reputation.

Furthermore, representatives for the indigenous communities have been touring the Ecuador relentlessly, “making the trial an issue of national dignity and sovereignty in anticipation of a final decision in 2008” (The Goldman Environmental Prize, 2008) In April 2008 the two indigenous representatives, Yanza and Mendoza, were awarded ‘The Green Nobel Prize’ – The Goldman Environmental Prize’ – for their fight against Chevron Texaco, and this was covered by e.g. Wall Street Journal, Los Angeles Times, USA Today, and ABCnews. (Chevron says in USA Today that “the Goldman foundation has been misled and that the environmental damage was in fact done by Petroecuador, the national oil company” (Weise, 2008).)

What makes running the risk of not doing stakeholder identification particularly questionable is that in fact, proper stakeholder identification is a very small effort compared to the entire operation of extracting oil or other natural resources. Typically, extractive projects are long term investments that will last no shorter than 10 years and sometimes up to 50 years. Spending a few months on stakeholder identification seems a reasonable and good investment.

*“It is worth doing a mapping of power within the country. If you’ve got good people on the case, it can be done in 3 month”*

Donal O’Neill, former Shell Venezuela/Nigeria, interview

But even when companies do make an effort to identify stakeholders, as ever more companies in the extractive industry do, the identification is often inadequate. A common way to do stakeholder identification is to have a generic list of groups and institutions that should be included as stakeholders, and then have employees from the company identify representatives from each institution or ask someone from each institution to identify representatives themselves. Yet even with such a generic list, the companies often forget someone in the identification process. Therefore, some companies have found it rewarding to take this generic list to the identified stakeholders in order to get the stakeholders' input on inadequacies in the identification made. This, however, presents another challenge, since the stakeholders might avoid mentioning groups which they see as competitors, and therefore the companies cannot solely rely on this method either (Jungk 2006).

**Companies do not accept everyone who claims to be stakeholders as stakeholders**

The second problem in this category of stakeholder identification has to do with companies' refusal of stakeholders. People living around an operation sometimes claim to be stakeholders who should be listened to such as it was the case when Shell began its operations in Sakhalin. This claim, however, is not always accepted by the companies, and Shell's experience in Sakhalin is an illustrative example of why ignoring people who claim to be stakeholders can be both problematic and costly.

Shell created a great deal of anger in the local population, much of which could probably have been avoided had Shell accepted the stakeholders that claimed to be so. Sakhalin is a long, slim island off Russia's east coast with an indigenous population of around 4000 people, mostly living in the northern part of the island. Shell had identified all local communities, but because the oil project had direct impact on the middle and the south of Sakhalin only, the company decided not to include all the indigenous people on the island as stakeholders. Instead, Shell chose to accept as stakeholders and communicate with the indigenous people that lived south of the main settlement, namely those whose land was directly affected by the project. In practice, this meant that Shell would take the time to communicate only with the accepted stakeholders and no one else. The problem with this was that the people living on the northern tip of the island were also frustrated with Shell's presence on the island, even though the pipeline project did interfere directly with their communities. They feared that the oil project

would ruin their indigenous culture and have a negative impact on their livelihood; salmon fishing. The indigenous people told Shell about their worries, but Shell ignored them. Barnaby Briggs, Social Impact Manager at Shell, recounts the people from the north saying to Shell:

*“What are you doing? You’re destroying our culture. You say you’re not having a direct effect, but you are. We hate you.”*

Briggs, Shell, about disenfranchised stakeholders’ reaction to Shell; interview

Shell’s response to this was basically to tell the people to go away (Briggs 2006), because according to normal practice in Impact Assessments, they were not affected by the project. Next, the indigenous people barricaded Shell’s construction site, while Shell had to bear the financial costs of not being able to operate. This is a typical example of how not engaging the disenfranchised stakeholders can create a feeling of resentment, which is then expressed through violent or disruptive actions that hurt the company. In this case, Shell lost both working hours and damaged its already scratched reputation (interview, Briggs, 2006).

After the barricading of the construction site, Shell changed its strategy and initiated a dialogue with the indigenous people from the north. The feeling of being recognized as stakeholders has since lessened the hostility between the indigenous people and the company. One could argue that a group does not have the right to be heard and taken into consideration solely because it wants to, yet according to people working in the industry, it can serve companies well to listen to everyone. Not listening can in fact be very financially costly.

At least, the lesson Shell took away from this experience was that if someone claims to be a stakeholder, they are a stakeholder. This does not mean that they can always have money or have a say in the decision making process, but they always have the right to be heard.

### **Companies do not include critics on stakeholder list**

The third typical problem when companies identify stakeholders is the tendency to only or primarily identify people who are friendly towards the company and its project; not the critics. This is problematic because by leaving out the critics, the company risks

cutting itself off from valuable information that could provide insights to help prevent future misunderstandings and (resulting) conflicts.

There are several reasons why companies leave out the critics when it comes to identifying and engaging stakeholders. For one, it is about feeling that the project one is working on is a success. This neglect of critical stakeholders and focus mainly on 'friends' tends to occur when things are not going well, so that the staff working on a given project can send positive reports back to their corporate headquarters. Another reason for prioritizing the friendly minded stakeholders is the fact that employees feel defensive and uncomfortable when meeting critical opponents.

*“We have had a tendency in the past with some of our earlier advisory groups to just engage with our friends. It is much easier to engage with your friend than the person who disagrees with you, which of course is not which engagement is about. To really find out and get the dynamics you need to engage with both, and we’re doing a lot of work to try to do that.”*

Anita Roper, Alcoa, interview

On the other hand, the disenfranchised stakeholders can also withhold critique because the company is a major employer in the local area. If a given company is the only or one of few major employers in the neighbourhood, its status can make disenfranchised stakeholders reluctant to present their point of view, fearing that this will exclude them or their family from getting a job. One could argue that this is purely the disenfranchised stakeholders' problem as long as the company does not in fact punish people for putting forward their critique. However, having the role as the superior part with control of job distribution, it is very much in the hands of the company to explain to the stakeholders that they will not be punished for voicing critical views. On the contrary, their critique is often of value to the company, since it can give new insights and serve as a way to identify and prevent potential conflicts with the disenfranchised stakeholders.

In sum, the problems of poor stakeholder identification are diverse. They include problems caused by passive neglect on behalf of the company, such as not undertaking

a thorough identification process, as well as problems caused by active neglect, such as turning away people who believe to be stakeholders. Besides not ensuring proper stakeholder identification and refusing people as stakeholders, a third main problem occurs when companies solely engage with people who are friendly towards the company and forget the critical people/groups on their lists of stakeholders.

### **Problem 2: Poor external communication**

The term “poor external communication” covers a wide range of behavioral patterns. For this purpose, however, they are all discussed under the same heading since they all, in one way or the other, relate to the way companies communicate with disenfranchised stakeholders. Below, this paper deals with four behavioral patterns related to external corporate communication, which were identified through qualitative interviews as the most problematic ones:

- Companies begin engagement process too late
- Companies do not listen to community
- Companies do not follow up on stakeholder engagement
- Companies expect people to understand matters immediately; and/or present written material to illiterate people

#### **Companies begin engagement process too late**

Instead of initiating the communication process with the disenfranchised stakeholders when an operation is at its planning/primary stage, companies often do not initiate a dialogue with the stakeholders until right before the operation actually begins. By then, all questions of finance are usually settled, and though the company probably have budgeted unforeseen expenses, it would be much less troublesome in terms of both money, energy and frustration to do this from the beginning. Late engagement is often very unsatisfying for the community living in the area and can give rise to much concern and dissatisfaction. It can make the disenfranchised stakeholders angry because they feel left out; an anger which can turn on the company in terms of blockages, sabotage, and violence, such as the above cases of Shell on Sakhalin and Chevron Texaco in Ecuador shows (see above).

“Even if the terms of an agreement seem favourable, the other side may reject them simply out of suspicion born of their exclusion from the drafting process [...] If they are not involved in the process, they are hardly likely to approve the product. It is that simple. If you go to the state insurance commissioner prepared for battle after a long investigation, it is not surprising that he is going to feel threatened and resist your conclusion.” (Fisher and Ury 1991: 27)

Replace “you” with the extractive company and “the insurance commissioner” with disenfranchised stakeholders, and you have a common conflict in the extractive industry, since for various reasons – lack of knowledge, fear of complications by involving potential critiques, misguided consideration, etc. – companies often ignore or postpone the need to engage the disenfranchised stakeholders.

The benefit of initiating an engagement process at the very early stages of project planning is that it can prevent some of the problems that might arise later, for example stakeholder opposition when the company applies for legal permits to operate. In general, early engagement minimizes the potential conflict between stakeholders and company. If people are given a stake in the outcome by participating in the process, they are more likely to feel ownership, and this feeling of joint ownership is likely to make it much easier to solve potential conflicts and reach agreement (Fisher and Ury 1991).

*“If I spend time with you now and talk with you what it’s about, in a couple of months time when I go for the permit, you’re less likely to oppose it, if you understand it, have had some input, and I have listened to you.”*

Anita Roper, Alcoa, interview

Moreover, by beginning the engagement process early, the company has a chance to make potential changes that can seem irrelevant or minimally costly at an early stage, but might prove very costly later on. And further, these potential early changes are likely to benefit the community and thus minimize the risk of local resentment to a given project. For example, the company can perhaps easily move a construction site a few miles in order to avoid disrupting holy ground – something, which might seem

irrelevant or minimally costly to the company, but which will benefit the community and minimize the risk of resentment from the community. Furthermore, it is important to remember that extractive projects are always a long term investment. Short term projects last about 10 years, while long term projects can have duration of around 50 years. In this light, initiating the engagement process six months before it is perhaps strictly necessary seems a reasonable and good investment.

### **Companies do not listen to community**

Another critical corporate behaviour is the tendency to not listen to the disenfranchised stakeholders. The problem of not listening is that the people, who want to be listened to, feel ignored, and that this feeling of being ignored can quite easily turn into resentment.

Zweifel identified the different levels of listening in “The Matterhorn of Masterful Listening” (Zweifel 2003: 34). He identifies seven levels of listening, ranging from “Ignoring”, the poorest level of listening, to “Mastery”, the pre-eminent level. According to Zweifel, ignoring someone is particularly damaging, since *you* and *I* exist only in relation to each other. If I ignore you, it is as if you do not exist – in other words ignoring someone is a way of disrespecting the humanity of the one being ignored (Zweifel 2003). Applying this framework to the extractive industry and the disenfranchised stakeholders can help us understand why being ignored by an oil company is very likely to upset the local population.

There are many ways of “not listening” to a community. One way is not to ask a community for input, and another is to simply refuse to listen to the views of stakeholders even if they try to present them. This was indeed what happened in the previously mentioned case of Shell and the indigenous people in Sakhalin. Some negotiators see not listening as a useful tool in order not to have to make concessions to the opponent, because if you do not listen, your opponent’s point might seem less legitimate (Fisher and Ury 1991). But according to Fisher and Ury, a good negotiator does just the opposite:

“Unless you acknowledge what they are saying and demonstrate that you understand them, they may believe you have not heard them. When you then try to explain a different point of view, they will suppose that you still have not grasped what they mean. They will say to themselves, “I told him my view, but now he’s saying something different, so he must not have understood it.” Then instead of listening to your point, they will be considering how to make their argument in a new way so that this time maybe you will fathom it.” (Fisher and Ury 1991: 34)

Seen in this light, if a company does not listen, its communication with the disenfranchised stakeholders will at best be of no use, since the stakeholders are not taking in, what the company is saying. And at worst it will be damaging to the relationship, because the continuous feeling that the company is not listening will leave the stakeholders frustrated and angry. As described above, such anger can make the stakeholders turn to violent actions against the company.

### **Companies do not follow up on stakeholder engagement**

Companies too often assume stakeholder engagement to be a one-time priority. They might identify stakeholders before beginning a project, have an initial engagement with the disenfranchised stakeholders, and then let the stakeholders know that they are welcome to contact the company if they have any further questions or comments. Yet according to the data material that this paper is based on, neither stakeholder identification nor stakeholder engagement should be thought of as a one time priority, but rather as a regular and continuous process. The respondents in the industry suggest thorough reviewing of the stakeholders once a year and checking up about once a quarter.

By only doing stakeholder engagement once, companies risk leaving out people, who they might not have identified the first time. Also, societies and power structures change – particularly when a company begins a dialogue with certain groups, as this dialogue itself can bring about social change (Freire). In this case, the process of social change begins with interactions, e.g. meetings between the company and the disenfranchised stakeholders. The stakeholders then reflect, and this can result in more change. If companies do not initiate a regular stakeholder identification and engagement process, they risk not noticing these changes and therefore being left with a

misperception of relevant power structures. Consequently, it becomes more difficult for companies to engage stakeholders properly and thus to live up to the responsibilities which will be discussed below.

Another problem concerning following up on engagement is when companies actively seek the input of the disenfranchised stakeholders, but afterwards show no signs of using the input they have been given.

If company employees meet with a group, it raises expectations, and if there is no follow-up from the company afterwards, the stakeholders can in fact sometimes be even more upset than before a meeting. This disappointment occurs because expectations materialize based on the first meeting, and subsequent expectations then build on those expectations, thereby creating a dependency on the first set of expectations; a reaction also referred to as path-dependency (Rip 2005). In other words, when stakeholders expect that a company will act on the input given, and the stakeholders later find that the company has not acted, their expectations need to be readjusted and this creates disappointment and potential conflict.

Ill-feelings amongst the local communities can lead to various actions that are damaging to company activity. A recent example of how is kidnappings and shooting of Shell-employees in Nigeria in early 2006. These violent actions presumably carried out by the dissatisfied Ijaw minority had by late February 2006 led to a decrease in Shell's oil production by about 450,000 barrels per day (this equals approximately 20 pct. of the total output in Nigeria) as well as the withdrawal of about 330 workers (Goujon 2006).

**Companies expect people to understand matters immediately; and/or present written material to illiterate people**

The final problem identified by the respondents in terms of external communication is the fact that companies often miscalculate the ability of disenfranchised stakeholders to grasp technical terms.

Company employees forget that they themselves deal with issues related to the extractive industry on a daily basis, while a meeting with the company might be the first experience that the disenfranchised stakeholders have with this issue. (In other words, employees of extractive companies spend many internal meetings discussing an issue, and making sure that everyone understands it, while only short time is spent with

the stakeholders afterwards. This might not happen deliberately but rather because the company staff members are under pressure and therefore do not think about the discrepancy in time spent discussing an issue internally vs. with the stakeholders.

*We already understand it, and we tell you, and off we go to the next one. But if you are doing true engagement, then it takes time to talk through with people about their ideas.*

Anita Roper, Alcoa, interview

Furthermore, many companies seem to take a typical “developed-country-approach” to stakeholder engagement, meaning that they try to be as efficient as possible; asking questions and expecting immediate answers. This approach, however, is not suitable for all cultures; many disenfranchised stakeholders in the developing world are not used to this direct form of communication, and are therefore unable to offer immediate responses or counter arguments. This can lead to misunderstandings as the stakeholders see the meeting as the beginning of a process and will return with demands and wishes after what could be day or weeks of internal discussion, while the company thought that given the silence during the meeting, the stakeholders had no objections. Consequently, the company might have to take new information into account and maybe change its plans, or the stakeholders might feel that their viewpoints are not being heard or taken into account.

Another obstacle is that companies tend to ignore that stakeholders might not be able to grasp the concepts discussed, even when sufficient time is spent on the discussion. For example, Alcoa had been preparing for a smelter project in Guinea for two years when it suddenly became clear to the project staff that the local people whom they had been discussing the smelter project for a long time, actually had no idea what a smelter looked like. This is problematic for two reasons: Firstly, according to the Right to Self-determination discussed below, the people living in a given area have a right to freely pursue their own economic interests and development. This is obviously not possible if they do not understand what they are accepting. Secondly, a refinery has a huge footprint, 6-7 miles in diameter including the bufferzone. If the people living in the area do not know that this is what they consented to, it can be a great shock to find a project of this magnitude in their area once it is under way. The shock can potentially lead to

the stakeholders feeling misled or deceived; a feeling which can cause the ill-feelings and their potential consequences.

Some companies have tried to solve this problem by bringing local representatives from new project areas to already established ones, so that they can see for themselves what to expect in their own area.

Furthermore, in many developing countries a large part of the population is illiterate, e.g. in Guinea 65 percent of the population is illiterate, and therefore projects need to be presented in a way so that the illiterate will understand it too.

In sum, there is a wide range of potential problems and risks when companies communicate with stakeholders and in this case with the disenfranchised stakeholders. Beginning the engagement process too late, not listening to the community, not following up on stakeholder engagement and expecting the disenfranchised stakeholders to understand matters too quickly or easily are the most significant communication problems such as they are identified throughout the interviews carried out for this paper.

### **Problem 3: Lack of respect for local traditions and societal structures**

A number of companies have severely infuriated its disenfranchised stakeholders by violating the stakeholders' local traditions and/or by not respecting the way the stakeholders have organized themselves. This has led to protest, which have cost the companies large sums of money. The main problems identified are:

- Companies lack respect for traditions and authorities
- Companies impose structures

#### **Companies lack respect for traditions and authorities**

A classic violation by companies is the violation of local religions. If the local community's faith – which for many indigenous people is related to the natural surroundings (Colchester, 1994) and therefore also to the natural resources the company is there to extract – “gets in the way” of the company's operation, several companies have chosen to ignore the community's faith and carry on with the operation. This has ultimately led to disastrous results for both parties involved. An example of this is Freeport Mining's operations in Papua New Guinea. One of the

tribes in Papua New Guinea, the Amungme tribe, believes in female earth spirits, and locates the most important of these spirits – the Tu Ni Me Ni – as embodied in the surrounding landscape. The mountain embodies Tu Ni Me Ni's head, her womb and breasts are in the valleys, and the rivers symbolize her milk. Furthermore, the Amungmes believe that their ancestors go to the mountains after they die (Abrash 2002). In spite of these beliefs, Freeport Mining cut the top of two mountains, filled mining waste in lakes, and paved over some of the Amungmes sacred sites in the valleys – actions which left particularly the Amungmes, but also other tribes, feeling violated by the company. As a consequence, much ill-will exists between the tribe and the company and this has led to violent actions, which have forced the company to occasionally stop operations resulting in financial losses (Hafild 2002).

Another behaviour seen as damaging to the stakeholder engagement is that of not acknowledging the authority of the people seen as authorities by local society. Burlington Resource's conduct in the Ecuadorian Amazon is a telling example of this problem: The indigenous people inhabiting the project area did not want oil development, but Burlington Resources did not accept this position as being the official one, and the company therefore began negotiating with individual Shuar leaders who held a more positive attitude towards oil development. A court ruling said that the company was not allowed to negotiate with individual Shuars, but only with their federation – the Independent Federation of the Ecuadorian Shuar People, yet Burlington Resources consistently disobeyed this ruling (Gorman 2002). The company met with individual Shuars while claiming that it had gotten the permission to do so by two out of three presidents of the three indigenous federations involved – the Independent Federation of the Ecuadorian Shuar People, the Interprovincial Federation of Shuar Centres, and the Interprovincial Federation of the Achuar Nationality of Ecuador. This agreement was however quickly denounced by the remainder of the leadership in the three federations: The remaining leadership did not want Burlington Resources to continue its dialogue with the Shuars, and since the presidents have to 'follow orders' from the rest of the leadership both presidents were deposed within half a year. In other words, Burlington Resources did not respect the fact that the presidents were only authorities when backed by the remaining leadership.

Violence and civil unrest have grown in the area and the resistance have paralyzed Burlington Resources' operations (Hearn 2006), leading to substantial financial losses

for the company. This would in all likelihood not have taken place, had Burlington Resources respected the view of the indigenous peoples and the fact that the local presidents must act in accordance with the with the majority view (Heim 2006).

### **Companies impose structures**

The above mentioned operation by Freeport Mining in Papua New Guinea also illustrates another of the disrespectful behaviour often seen by extractive companies, namely the one of imposing societal structures on local communities. After several conflicts in Papua New Guinea, Freeport Mining realized that the company needed not only the contract with the Indonesian government but also a social license to operate from the community. The company then set up a fund to help the locals achieve social development, but the way the fund was organized caused many problems. Freeport Mining set up a tribal system, in which the money in the fund would be given to the locals based on their tribal heritage. The tribes are intermarried and live in communities together, yet Freeport Mining chose to impose a different structure. This distribution on tribal basis caused a lot of tension, because it accentuated the tribal differences. After realizing the conflicts caused by the tribal system, Freeport Mining shifted to a community based fund (Freeport-McMoRan 2003), and this lessened the conflict.

All in all, companies showing disrespect for local traditions and societal structures is a well known problem in the extractive industry, and this behaviour causes conflicts with the disenfranchised stakeholders. The disrespect particularly manifests itself in the disregard of local religions, local social structures and local authorities.

### **Problem 4: Lack of Internal knowledge and qualified staff**

The lack of internal knowledge and properly trained staff was identified by most of the respondents as a major obstacle to engagement of the disenfranchised stakeholders. These internal inadequacies result in poor engagement techniques as well as a deep-felt reluctance to engage the disenfranchised stakeholders. It is therefore rather thought provoking that it is not a problem which is thoroughly dealt with in literature on the issue. The various problems identified are:

- Lack of skills in company to do stakeholder engagement
- Reluctance in company to do stakeholder engagement
- CSR not integrated in business

**Lack of skills in company to do stakeholder engagement**

Most employees in the extractive industry have a technical background; many are engineers and therefore have a technical approach to anticipated problems rather than a sociological approach. This causes problems for the company as well as for its disenfranchised stakeholders, because the employees too often are not capable of doing proper stakeholder identification and engagement.

To understand the matter, one can divide the extractive industry’s areas of influence into two spheres; one which requires a technical response and one which requires a more sociological response (figure 1).

**Figure 1**

Areas on which the company has influence	Nature of response required
Technical Commercial	Technical
Environment Social situation (stakeholder engagement) Economic situation Political situation Reputation – media cooperation	Sociological

(Adapted from idea by O’Neill)

Looking at figure 1, one can see that many of the areas which the company influences require a sociological response, and amongst these areas is stakeholder engagement. However, the employees’ educational background means that the company has a large pool of technical competencies, whereas the pool of sociological competencies is limited. Accordingly, the skills to do community engagement simply might not be present, since with a background in engineering, many employees in the extractive industry are more adept at conceptualizing the world as issues to be solved within a technical framework.

Not having the competencies to do stakeholder engagement means that the employees can not properly prepare themselves for what is required to do good stakeholder engagement; at least not without the help of someone trained in that particular task.

*There were lots of things, Newmont could have done differently in terms of stakeholder engagement, but no one knew what capacity was needed. They did not understand what they did not understand. Newmont is a somewhat provincial, very South-Western company, and all of the sudden they had to deal with indigenous tribes in other parts of the world without having any experience with this.*

Lauren Compere, Boston Assets Management, interview

*“The root of a lot of problems is that by background the employees have not got sociological training. They tend to be technocratic and search for quantifiable answers. This happens all the time in the extractive industry.”*

Donal O’Neill, former Shell Nigeria, interview

### **Reluctance in company to do stakeholder engagement**

The lack of background in social sciences not only causes a lack of knowledge of how to engage with the disenfranchised stakeholders; it also aggravates the previously mentioned lack of will to engage with the community at all.

As seen in figure 1, the primary competencies of employees in the extractive industry lie in the technical sphere. Figure 2 shows how, consequently, this means that the employees will get the highest level of satisfaction when working in the technical and/or commercial sphere. On other hand, when employees work within the environmental, social, economic, or political sphere, they tend to have a lower satisfaction level as they do not have the competences to work within these spheres.

**Figure 2**

Work areas	Satisfaction level for employees
Technical Commercial	<i>High satisfaction level because:</i> - Physical Realities - Quantifiable Problems - Common Language - Objective, Rational Basis for Decision - Emotional Content Low
Environmental Social Economic Political Reputation - media cooperation	<i>Low satisfaction level because:</i> - Do not have education - Do not have common language - No guarantee for a satisfying solution - Emotional content high

(Adapted from idea by O'Neill)

Because of the difference in satisfaction levels, the employees often do not *want* to work within the sociological sphere. The concept of self-efficacy such as described by Bandura can be used to explain this mechanism as people's sense of self-efficacy (how well they believe themselves to be able to perform in a given situation) have a great impact on their willingness to engage in this situation:

Their lowered expectations lead them to avoid situations that are threatening and in which they do not believe they could perform well. Where situations cannot be avoided, they try only a little and give up quickly. As a result, they do not engage in activities that might demonstrate their abilities and serve to change their sense of self-efficacy. (Engler 1995: 234)

For the problem at hand, the unwillingness to engage in activities in which ones self-efficacy is low means that since stakeholder engagement falls within the social area of influence, where the employees' self-efficacy is low, there is a reluctance to perform this task. It adds to the reluctance that many employees in the extractive industry are used to a very internal process – they are not as e.g. consultants used to going out and talking about their work and this makes them nervous when having to do so.

*Normally I find that if you are willing to help them (employees in the business units) they will try to talk to their stakeholders. But they do not know how to do it, so they are scared to do it.*

Anita Roper, Alcoa, interview

Also, employees can fear that what they say will be used against them. If for example a company reveals its targets for carbon dioxide emission and then does not meet these targets, the employees fear that the company will be prone to attack by groups with whom they have shared the information, as these groups can reveal this to the press, thus resulting in bad publicity. In other words, the employees can be nervous about being the one causing damage to a company's reputation and therefore want to stay away from these risks.

*For companies that have traditionally operated internally, it is scary to talk about your problems outside, because you can get knocked on the head for it. I have had that problem with a country office. We said: 'you should talk to stakeholders', but they said, 'oh, we know what they will say and if we give them information, they will just use it against us in the media'."*

Anita Roper, Alcoa, interview

### **CSR not integrated in business**

Many companies see CSR – and thus stakeholder engagement – as an external component rather than as an integral part of a business operation (Djursø 2006). This is a risk factor in terms of achieving good stakeholder engagement, because employees who have extensive knowledge of CSR do not cooperate, at least not on regular basis, with employees that are physically close to the disenfranchised stakeholders. Thereby CSR initiatives risk getting “lost” somewhere between the two groups of employees.

*“One of my problems with the term stakeholder engagement is that people see it in isolation, a process that is separately different from management issues that needs to be tackled [...] they see it as separate from the way you run the business.”*

Barnaby Briggs, Shell, interview

Traditional business goals in the extractive industry such as developing and upgrading technology, lowering production costs, and improving sales numbers are seen as the core competencies of most extractive businesses. Therefore, these are the areas which the employees expect to be judged on and for that reason want to do well on. Also, as seen in figure 2, it is the areas in which the core competencies and interests of most employees lie. Consequently, assignments which have got to do with CSR-related areas – such as stakeholder engagement – are seen as taking away time from more important tasks and are therefore likely to be neglected. Thereby, companies run the risk of simply not benefiting from its CSR-initiatives, while believing that they do.

The isolation of CSR can also lead to conflicts between the corporate level, where the CSR unit is usually placed, and the local companies. The expectations from the corporate level to local companies are often too high – e.g. the CSR unit develops extensive tools to do stakeholder engagement and presents these tools in long reports, but the employees in the local company do not feel that they have time to read such extensive reports, as this takes time away from more urgent tasks. Consequently, employees at the corporate level will feel their work being neglected, while the employees in the local company feel that they are being pushed too hard, and that the enormity of their work load is not acknowledged. Such internal conflicts are likely to prevent optimal business operations (Noll 2004).

To sum up, inadequacies in the company cause problems for the employees' capabilities and willingness to do stakeholder engagement. What compromises the readiness to perform stakeholder engagement is particularly the fact that many companies lack employees with the proper background to carry out the task; something which also causes unwillingness amongst the employees to engage with the disenfranchised stakeholders. Furthermore, the organization within the companies often keeps CSR as a separate department which makes it more difficult to make initiatives typically seen as CSR-related, such as stakeholder engagement, an integral part of the business operation leading to internal conflicts.

## **How engagement problems increase media exposure**

The problems identified vary in their nature, and range from poor stakeholder identification and communication problems to a lack of skills in the company to perform these tasks as well as a lack of respect for the disenfranchised stakeholders traditions and societies. Together, however, they pose a risk in terms of negative media coverage. In fact, it is possible to see how the four identified categories of problems expose the company to criticism:

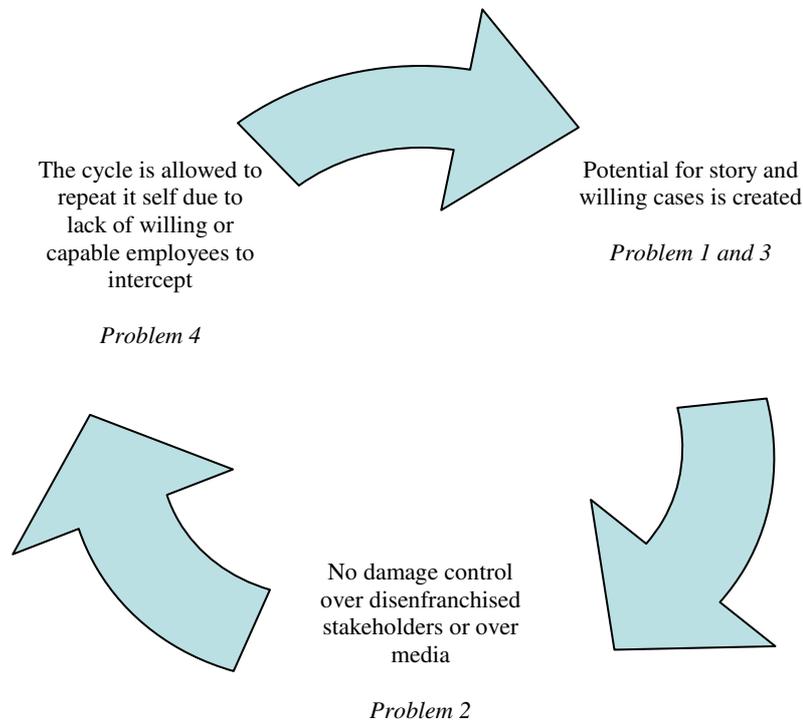
Not identifying stakeholders (problem 1) and not respecting their traditions (problem 3) creates the potential for a story. Not identifying stakeholders is, as shown above, the first step towards creating potential resentment. Thus it is the part of the process where the foundation for a conflict – and thus a story – is laid. The lack of respect and the resentment this causes is another ‘story creator’ such as it was the case in the above mentioned example of Freeport Mining in Papua New Guinea, which received quite a bit of media coverage.

Poor communication (problem 2) minimises or even prevents the damage control a company might exercise – either over the disenfranchised stakeholders where ill feelings potentially could be soothed and thus make the stakeholders less willing to act as case in a story or over the media.

Finally, all of the above problems are both to a certain extent caused by and certainly exacerbated by the lack of qualified staff to deal with these challenges (problem 4).

The problem can be illustrated like this:

**Figure 3: Engagement problems and story potential**



The pressure from the media is likely to intensify for the reasons described earlier, namely 1) that business journalism is growing and more areas are thought to be of legitimate interest to the public, and 2) because companies in the extractive industry are increasingly operating in areas where these issues will come into play.

In order to handle this pressure well, companies have to break the cycle shown in figure 3. This can be done by not creating the potential for a story, by being better a damage control, and/or by having qualified staff to solve these challenges.

*“We had a community that was upset because it was close to the plant and smelling the soda. It was a question whether they were sick or not – some say they were, from our point of view there was no medical evidence, but perception is reality and we just did not handle it well – probably because we did not have the skill set.”*

(Roper, Alcoa)

## **Part 3: Legal obligations**

## Multinational Companies' obligations to Disenfranchised Stakeholders

### This section contains:

- Presentation of legal obligations under national law
- Presentation of legal obligations under international law
- Presentation of the rights of the disenfranchised stakeholders
- Legal obligations for companies to engage disenfranchised stakeholders
- Why it is prudent for companies to engage disenfranchised stakeholders
- The law and media coverage

It has now been established that there *are* problems in the extractive industry's engagement of its disenfranchised stakeholders. But why, one might ask, should the companies really care? In the following chapters, this paper will make the argument that the answer is twofold: They have a legal obligation, but also there are important economic gains to be made. In this chapter the legal obligations will be discussed, and in the subsequent chapter the economic benefits of stakeholder engagement will be introduced.

### Legal obligations

As presented in the introduction, there are developments in the legal systems which increases the risk of companies

Whether or not a company successfully engages its disenfranchised stakeholders has traditionally been debated within a framework of voluntarism (Doane 2005). The relationship with disenfranchised stakeholders has been viewed as one which the company could *choose* but was not *legally* obliged to engage in – as long as it otherwise respected national law. This view is, however, changing – today companies are increasingly seen as having legal obligations to respect the rights of the people they impact (Kamminga et al 2000). The question is how far these legal obligations extend? In order to analyze corporate legal obligations to respect the rights of disenfranchised stakeholders, one must turn to the laws that define corporate obligations. In this regard, both national and international law is relevant as they both place obligations on

companies. Below, the paper therefore discusses the legal obligations of companies related to the disenfranchised stakeholders under both systems of law.

### **Obligations under national law**

The behaviour of companies has traditionally been governed by national law. This is applied to the concept of legal personality: In order to have legal rights and obligations under national law, one needs to be a subject of the law. To be a subject of law, an entity is required to have a “legal personality”. One has a legal personality, if one can enter into legal relations with other entities as well as if one can have rights and duties, and in Malanczuk’s definition, individuals, organisations, states and companies all have legal personalities and are therefore subjects of national law (Malanczuk 1997). Consequently, because a company is subject to the law, the company has to abide by the law in force, and if it does not, it can be subject to liability. With regard to multinational companies, both the law of the home state (the state in which the mother company is incorporated) as well as the host state (the state in which the company or its subsidiary operates) play a role, but the host state laws are usually the most influential ones. A company has the obligation to abide by the law in the country in which it is working, and for a multinational company, this means that it has to act in accordance with the laws of the host state. The reason why the host state can set the law is that every state can claim jurisdiction over crimes committed on its territory – also if the crime is committed by foreigners (or a foreign company) (Malanczuk 1997). The home state responsibility can be built on several jurisdictions of which nationality generally is seen as the most important (Engström 2002). The nationality principle means that a state is allowed to prosecute its nationals for crimes that are committed in other states.

There are, however, serious risks attached to having national law as the only source of law to regulate companies. Multinational companies (MNCs) increasingly outsource operations to developing countries – amongst other reasons because the costs are usually lower here. This creates a risk of the so-called “race to the bottom-effect” (Engström 2002), which refers to the willingness of governments, particularly in developing countries, to lower their standards and level of regulation, for example of minimum wages or land rights of indigenous groups, in order to attract foreign direct investments (FDI). Moreover, due to their substantial economic contribution to a country, MNCs are sometimes able to pressure governments in developing countries

into creating laws and conditions that are beneficial for the company, though maybe harmful for the people living in the country. This is a very current concern; FDI from private/corporate sources have replaced governmental foreign and development aid as the main source of external capital in many developing countries. FDI currently make up around 60 pct. of international capital coming into developing countries, and the amount of FDI is almost ten times greater than official development assistance, whereas in the late 1980's official development aid and FDI were approximately at similar levels in most developing countries (Oxfam 2004). Because FDI by MNCs contribute so substantially to the economy of many developing countries, and because of the enormous economic strength of the largest MNCs<sup>1</sup>, the companies are often capable of putting extensive pressure on governments in developing countries, as the countries really need the investments and therefore will go to great lengths to please the companies

A second concern regarding national law is known as "The Corporate Veil". MNCs consist of parent companies and subsidiaries that are often registered in different countries. Their construction is often very elaborate, and can make it difficult to determine which part of the company is responsible and under what law (Engström 2002). MNC's with complex structures might thus be able to avoid legal obligations under national law that they would otherwise have to respect.

In sum, it is clear that national law is not sufficient to make MNCs respect the rights of its disenfranchised stakeholders. In recent years international law has thus played an increasing role in regulating corporate obligations, and there is a growing acceptance to look to international law for ways to determine these obligations (Kamminga et al 2000).

### **Obligations under international law**

As the recognition that national law can be insufficient has gained momentum, the focus on international human rights law as a means to determine and regulate companies' accountability has increased (IPIECA 2006). The human rights framework is considered by both the International Council for Human Rights Policy (ICHRP) and

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<sup>1</sup> The 200 biggest corporations in the world control close to one third of the world economy. (Roddick 2001)

The World Bank's Extractive Industries Review to be the most relevant framework in which to discuss corporate obligations today. According to the ICHRP, the human rights framework can be used to provide a universal standard, assess the effectiveness of national regulation, and strengthen the language of human rights advocacy (ICHRP 2002).

Whether or not it is appropriate to develop a system, in which international law progressively more strengthen the obligations of companies, causes disagreement (ICHRP 2002). Some believe that international law should remain a system for states, while others believe that it is appropriate to place more international legal obligations on MNCs, that are often growing larger and stronger every day. Also, due to an increase in abuses by companies, and because voluntary codes have not sufficiently prevented such abuses, international law is by some seen as the best "weapon" available to control corporate behaviour (ICHRP 2002). However, there seems to be a consensus among scholars such as Malanczuk, Kamminga, and Avery, that international law *can* place obligations on companies – Malanczuk states that "*the present century has seen a growing tendency to admit that individuals – and companies – have some degree of international personality*". Over all, there are two ways in which corporations can be responsible for respecting human rights under international law: Indirectly and directly. These two ways will be dealt with in further detail below.

### **Indirect obligations on companies**

Indirect obligations are called so because they are placed on companies by states and not directly by international law. States are the main object of international law and though responsibilities under international law are increasingly being ascribed to private actors ((ICHRP 2002), states still by far have the most obligations under international law. State obligations relevant to MNCs and disenfranchised stakeholders are obligations under international human rights law. Here, states have three types of obligations: The state must *respect* the human rights of its people, it must *fulfil* the human rights of its people, and finally it must *protect* the human rights of its people. It is this third obligation to protect the people, which is relevant with regard to the companies operating in the country, as it means that a state has the obligation to protect its people against human rights abuses by private actors (ICHRP 2002). One example of state action affecting corporate behaviour and taken as a consequence of the above

obligation to protect is the requirement for states to outlaw corruption. This requirement is codified in international treaties. In fact, it is suggested by the International Council on Human Rights Policy that a body of international customary law is emerging, which will bind states to fulfill their obligations to protect citizens no matter which human rights treaties the state has signed and ratified (ICHRP 2002).

Consequently, there is no doubt that national governments still have an important role to play in this context. In accordance with the responsibility to protect, governments have an obligation to use their institutions such as courts and police to protect their citizens, therefore also the disenfranchised stakeholders and provide redress whenever necessary. It is then up to civil society, in practice this often means international NGOs, to make sure the people know that they can make this claim on their government as well as to empower them to exercise this right.

### **Direct obligations on companies**

Before the Second World War there was a common understanding that international law was only for states. Today, there is now a growing acceptance of the view that companies can have at least a limited legal personality under international law (Malanczuk 1997).

The main reasons for claiming that companies have legal personalities under international law are:

- 1) Companies have the right to a fair trial.
- 2) Companies can make claims to international tribunals.
- 3) States can make treaties that put obligations on companies (ICHRP 2002).

The possibility to place obligations on companies through the use of international treaties shows that “no conceptual obstacle prevents states from requiring companies to abide by legally binding international human rights obligations” (ICHRP 2002: 56). In other words, states can make an indefinite number of international treaties that are governed by international law and put obligations on companies, and this shows that companies are capable of having an international legal personality with international legal rights and obligations. It makes no difference to a company’s obligation that the company plays no part in negotiating the treaty that places the obligations on the company.

The subsequent question is that given the possibility of having a legal personality under international law, to what extent – if any – is a company required to respect international human rights law? To answer that question, it is helpful to look at the Universal Declaration of Human Rights (UDHR). In its preamble, the UDHR states that: “The General Assembly Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all national, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance...” (Center for the Study of Human Rights 2001). The term “every organ of society” is interesting here. Professor of international law Louis Henkin states that “every organ of society excludes no one, no company...” (ICHRP 2002). The literal meaning of the word organ refers to a unity that performs a vital function in the body, and as shown above, MNCs now control such a large part of the world’s trade and economy that they must be said to perform a vital function of society. Therefore companies, particularly large companies with a significant impact on its surroundings, should be seen as an organ of society and consequently as someone, to whom the UDHR must apply.

Because of its nature as a *declaration*, the UDHR was by the time it was created and signed not legally binding. This status has – for some of the articles – been altered. Due to the incorporation of the UDHR in several national constitutions as well as the fact that the UDHR has served as the foundation for several international human rights treaties (treaties are legally binding), at least parts of the UDHR (i.e. art. 1-10) are generally interpreted as having become customary law, which is legally binding (ICHRP 2002). The only way for companies not to be seen as legally bound by customary law on the area is if the companies continually have objected to the legitimacy of the law. However, the contrary has been the case, namely that more and more companies publicly announce their support for the human rights principles.

While the UDHR applies, it is not enforced to its full extent, and this causes crucial problems, since it raises the question of who will hold a company responsible, if the host government accepts its behaviour. However, advocates increasingly cite such

international law in national courts when the scope of national law is in doubt in order to establish liability (Petrasek 2003).

Another set of norms, which companies are bound by, is the “peremptory norms of international law” also called jus cogens norms (Malanzcuk 1997). These norms concern the gravest violations of human rights and are considered to apply to all states – also those who have not signed the UDHR or other treaties prohibiting the behaviour, because the norms are seen as accepted by the international community as a whole (Malanzcuk 1997). Amongst the jus cogens obligations are the prohibitions against genocide, slavery, crimes against humanity, murder, slavery, denial of the right to self-determination and any consistent pattern of gross violations of other human rights (ICHRP 2002). Accepting that an MNC is an organ of society, and that all organs of society should respect human rights, therefore also means that corporations should respect these fundamental rights with jus cogens status (ICHRP 2002).

Furthermore, the OECD has created the OECD Guidelines for Multinational Enterprises. The guidelines were first adopted in 1976, and in 2000 the Revised OECD Guidelines for Multinational Enterprises were adopted (OECD 2002). The guidelines are recommendations from governments to multinational enterprises that operate in (or from) the 33 adhering countries. What makes these guidelines exceptional is that they are the only multilaterally endorsed code on this issue that governments are committed to promoting.

In sum, companies have a responsibility to respect human right under both national and international law. Under international law, the obligation can be both direct and indirect. On the whole it is therefore possible to conclude that companies have an obligation to respect human rights – also if the home state does not enforce its laws as corporate obligations also fall under international law. The status of some rights as legally binding is still debated, whereas other rights, such as the jus cogens norms are binding on companies at all times.

## **Rights of the Disenfranchised Stakeholders**

When asking companies to respect the rights of the disenfranchised stakeholders, it is imperative to also establish which rights these stakeholders have, under what law, and how they can be enforced. In order to establish this, we must first look at who these disenfranchised stakeholders are: Many stakeholders will qualify as a people and many of these people as indigenous people. Therefore, first the rights of a people will be presented below, and secondly the rights of indigenous people will be examined.

### **Rights of a people**

In order to claim the rights of a people, a group of individuals first needs to show that they are in fact a people. Indicators that a group of individuals can be classified as a people are: a common historical tradition, ethnic identity, cultural homogeneity, linguistic unity, religious or ideological affinity, territorial connection, and common economic life. Furthermore, the group must have the will to be a people and institutions that show this will (Henriksen 2001). If these indicators are present, a group generally should be recognized as a people and therefore given the rights of such.

Several different rights come with being recognized as a people, yet some rights are more crucial as well as greater more pressure than others. One of the endangered rights is the Right to Self-determination, and the right is relevant to emphasize here, because the violations of this right causes much distress amongst potential disenfranchised stakeholders (Oxfam 2004)

The Right to Self-determination is established in Common Article 1 in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states that:

“All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

A common interpretation of this right is that the people should be included in a participatory democracy. This right has been interpreted as people having the right to exercise e.g. territorial or political autonomy within an existing state (Oxfam 2004).

This issue of land and natural resources concern many indigenous people and the right to these resources is also emphasized in Common Article 1.2 of the Covenants:

“All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefits, and international law. In no case may a people be deprived of its own means of subsistence.”

The Right to Self-determination is steadily established under international law, including human rights law (Oxfam 2004), and is therefore universally applicable.<sup>2</sup>

### **Rights of indigenous people**

*Indigenous* people make up a significant part of the extractive industry’s disenfranchised stakeholders, and they have special rights. The primary argument for why indigenous people need special rights in regards to extractive projects is that they are particularly vulnerable. The vulnerability is caused by the fact that indigenous people are usually the poorest and most marginalised groups in society (Oxfam 2004). To be recognized as an indigenous people, a people must fulfil certain criteria. A definition widely accepted is the one formulated by Special Rapporteur of the Sub-Commission, José Martínez Cobo, which states that:

“Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing in those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal systems.” (Henriksen 2001)

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<sup>2</sup> There is a controversy regarding determining *who* should have the right to self determination. Some scholars on international law argue that the principle only applies within the context of traditional decolonization, while others believe that also indigenous peoples within a country hold this right (Henriksen 2001).

The rights of indigenous peoples are established in the concept of Free Prior and Informed Consent as well as the ILO's Indigenous and Tribal Peoples Convention (Convention 169). Free Prior and Informed Consent (FPIC) is defined in the policy statement *UNDP and Indigenous Peoples: A policy of Engagement 2001* and refers to the idea that peoples whose lives are impacted by a project have a right to be thoroughly briefed about the perceived impact of the project before it is initiated and on the basis of this information to consent to whether the project should go forward or not. It states that:

Free, prior and informed consent recognizes indigenous peoples' inherent and prior rights to their lands and resources and respects their legitimate authority to require that third parties enter into an equal and respectful relationship with them, based on the principle of informed consent.

As of now FPIC is not binding on companies, and there is significant disagreement between the industry on one hand, and NGOs and the UN on the other hand, on whether communities should actually be allowed to veto a project and if so, who in the community should have this right (Roper 2006, Schilling 2006). The disagreement is primarily founded in the fact that, while the organizations want companies to accept that a community can veto a project, companies wish to have as much space of manoeuvring as possible and do not want to be limited by the possibility of a veto.

The ILO Convention 169 states the rights of indigenous peoples. Of particular importance in the convention in terms of interaction between indigenous peoples and companies are articles 4.1, 4.2, 7.1, 15.1, and 15.2.

4.1 **Special measures shall be adopted** as appropriate for **safeguarding** the persons, institutions, property, labour, cultures and environment of the peoples concerned.

4.2 Such special measures shall **not be contrary to the freely expressed wishes** of the peoples concerned.

7.1 The peoples concerned shall have the right to **decide their own priority for the process of development** as it affect their lives, beliefs, institutions and spiritual well being and the lands they occupy or otherwise use, and to exercise

control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly.

15.1 The rights of the peoples concerned to the **natural resources** pertaining to their lands shall be **specially safeguarded**. These rights include the right of these peoples to participate in the use, management and conservation of these resources.

15.2 In cases in which the State retains the ownership of mineral or subsurface resources or rights to other resources pertaining to lands, governments shall establish or maintain **procedures through which they shall consult these peoples**, with a view to ascertaining whether and to what degree their interests would be prejudiced, before undertaking or permitting any programmes for the exploration or exploitation of such resources pertaining to their lands. The peoples concerned shall wherever possible **participate in the benefits** of such activities, and shall receive fair compensation for any damages which they may sustain as a result of such activities.

(Emphasis added)

The convention has been ratified by only 17 states, and is therefore not binding on all states and consequently all states will not require companies to live up to the convention. However more states are applying the principles (International Labour Office 2003) and on 29 June 2006 the Human Rights Council adopted a resolution on the Declaration on the Rights of Indigenous Peoples. The Declaration is now waiting for approval by the UN General Assembly before the end of 2006, and such developments, as well as the increased debate of FPIC, indicate that customary law could be developing on the rights of indigenous peoples, thereby making it legally binding to respect them (Tobin 2004).

A final right to be taken into account is the Right to Development. This right applies to all people; not only indigenous people. According to the UN Declaration on the Right to Development article 1, this right is an inalienable human right which makes all people eligible to “participate in, contribute to, and enjoy economic, social, cultural and

political development, in which all human rights and fundamental freedoms can be fully realized.” Nobel prize-winner Amartya Sen has shown how the Right to Development can be perceived as the right to freedom to live as we please. Further, he has shown how in order to achieve this freedom; people need not only to have democratic freedom and civil rights but also to be able to participate in society. (Sen 1999) This is important, as it implies that the Right to Development can only be fulfilled through letting people participate in projects that impact their lives. Sen talks about the “agency aspect” in which citizens are to be perceived as agents for whom “greater freedom enhances the ability [...] to help them selves and also to influence the world, and these matters are central to the process of development,” (Sen 1999: 18) and this agency aspect can also be found in the UN’s Millennium Development Goals. This is a debate also known from the concept of public journalism where the question of whether participation is an end in it self is sometimes asked. Concerns are that public journalism will serve as “*a technique of cooptation or legitimation that creates a false sense of participatory involvement without challenging entrenched elite interests*” (Glasser, 1999).

All in all, groups of disenfranchised stakeholders will often have the rights of a people. The Right to Self-determination is one such right and this right plays a significant role because it gives a people the right to freely pursue their economic, social and cultural development. Many disenfranchised stakeholders are indigenous peoples who furthermore, according to the ILO Convention 169, have a right to have natural resources specially safeguarded and to be consulted as well as receive benefits when states maintain ownership of resources below the surface of their settlements. The Right to Development is another right, which should be taken into account.

### **Why should companies engage the disenfranchised stakeholders?**

The obligations of companies and the rights of a people as well as of indigenous people have now been set out. Considering these rights and obligations together, it is possible to explain why MNCs in some cases are required to engage the disenfranchised stakeholders.

First, according to national law, host states can put the obligation on a company to deal with the local people in a particular way. E.g. national law can require companies to

have a certain engagement process with people living around an operation. However, even if the state does not enforce such laws, companies can have an obligation to respect their disenfranchised stakeholders' rights under international human rights law.

Second, international law can also require companies to engage the stakeholders. Companies have an obligation to respect the jus cogens norms, and one of the jus cogens norms is the Right to Self-determination. The common interpretation of this right is that it gives a people the right to be included in a participatory democracy as well as to exercise territorial autonomy within an existing state. Since most disenfranchised stakeholders will have the rights of a people, and because companies should respect human rights, it means that companies should respect their disenfranchised stakeholders' right to make decisions for their own land. In practice, giving peoples the right to self determination cannot only be done by engaging them in all processes that will severely affect their lives, and thus companies are under international human rights law obliged to engage its disenfranchised stakeholders when performing operations that can be expected to have significant impact.

Thirdly, indigenous people inhabit much of the land, where the extractive industry works. The rights of indigenous people are established in the concept of FPIC as well as in ILO Convention 169. The convention has to date been signed by only 17 countries and does therefore not qualify as international law; nor does FPIC. However, international customary law that will require companies to increasingly respect indigenous peoples' rights seems to be developing (Tobin 2004). This developing customary law can progressively more put legal obligations on MNCs to respect their disenfranchised stakeholders' rights through engaging them in the process of the operation. Furthermore, the Right to Development grants peoples the right to participate in the development of their own society and since the right to development is a human right that applies to companies, the companies should respect this.

### **Redress of the disenfranchised stakeholders**

Though the above rights are legal rights it can be difficult to enforce them, and many disenfranchised stakeholders have failed to do so. This, however, should not lead companies to believe that they can violate the rights of the disenfranchised stakeholders without being punished.

Ever more companies are facing law suits by disenfranchised stakeholders over alleged human rights abuses such as physical abuses by the military or environmental pollution, and these lawsuits are fuelled by the anger of the disenfranchised stakeholders.

Unocal (now a part of Chevron Texaco) experienced this in relation to their operations in Burma. 12 local citizens sued the company for millions of dollars for alleged human rights abuses. Unocal denied complicity in the abuses, but eventually settled out of court by paying the Burmese citizens an unknown sum of money (Stormer 2002, Lifsher 2005).

Members of the Karen people in Thailand won first part of a lawsuit in August 2006, when Lead Concentrate Company was ordered to pay 4 million baht (US \$105,000) to eight inhabitants of a Karen village poisoned by contaminated water from a local stream for which the company was responsible. More villagers will now proceed with lawsuits (Slip 2006).

Chevron Texaco is currently facing a lawsuit in the Aguinda trial, and representatives of the plaintiffs expect that if Chevron Texaco is sentenced to pay redress, more lawsuits will follow around the world, as other disenfranchised stakeholders that feel violated will become inspired by the lawsuit (Mendoza 2006).

All in all, more disenfranchised stakeholders are – many with the help of international NGOs – setting a precedence which makes it likely that more companies will be facing law suits and having to pay redress to local people in the areas of operations. Therefore, companies have a profound self-interest in respecting the rights of the disenfranchised stakeholders.

### **The law and media coverage**

It has been established, that MNCs have a legal obligation to respect its disenfranchised stakeholders and that this in some instances requires the companies to engage the stakeholders by informing them and taking their feedback into account.

It might seem disproportionate with such a long analysis of legal obligations. However, when trying to analyze this area from the sources' point of view, the law is a crucial parameter in predicting companies' future challenges in terms of which areas could be interesting for the media:

A development in (international) law will lead to more obligations being put on companies, and failing to live up to these obligations can create the potential for a critical story, i.e. “Company XX violates international law”.

But another challenge is at play here too: increased legislation has a tendency to draw attention to an area. In Denmark, we have experienced this lately with the heated debate about head scarves for Muslim women caused by a court ruling on the matter. This increased attention can in itself be a great challenge for companies. Regardless of whether a company or a person is found guilty according to the law or not, there is still a substantial risk of being judged by the media and the public (Borberg, 2008). An example of this is the bankruptcy of the Danish company Burmeister & Wain, where the business man Jan Bonde Nielsen was accused of fraud and haunted by the press to such an extent that he fled to London. He was later freed of all charges, but has not wanted to return to Denmark.

There are also other reasons why it is prudent for companies to engage disenfranchised stakeholders – the most obvious are:

- reputation management
- better access to resources
- reduced transaction costs

### **Reputation management**

The first crucial reason for extractive companies to develop a positive relationship with their disenfranchised stakeholders is the good it can do for a company’s *reputation*. Several studies have proved a good reputation to be a valuable asset – something which can help protect an organization in times of corporate crisis (Jones et al, 2000). For example, a good reputation can help a company when competing for attractive employees (Djursø et al 2006). This will be increasingly important in the years to come, because in many parts of the world the available labour force of young and well educated people is shrinking due to smaller birth cohorts as well as a delayed entry into the labour market, causing an intensified competition amongst the companies for this group of potential employees. Furthermore, studies show that a company with a good reputation is more likely to have a lower turn over than competitors with a less impressive reputation. A good reputation is also thought to give the company a popularity factor, which better enables the company to get products sold (Djursø 2006).

In fact, according to several case studies, by adhering to CSR strategies, companies can increase their profits by as much as 40 pct. (Willard 2002). Therefore, having a good reputation is not only nice to have; it can also be seen as paying off on the bottom line. Orlitzky et al (2003) show in a meta-analysis of former studies that a good image and profit are positively connected. The authors especially show that a better reputation of a firm leads to an improvement in relations with investors and possible stockholders, which in turn can lead to facilitated access to capital.

On the other hand, a bad reputation is likely to influence negatively on the profits, since more and more consumers, stockholders and investors are concerned about the business practices of firms with which they are connected. Consumers might stop buying products of a certain firm, as can be seen from boycotts against Shell after the incident of Brent Spar. These boycotts as well as protests of NGOs forced Shell to abandon their initial plans of sea disposal; instead the company had to spend a total of £60 million on the decommissioning of Brent Spar (Professional Engineering 1999). The globalization of the media has only made this risk more urgent to companies:

*“If something happens in a remote Amazonian area, you will know about it the next day, because news travels around the world fast. A lot of advocacy groups are tracking these issues on list services.”*

David Schilling, Interfaith Center on Corporate Responsibility, interview

### **Better access to resources**

The second reason for improving the relationship is that a positive relationship improves the companies' chances of securing persistent access to resources located in the vicinity of that particular community. Legal access to natural resources given by governments might not be dependent on a respectful dialogue with the local people, however, once such access is guaranteed, the physical access to the resources is crucial for oil companies. Communities and the extractive companies usually have to work together for a long time, because such operations have a long time span, and a hostile environment hinders operations of oil companies immensely, while respectful interaction with the local people can facilitate the process.

*“If you annoy your neighbours you don’t get access, and you don’t stay there. Being a good neighbour is good business.”*

Barnaby Briggs, Shell, interview

The example of the Niger Delta illustrates rather well to what extent resentment among inhabitants can hinder access to resources. In May 2006 alone, three workers of the Italian oil contractor Saipem were kidnapped, and a U.S. oil executive was killed in Port Harcourt a few days before. In fact, attacks and sabotage primarily thought to be carried out by the Movement for the Emancipation of the Niger Delta reduced Nigerian oil exports by a quarter from February 2006 to May 2006 (MSNBC 2006). The people who carry out the violence have different motives for hindering the Western-run oil industry. Community leaders claim that they have had to give up tribal land for the profits of others, and furthermore they demand compensation for environmental damage, which, according to them, is caused by Saipem’s pipeline through the area. Feeling overlooked, violence can seem to be the only way to draw attention to their demands. Had the companies instead establish a respectful with local communities in the area, the violent need not have gone so far – if have occurred at all.

### **Reduced transaction costs**

Finally, a positive relationship with the disenfranchised stakeholders can benefit the company in terms of less regulation by the host government. If a company keeps to self-regulation with regard to its own practices and engages in fair behaviour and good dialogue with the local community, this is likely to create less anger in the population. This will in all likelihood result in fewer security problems, which the government has to deal with, and a stable business environment gives a government less incentive to apply further legal regulation (Djursø 2006). In other words, when a firm already keeps to certain, self-imposed standards, the need for government regulations seems less apparent. By reducing the likelihood of future regulation, the extractive companies can make decisions about future operations with greater freedom. On the other hand, with government restrictions and less freedom in the market, companies might need higher expenditures (lawyers, implementing measures etc.) in order to keep to the laws.

Furthermore, a good reputation raises trust of contract partners and therefore makes good deals more likely to be achieved (Fisher 1999). In general, fruitful negotiations

cannot take place without trust, and this trust is supported if a company has developed a reputation for honesty and integrity in the past. Therefore, it will, all other things being equal, be easier for extractive companies to negotiate good deals with the host government as well as others, if the contract partners trust that company, because it has a reputation for being fair and keeping to its promises (Fisher and Ury 1991).

To sum up, companies can do well, while at the same time doing good, by engaging in a respectful dialogue with the communities in which they work. By creating a better relationship with the local population, the companies can more easily gain access to resources, build a good reputation, prevent government regulation and therefore increase their profits.

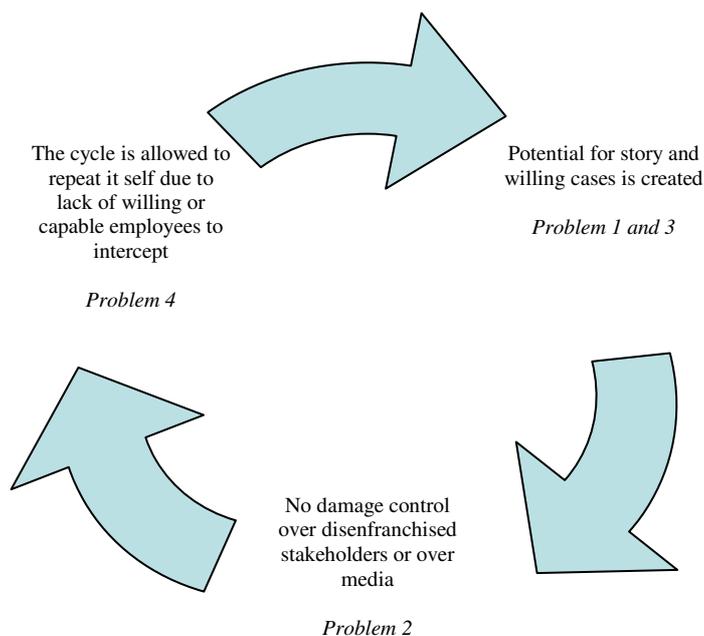
## **Part 4: Conclusion and discussion**

## Conclusion

It has been my ambition with this study to dive beneath the surface of a ‘buzz word’ – Corporate Social Responsibility – and analyze which implications the increasing focus on CSR in the media can have for companies. Though not exhaustive, I hope this study, which has been focused on the extractive industry’s engagement of disenfranchised stakeholders, have shown a broad range of implications including development in business news coverage, development in international law, and various organizational structures, which all put pressure on companies and further increase their risk of negative media coverage. This study should be seen as a contribution, a first step, with many more important studies waiting to be carried out.

The analysis carried out has left me no doubt that companies’ engagement of disenfranchised stakeholders is deeply problematic and exposes the companies to media scrutiny. The poor engagement causes severe problems for the disenfranchised stakeholders who are and feel violated, and for the companies that face increased attention from the media and severe financial costs due to the damaging reactions from the disenfranchised stakeholders.

Based on interviews with people working on the issue, four categories were identified to be the major causes of problems; poor stakeholder identification, poor external communication, a lack of respect for traditions, and internal lack of skills. These problems each in their own way increase the risk of negative media coverage:



Companies have an obligation to respect and engage the disenfranchised stakeholders. The obligations stem from national law as well as from international law with the latter gaining increasing momentum. The fact that international law is gaining momentum can in itself lead to increased media focus on an area, and there is furthermore a risk to the companies of being “judged” in the media even if not found legally guilty. In general, companies thus have self-interest in solving the problems of poor stakeholder engagement; other benefits include better reputation management, better access to resources, and lower transaction costs.

The disenfranchised stakeholders have various rights, often the rights of a people and of indigenous people, which should be respected. These rights are difficult to enforce, yet this should not lead companies to complacency in respecting the disenfranchised stakeholders. There seems to be a tendency that more companies have to pay redress to local communities for various violations. Due to the precedence set by such cases as well as growing international awareness on the issue – in the media and elsewhere – companies can expect to face more lawsuits unless they straighten their behaviour.

If the extractive multinationals put resources into developing and improving their skills and willingness to do stakeholder engagement, there is a great potential for better conditions for all as well as for minimizing the risks of negative media coverage. If not, however, companies should expect to face more protests, violence, and lawsuits as their disenfranchised stakeholders’ anger grows with the strength of someone who has been oppressed for a long time and increasingly realizes that there is a way to get back at the oppressor. And this will definitely make for more front pages.

## **Discussion: Where should the companies go from here?**

### **This section contains:**

- Analysis of preferred sequence to handle problems identified
- Discussion of how to handle powerlessness through social learning theory
- Concrete recommendations for steps to be taken by companies

I have presented the results my analysis to two of the external experts, who had only limited critique. They found my analysis to be credible and a break through in this field. I have furthermore had the opportunity to give a presentation of my research to the employees and the director of the Human Rights and Business Project at the Danish Institute for Human Rights. They are currently considering applying for funding for a project on disenfranchised stakeholders and multinational companies.

Below will be discussed where the companies need to go from here; in which area they need to focus their resources first, and what concretely they should do in order to put them selves at less risk of bad press in this area.

Companies are to an increasing extent working in areas with indigenous people. At the same time, the world has witnessed more and more cases of violent actions by frustrated disenfranchised stakeholders. These two factors combined make it likely that unless the extractive industry changes its behaviour and reputation, the industry will to an increasing extent have to deal with the costs of angry protesters. Based upon these tendencies as well as the data material analyzed it seems fair to conclude that companies in the extractive industry increasingly need to turn their focus to the disenfranchised stakeholders, and acknowledge a positive relationship with these stakeholders as central to the business operation. Next follows a discussion of what, more specifically, the companies should do.

The 4 overall categories of main problems were:

1. Poor stakeholder identification
2. External communication problems
3. Lack of respect for disenfranchised stakeholders
4. Lack of internal knowledge and qualified staff

One can, roughly put, say that the internal problems in category 4 to a large extent cause or exacerbate the problems in category 1, 2, and 3, and therefore it is important to first deal with these problems of internal lacks as identified in category 4: The internal lack of capacity to do stakeholder engagement causes reluctance towards the task that leads to either no or poor stakeholder engagement. This inadequate stakeholder engagement leaves the disenfranchised stakeholders feeling frustrated, which again intensifies the reluctance amongst the employees to engage with the stakeholders. Hence, the problems are interconnected, and it seems that the relevant place to focus first is on the problems in category 4. This is true for three reasons: Firstly, the internal powerlessness causes and worsens the problems in category 1, 2, and 3, secondly, 1, 2, and 3-problems cannot be wholly solved without solving category 4-problems, and thirdly, it is the problems in category 4 over which the companies have the largest degree of control.

What causes the problems in category 4 can, as mentioned above, to a wide degree be described as the employees' low self-efficacy. Consequently, all other things being equal, if the self-efficacy of the employees is raised, the problems in category 4 will be lessened. This will in return stop to cause many of the problems identified in category 1, 2, and 3. Next will be discussed how companies should proceed.

### **Powerlessness need to be handled**

Many of the problems identified in this paper in various ways relate to a feeling of powerlessness. There is an *internal powerlessness* where the employees of the companies feel powerless because they do not feel capable of performing adequate stakeholder engagement, and there is an *external powerlessness* where the disenfranchised stakeholders feel powerless because they feel ignored – either because they are not contacted or not properly listened too. Also, they see their rights and traditions being violated without having the possession to end this abuse in other ways

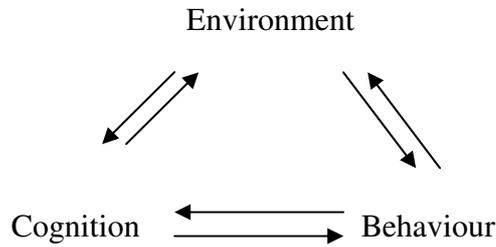
than violence. Hence, it is important to focus on how to overcome this sense of powerlessness for companies to improve their relationship with the disenfranchised stakeholders. A theory which is helpful in overcoming the perception of powerlessness is Albert Bandura's Social Learning Theory, which is the name given by Bandura to his psychological theories about the foundations for human behaviour.

Social learning theory is a relevant foundation for discussing where the companies need to go because it addresses the core of the problems identified. As described above, most of the problems identified relate to feelings of powerlessness either internally or externally, and since social learning theory specifically addresses feelings of powerlessness and incapability, it is very useful in this context. Furthermore, Bandura's theory is very applicable to real life situations and gives specific recommendations for how to alter situations, and this makes it relevant in order to suggest improvements. The theory focuses on interactions amongst humans and the surrounding environment and since the (lack of) interactions between the company and the stakeholders are what are causing problems, the theory remains relevant. Finally, the theory focuses on processes of change, and this is exactly what many of the companies need.

A central concept from social learning theory in this context is that of *self-efficacy*. As mentioned above, the definition of self-efficacy is a person's belief in his or hers own ability to effectively handle a situation. Self-efficacy, according to Bandura, has a great influence on how well a person actually handles a situation as well as how that person will approach the situation. Having a low self-efficacy about a particular situation will lead a person to avoid that situation or, when not possible to avoid it, to give up sooner than people with a higher self-efficacy. This can be problematic, because the person might actually be able to perform the task since the level of self-efficacy reflects only *perceived* and not *actual* competence in an area, and because avoiding tasks in most cases will prevent the person ever becoming proficient in that area (Ewen 1993).

There are ways to improve people's self-efficacy. According to social learning theory, the concept of *reciprocal determinism* explains how human behaviour is determined by three interlocking factors: environment, cognition, and behaviour:

**figure 4**



The three factors; environment, cognition, and behaviour, all influence each other. E.g. the disenfranchised stakeholders go to a meeting with the company (behaviour), this influences their perception of the company (cognition) and it influences what the company does – if for example the company has had positive feedback about a project from the stakeholders it might go ahead with the project immediately, while it had negative feedback they might want to change their plans. Depending on what action the company chooses to do next, the environment in which the stakeholders live will reflect this decision (environment). On the other hand, the environment also influences the stakeholders' behaviour as they react to the environment in which they live etc.

In order to change someone's self-efficacy and consequently behaviour, the importance of all three factors has to be recognized. A strong way to influence someone's behaviour, according to social learning theory, is to use *modelling*, that is, watching someone perform certain behaviour and seeing the consequences of this behaviour. This can work both in a negative and positive context, meaning that people can learn from both watching someone succeeding in their task as well as failing. Social learning theory defines the factors that influence learning results and the maintenance of these results as: 1) the ability for the observer to identify with the subject (the model), 2) the insecurity level of the observer (the more insecure, the easier to influence), and 3) rewards and social support for behaviour, meaning that the more attractive the rewards and the better the support from the social environment, the better the learning is expected to be maintained (Engler 1995).

On the basis of the theory of social learning as well as the data material collected, it seems possible to formulate some answers to the question of where companies in the extractive industry need to focus in order to counter the problems identified.

The four categories of problems will be dealt with separately.

### **Internal lack of skills**

As described above, it is beneficial to begin the process internally in the companies. In order to raise the level of internal self-efficacy, social learning theory emphasizes modelling as a way to teach someone new behaviour and consequently raising their self-efficacy. In other words, by teaching the employees how to do stakeholder engagement and making them feel comfortable with it, their self-efficacy and hence willingness to engage will be raised. The three main factors for modelling to be successful – the ability for the observer to identify with the model, the insecurity level of the observer (the more insecure, the easier to influence), and rewards and social support for behaviour – are crucial to take into account when trying to raise the level of employee self-efficacy.

For modelling to be successful it thus needs to be performed by someone with whom the employees can identify. In practice, this means that the employees need to believe that the person who carries out the stakeholder engagement have a working situation similar to that of the employees – or at least understands it. It is not sufficient to have someone from the CSR department in the headquarter come and demonstrate how to do, as the employees will not find a shared working situation with that person. It will be too easy for the employees to think *“it’s easy for her to do good stakeholder engagement, she does not have to concentrate on anything else; we have to run a business as well and cannot spend so much time on this.”* It can be beneficial to have experts in stakeholder engagement present different methods available for the employees, but for the self-efficacies to really be raised, the employees need to experience someone with whom they feel alike perform and succeed in stakeholder engagement.

As for the level of insecurity, the more insecure the person, the more likely the person is to be influenced by the model. Obviously, companies should not try to make their employees more insecure in order to be able to influence them. Where companies can utilize this factor, however, is in relation to new employees. Being new in a company many people will tend to be more willing to incorporate new tasks into their work as they are more likely to accept this task as a normal part of their job than someone who has been in a position for 10 years without ever having to engage disenfranchised stakeholders. By focusing on new employees with a (potentially) longer future ahead of

them in the company, the learned behaviour will furthermore stay in the organization for longer.

The final factor relevant to make learned behaviour last; rewards and social support is extremely important for stakeholder engagement to catch on as something employees voluntarily spend time on. In fact, judged upon the data material collected for this paper, it seems fair to say that out of the three factors crucial for learning to last and self-efficacy to be raised, this is the most fundamental obstacle to overcome. The fact that stakeholder engagement is not something which is being explicitly rewarded nor supported in most companies is, according to social learning theory, a hindrance for the task to catch on as a natural way to behave in the organization. Hence, the companies need to support their employees in doing stakeholder engagement by appreciation for the task. There are several ways to do this and each company needs to find a way that suits its organization. In general, though, it can be said that companies need to make the employees feel that spending time on stakeholder engagement is well-regarded, that changing business plans due to input from stakeholders is (to a certain extent, at least) respected, and that in fact engaging with the stakeholders is appreciated rather than just tolerated.

By securing the above three factors – foundations for identification, modelling and social support – companies will take a big step towards being able to perform excellent and satisfactory engagement of the disenfranchised stakeholders. The steps are not the only ones needed, far from it, but they are a necessary place to begin, and they will bring the companies closer to where they need to be than they are today.

*Recommendations for how to solve problems of internal lack of resources and skills:*

- Establish a system that shows the employees that stakeholder engagement is part of the job. It could be that (certain) employees have to document that they spend 10 percent of their time with the disenfranchised stakeholders.
  
- Show the employees that stakeholder engagement is appreciated on line with other performances. If the company rewards good sales, make a system to reward this as well. Talk about it in annual conversations with the employees,

and specifically emphasize good results with stakeholder engagement as a reason for a promotion. This will give stakeholder engagement prestige.

- Teach the employees how to do stakeholder engagement. Have someone, (preferably someone with a similar job or background) show the employees how it can be done. If none are available, get help from an employee with anthropological insight. Make sure to give the employees specific tools – e.g. specific sentences to open with – to do the engagement.
- Emphasize that negative or even angry violent reactions from the stakeholders will not be blamed on the employees who do the engagement. This is important, as it will relieve the pressure of needing to get positive feedback.
- Integrate the feedback given through stakeholder engagement in the business plan. This will give the employees who do the engagement a feeling that their work is important and will raise the motivation to do it.

Once the internal state of affairs has improved (and to the extent it is possible also *while* the internal lacks are being improved), it is time to begin focusing on how to solve the problems in category 1, 2, and 3, namely the poor stakeholder identification, external communication problems, and lack of respect for local traditions and societal structures. Below, each of these potential solutions will be addressed in turn.

### **Poor stakeholder identification**

To raise the general level of stakeholder identification the first step needed is to acknowledge the task as crucial to all further stakeholder engagement. The identification is the foundation on which the following interaction with the stakeholders rests, as it is only possible to know who to engage after a thorough identification of the stakeholders. There are various ways to do stakeholder identification – some companies have trained anthropologists or other professional consultants with a background in social science do the identification, while others rely on employees and managers at the local company to be responsible for the task.

What is the best solution will depend on the country in which the company operates the experiences of the company employees in the country etc. There are, however, general guidelines for what one needs to keep in mind when doing stakeholder identification.

*Recommendations for how to solve problems of poor stakeholder identification:*

- Let stakeholder identification be among the first tasks the company performs when investigating potential exploration sites. This will provide the opportunity to take the necessary precautions and make adjustments before plans are finalized.
- Do stakeholder identification regularly. Institutions and power structures in a society change; and only by updating the identification is it possible to keep track of the changes.
- Be sure to identify potential critiques as well as more friendly minded stakeholders. The input from the critiques is often valuable, and the critiques have a right to be engaged as well.
- If no one in the company is trained to do stakeholder identification, get help from professionals. However, be sure that they cooperate with employees so the knowledge will benefit the company later.
- Engage the disenfranchised stakeholders in the identification process by asking for their input on the identified groups and institutions. Be aware that they might have self-interests that keep them from giving an objective opinion.

### **Poor external communication**

Many of the communication problems are caused by the problems discussed above, namely the lack of internal skills and the poor stakeholder identification. Therefore, once these problems are addressed, the problems with external communication should, all other things being equal, decrease as well. For example, it seems fair to assume that if the employees' capabilities and willingness to engage with the disenfranchised stakeholders increase, the employees will be perform a better dialogue with the stakeholders thus reducing several of the communication problems. It is, however,

important to be aware of these communication problems in themselves, as some of them will need direct attention.

*Recommendations for how to solve problems with external communication:*

- Know your audience. Be very familiar with the factors that shape the disenfranchised stakeholders' lives such as which language they speak, what level of education they have, and what the normal form of communication is – is it for example customary to raise critique in the presence of a stranger? Incorporate all these factors in to the company's plan for stakeholder engagement by making sure material is in the right language, using pictures if the rate of illiteracy is high, etc.
- Start dialoguing with the local communities while exploration plans are being considered; even before it is established that the company will in fact be operating in the area. This will give the stakeholders a chance to get used to the company, it will give them a feeling of having more influence, and it will make potential changes much less costly for the company to carry out.
- Listen to the stakeholders. Let them finish their sentences even if what they say seems unfair or outright wrong. This will give them a feeling of being heard and will lessen frustrations. One can show that one is listening by repeating their points and asking them if it has been understood correctly.
- Meet the disenfranchised stakeholders in person as much as possible. It is much easier to talk when being able to “put a face” on the other person. This way the stakeholders will also see that the company consists of human beings.
- Follow up on stakeholder engagement. Show the disenfranchised stakeholder precisely how their suggestions/complaints have been incorporated. If demands from the stakeholders will not be met, explain to them why. Even if it will make the stakeholders angry, it is better to be honest and open than to pretend to never have heard the demand as this will increase the distrust of the company.

### **Lack of respect for disenfranchised stakeholders**

Whereas the above problems to a large extent can and should be addressed through education of the employees and a change of behaviour; this category of problems primarily requires a change of attitude. Some (western) companies take on a rather patronizing attitude towards people in the developing countries, and this attitude reflects itself in the lack of respect for the disenfranchised stakeholders' traditions. The attitude creates much resentment, and by changing this attitude, oil companies are more likely to develop stronger relationships with the disenfranchised stakeholders.

Changing an attitude is not an over-night thing and can seem as a somewhat fluffy task to work on. Yet there are specific steps a company can take in order to try to solve this problem.

*Recommendations for how to solve problems with lack of respect for traditions:*

- Develop extensive knowledge about local traditions through talking to the stakeholders and monitoring their lives. This way, a company will be more likely to be able to prevent making mistakes in terms of mistakenly violating a tradition.
- Investigate and respect local traditions, hierarchies and societal structures. If you violate them, you will be seen as an enemy.
- Develop a respectful language in the company. Language affects how we think about an issue<sup>3</sup>, and therefore managers within extractive companies should make sure that respectful words are used when talking about local communities through special briefings and trainings.

Incorporating the above recommendations, companies will come a long way. The recommendations cannot be fulfilled immediately, but with determination, strong leadership, and support of the employees, they *are* possible to incorporate in the

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<sup>3</sup> Pierre Bourdieu describes the power that comes with being able to name an issue as “Symbolic Capital”, and this refers to the extent to which someone holds the power to name and define an issue (Bourdieu 1984).

companies. And this will, in the short run but more so in the long run, benefit not only the disenfranchised stakeholders, but also the companies.

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