



## From Compliance to Practice

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Mining Companies and the Voluntary Principles on  
Security and Human Rights in the Democratic Republic  
of Congo

Tanja A. Börzel/Jana Hönke



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## From Compliance to Practice. Mining Companies and the Voluntary Principles on Security and Human Rights in the Democratic Republic of Congo

Tanja A. Börzel and Jana Hönke<sup>1</sup>

### Abstract

Transnational institutions increasingly commit multinational companies to human rights and social standards on a voluntary basis. Our paper investigates the security practices of multinational companies and whether these comply with the Voluntary Principles on Security and Human Rights. Analysing the case of mining companies in the Democratic Republic of Congo we evaluate the impact of the Principles on local security practices and critically analyse the effects of these practices. We argue that one needs to go beyond compliance studies, which focus on the implementation of formal programs (output) and rule-consistent behaviour (outcome), in order to evaluate corporate governance contributions. We therefore develop a conceptual framework that looks at companies' local security practices, including non-compliant practices, and their effects on local security. Our approach leads to a more differentiated evaluation of the effects of voluntary standards and the potential for corporate governance contributions than much of the literature on business and governance does.

### Zusammenfassung

Multinationale Unternehmen werden zunehmend von transnationalen Institutionen auf freiwilliger Basis zu Menschenrechten und Sozialstandards verpflichtet. Unser Beitrag untersucht die Sicherheitspraktiken von Unternehmen und fragt, inwiefern sich diese an die Voluntary Principles on Security and Human Rights halten. Anhand von zwei multinationalen Bergbauunternehmen in der Demokratischen Republik Kongo untersuchen wir die Wirkung dieser Standards auf die Sicherheitspraktiken der Firmen, nehmen darüber hinaus aber auch die Auswirkung der Firmenpraktiken auf die lokale Sicherheitslage in den Blick. Wir argumentieren dass man über die Compliance-Forschung, die auf die Implementierung formaler Programme und regelkonformes Verhalten fokussiert, hinaus gehen muss um freiwillige Standards sowie die Wirkung von Unternehmen auf Sicherheit in Räumen begrenzter Staatlichkeit zu evaluieren. Wir entwickeln dazu einen „bottom-up“ Ansatz der die gesamte Spanne lokaler Sicherheitspraktiken von Unternehmen sowie ihre – oft negativen – Effekte in den Blick nimmt. Dieser Ansatz erlaubt eine differenziertere Bewertung der Wirkung freiwilliger Standards als auch der Beiträge von Unternehmen zu lokaler Sicherheit.

<sup>1</sup> This working paper presents findings of Jana Hönke's dissertation "Liberal Discourse and Hybrid Practise in Transnational Security Governance: Companies in Congo and South Africa in the 19th and 21st Centuries" (Hönke 2010a) as well as of the project "Business and Governance in Sub-Saharan Africa", which is part of the Collaborative Research Center 700 "Governance in Areas of Limited Statehood", funded by the German Research Foundation (SFB 700) cf. <http://www.sfb-governance.de/>. We thank Miriam Weihe for her excellent research assistance, as well as Esther Thomas, Virginia Haufler and the anonymous reviewer for their helpful comments on earlier versions of the paper.



## **List of Abbreviations**

AGA - AngloGold Ashanti

DRC - Democratic Republic of Congo

EITI - Extractive Industry Transparency Initiative

FNI - Front of National Integration

FARDC - Armed Forces of the Democratic Republic of Congo

GSF - Global Security Framework

HRW - Human Rights Watch

MNCs - Multinational Companies

OKIMO - Office of Kilo-Moto

PSC - Private Security Companies

VPs - Voluntary Principles on Security and Human Rights

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## 1. Introduction

Transnational institutions, such as the Voluntary Principles on Security and Human Rights (VPs), commit multinational companies (MNC) to human rights and social standards on a voluntary basis. The governance literature has identified a credible “shadow of hierarchy” cast by central authority as a major precondition for companies to comply with their voluntary commitments. Yet, transnational institutions not only lack enforcement capacities. The local production sites of MNCs are often hosted by states which only loosely adhere to global rights themselves and are neither willing nor capable of making non-state actors comply with them. Home states have been reluctant to foster binding regulation for the human rights behaviour of ‘their’ companies abroad.

Our paper investigates the security practices of MNCs and their (non)compliance with voluntary standards in areas of limited statehood. More specifically, we analyze whether multinational mining companies operating in the Democratic Republic of Congo (DRC) honour their commitment to the Voluntary Principles on Security and Human Rights and evaluate their impact on local security practices and outcomes. Security provides a crucial case for business contributions to security governance. At the same time, it points to the ambivalent role of business in zones of conflict and weak governance. On the one hand, companies seeking to protect the security of their production sites pose significant human rights challenges. Their own security agents may abuse human rights or contribute to human rights abuses committed by state agencies, private security companies (PSC) or communal actors. On the other hand, companies are not only addressees of human rights norms but are also increasingly expected to act as “norm entrepreneurs”, setting norms (Flohr et al. 2010) and enforcing them with and, if necessary, against state actors (Ruggie 2008; Deitelhoff/Wolf 2010).

Our approach combines insights from the literature on compliance, governance, the sociology of rule, and criminology. The first part of the paper develops a conceptual framework to complement the “top-down approaches” which dominate the literature on voluntary programs, business and compliance. Instead, we advocate a “bottom-up perspective”, placing the broad range of companies’ local security practices and the various related perceptions and conflicts at the centre of our analysis. This allows us, first, to evaluate corporate security practices beyond the implementation of formal programs (output) focusing on rule-consistent behaviour (outcome). Second, we do not only look for behavioural changes that can be attributed to voluntary programs but also for governance practices that may undermine or even conflict with the requirements of the VPs. The second part of the paper presents an explorative case study on two multinational mining companies in the DRC. We demonstrate that our integrated, comprehensive approach presents a more nuanced evaluation of corporate security practices and their potential compliance with voluntary standards, than much of the literature on business and governance in areas of limited statehood. A bottom-up approach that takes corporate practices as a starting point reveals the limitations of transnational voluntary programs, sources of non-compliance with these programs, and contradictions between security practices of companies. The paper concludes with a discussion of avenues for future research on business and governance in areas

of limited statehood.

## **2. Transnational Voluntary Standards, Areas of Limited Statehood and Corporate Compliance**

Economic internationalization has fuelled fears of a regulatory race to the bottom, in which global competition induces companies to invest in countries that lack the capacity and the willingness to set and enforce regulations, taxes and other issues affecting the costs of production (Bhagwati/Hudec 1996; Murphy 2000; Lofdahl 2002). Companies increasingly operate across national boundaries and legal jurisdictions, extending their business activities into the global South. Many developing countries lack the capacity to regulate the behaviour of transnational firms operating in their territory, or may feel hesitant to do so for fear of putting their investment at risk.

At the same time, we have seen the emergence of transnational institutions that seek to voluntarily commit multinational companies to human rights and social standards. More and more MNCs have signed up to voluntary programs, such as the UN Global Compact or the Voluntary Principles on Security and Human Rights (Flohr et al. 2010; Prakash/Potoski 2006; Ruggie 2007). Even some of the companies that have not signed up still make reference to their respect of human and social rights.

For a number of multinational companies, commitment to global social, environmental and human rights standards appears to have become less of an issue. Rather, transnational voluntary programs have been criticized for being corporate cheap talk to evade further regulation (Schäferhoff et al. 2009; Brühl 2007). The lack of effective monitoring and sanctioning powers is seen as a major reason for their weakness (Flohr et al. 2010; Risse et al. forthcoming). Like states, companies have a strong incentive to renege on their commitment if defection is unlikely to be detected and punished, particularly if they anticipate that others will not comply either. Such collective action problems at the international level are reinforced by the weak regulatory and enforcement capacities of many states that host the production sites of MNCs. Like transnational institutions, areas of limited statehood lack by definition the capacity to cast a credible shadow of hierarchy because governments are not capable, and often not willing, to set rights and monitor and sanction violations. So far, home states have been reluctant to impose legally binding regulation on their companies' social and human rights behaviour in other countries (Muchlinski 2007; Zerk 2006).<sup>2</sup> The threat to unilaterally adopt and enforce collectively

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<sup>2</sup> The Canadian government, for instance, has opposed binding regulations. After a long process of consultation and debate, the government opted against the recommendations of a multi-stakeholder expert group, in favour of a CSR body that has few resources and little autonomy. The US, by contrast, passed the Dodd-Frank Wall Street Reform and Consumer Protection Act in July 2010. Section 1502 requires companies whose products contain "conflict minerals", such as tin ore, coltan, wolframite and gold to disclose to the Securities and Exchange Commission (SEC) whether they are sourcing these minerals from the DRC or adjoining countries. If such conflict minerals originated in any of these countries, the manufacturing company must submit to the SEC a report describing the measures taken to avoid sourcing these minerals from armed groups in the DRC. The provisions specify that all informa-



binding decisions provides an important incentive for actors that are opportunistic and seek to defy the costs of cooperation and compliance (Mayntz/Scharpf 1995). Empirical studies have confirmed the importance of such a shadow of hierarchy cast by (the threat of) state legislation for corporate self-regulation (Héritier/Lehmkuhl 2008; Börzel et al. 2011; Deitelhoff/Wolf 2010; Hamann et al. 2009).

This results in a serious dilemma for transnational voluntary programs in areas of limited statehood: The lower the capacity of the state to set and enforce rights and standards, the greater the need becomes for transnational voluntary programs to commit MNCs to the respect of human and social rights. On the other hand, limited statehood implies a weak shadow of hierarchy. As a result, corporate compliance becomes less likely, particularly if home states and transnational institutions cannot or do not want to compensate for weak or wanting enforcement capacities at the domestic level (Börzel 2010).

The governance literature discusses the existence of functional equivalents to the shadow of hierarchy. These provide sufficient incentives for companies to engage in the provision of collective goods, ensuring that the companies remain committed to the common good and are held accountable when they seek to renege in order to maximize their individual profit. Effective equivalents to the shadow of hierarchy go beyond the threat of unilateral imposition of regulation (Deitelhoff/Wolf 2010; Börzel/Risse 2010). To what extent competitive advantages on high-end consumer markets, naming-and-shaming campaigns by NGOs, or the mobilization of local communities can make up for the lack of central enforcement power at the international and national level is still an open question. We still lack systematic comparative case studies on the conditions under which companies contribute to the provision of collective goods in areas of limited statehood.

Our paper argues that governance and compliance research underestimates the actual role of business in governing. The literature neglects, for instance, the productive and indirect forms of power inherent in modern, liberal governance (Hönke forthcoming; Höppner/Nagl 2008). Case studies on oil companies in the Niger Delta demonstrate how corporate social responsibility discourse and engagement with communities is part and parcel of the local conflict system. In many cases, strategic philanthropy becomes part of companies' security management vis-à-vis community conflict, alongside deterrence and surveillance approaches (Zalik 2004; Frynas 2000). Also, multinational companies collaborate with host governments and try to comply with their expectations, which are often different from these standards (Reno 2001). The rentier literature directs attention to such structural power and the effects of transnational mining companies on governance to strengthen autocratic governments. Governments in many cases still act as the main gatekeeper between the domestic and the international spheres (Reno 2001; Bayart 1993: 198). In spite of their overall weak capacities, governments retain the monopoly

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tion disclosed must be independently audited (in: [http://docs.house.gov/rules/finserv/111\\_hr4173\\_finsrvcr.pdf](http://docs.house.gov/rules/finserv/111_hr4173_finsrvcr.pdf); 5 August 2010). Global Witness celebrates the act as a step towards binding regulation on HR and "a huge victory for corporate accountability in the oil, gas and mining industries" (Global Witness 2010).

over symbolic capital and make decisions regarding mining rights. New modes of governance thus interact with other transnational and local modes of governance. These hybrid governance constellations play a key role in corporate practices in areas of limited statehood (Hönke 2010a).

Understanding the role of companies in local governance in areas of limited statehood, and more specifically, questioning if and how their commitment to voluntary standards impacts local security practices and outcomes, requires a different perspective on transnational programs than we often find in the literature. We need to take actual corporate practices as a starting point. Rather than merely focusing on evidence for compliance and effective program implementation, we should also analyse corporate security practices – compliant and non-compliant – and consider their effects on collective security at the local level. Instead of selecting only cases of successful corporate engagement, this implies focusing on the broader range of governance practices, which might undermine or even conflict with the requirements of transnational programs.

As an important first step towards re-evaluating transnational voluntary standards and corporate governance practices, our paper develops an analytical framework that allows for a more biased mapping of companies' governance practices beyond the formal implementation of transnational voluntary programs. This not only enables us to explore to what extent MNCs operating in areas of limited statehood comply with transnational voluntary programs, such as the VPs. We also go beyond compliance to understand the broader range of parallel and often competing security practices that companies apply at their production sites (see also Hönke 2010a).

### **3. Studying Corporate Security Practices Top-down and Bottom-up**

A top-down approach to corporate security practices focuses on the compliance of companies with voluntary programs. Compliance is usually defined as rule-consistent behaviour (cf. Raustiala/Slaughter 2002). Consequently, MNCs are required to implement transnational voluntary programs by (1) incorporating transnational principles and standards into their corporate regulations to amend and repeal conflicting rules, and (2) integrating them into their management systems by setting up the administrative infrastructure and resources necessary to put them into practice, to monitor rule-consistent behaviour, and to sanction violations (Danish Institute for Human Rights 2006). While these output-related activities are important, MNCs have to make the necessary changes in their governance practices to make their behaviour consistent with the requirements of transnational principles and standards, and to refrain from action which violates them (cf. Deitelhoff/Wolf 2010: 14-15). Many studies point to the decoupling of actual behaviour from institutional changes (e.g. Flohr et al. 2010) or neglect the outcome dimension entirely, which provides an important, though not singular, link between the implementation of transnational programs and the solution of the problems they address. While their effectiveness does not exclusively depend on the rule-consistent behaviour of companies (after all, the principles and standards could be ill-defined to address

rights violations in the first place, or companies could be a lesser part of the problem than assumed), corporate compliance should help improve the rights situation.

Therefore, we identify three analytical steps for compliance studies to evaluate company practices on the ground:

*Step 1 – Transnational demand:* Identify the requirements defined by the voluntary principles and standards, with regard to both procedures and substance. What do they expect companies to do and not to do?

*Step 2 – Company output:* Trace the incorporation of these requirements into corporate rules and management systems and the service agreements with contractors. Does the company make explicit reference to the voluntary program? Do the voluntary principles and standards form part of its corporate identity? Have there been any changes after the establishment of official commitment to the transnational voluntary program? Have new responsibilities, procedures and resources (human, financial, technical) been introduced (e.g. in the internal auditing system) to put the principles and standards into practice, to monitor compliance, and to sanction violations, also “down the supply chain”?

*Step 3 – Company outcome:* Assess the changes in company practices necessitated by the voluntary principles and standards and the company’s output. Has the company taken the necessary action to make the behaviour of its employees and contractors consistent with the transnational requirements and the stipulations of corporate institutions and policies? Are new policies put into practice? Is the money spent? Is new personnel employed and old personnel retrained? Is rule-consistent behaviour rewarded and non-compliance punished?

Still, tracing both the output and outcome of MNCs with regard to voluntary programs only provides a partial and at times distorted picture of corporate security practices and their effects on human rights and security in host communities. Corporate governance practices that are not directly related to voluntary programs may undermine or even conflict with these programs’ requirements, and negatively affect the security and human rights of local communities. Such business practices tend to be overlooked by a top-down perspective. Therefore, we not only assess to what extent the behaviour of MNCs complies with the VPs, but also examine a broader range of companies’ security practices and potential contradictions and conflict between them.

A bottom-up perspective allows us to direct attention to the entirety of local security practices by companies (Hönke 2010a). Drawing on practice approaches in security studies (Leander 2010) and research on plural policing in criminology and area studies (Johnston/Shearing 2003), corporate security practices can be understood as the routinised and institutionalized words and actions of company agents seeking to secure operations on a daily basis. Security practices denote what company agents or members of local communities refer to as “security issues”. One would first ask what local company agents identify as security issues. The issues addressed in the transnational regulation and in company programs may substantially differ from the

everyday understanding of local management and security staff. What do local people perceive as potential factors of insecurity? Second, one would ask how the security problems identified by a company are being addressed on a day-to-day basis. Just as mining firms, for instance, usually combine different reactive and preventive strategies, security practices may range from fencing off parts of a concession area and putting it under surveillance, to co-opting local chiefs, to social investment in local communities. How inclusive is corporate security governance? Finally, beyond compliance or noncompliance with the VPs, what are the (unintended) effects of company security practices?<sup>3</sup>

Three analytical steps can be identified for analyzing transnational voluntary principles and corporate security practices in the local arena:

*Step 1 – Perceptions of security issues:* Analyze the issues identified as security problems by local company agents, the VPs, and by people living in the vicinity of mining operations. Look at the issues that are not understood to be security problems. What is established as a problem of (in) security, and how are areas of responsibility defined?

*Step 2 – Routine security practices:* Map how companies and other agents they work with, such as Private Security Companies (PSCs) or local chiefs, address these security issues in their day-to-day practices. What do they actually do? By which means do companies attempt to provide security? What is the scope of security measures? In other words, how inclusively do companies aim to provide security (for whom/where)? Who is targeted, excluded or otherwise affected by these measures?

*Step 3 – Unintended effects, competing norms and discourses:* What explains non-compliant practices? How can we understand the hybrid mix of corporate security practices at the local level and the contradictions attached to corporate governance interventions? What role do the VPs play and what do they omit from the companies' security/human rights agenda?

To illustrate our argument and demonstrate the added value of a bottom-up research design, we conduct two exploratory case studies on the corporate security practices of two mining companies in the DRC, examining their compliance with the Voluntary Principles on Security and Human Rights and their effects on collective security at the local level.

#### **4. Mining Companies' Security Practices and the Voluntary Principles on Security and Human Rights in the DRC**

Since the 1990s, the extractive industry increasingly operates in areas of weak governance and conflict zones where the allocation of resources and property rights are highly contested, and

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<sup>3</sup> For how we conceptualise inclusiveness and effects see Hönke, with Thomas (forthcoming).

state security forces often produce insecurity and violate human rights. Companies seeking to protect their property or extract private benefit from the mine and from the local population often cause violent conflicts at the local level. Artisanal mining poses a particular challenge to MNC: There is an inherent potential for conflict between large-scale operators and small-scale miners who work on the land licensed to the company, but claim to have an historical entitlement. In addition to access to mineral resources, land, and resettlement, the redistribution of economic benefits is often contested. Potential conflict is exacerbated by the lack of (enforced) regulation or by ambiguous legislation that does not take into account the concerns of artisanal operators and local populations, extending conflict to company security forces (Hönke 2009).<sup>4</sup> A series of industry-community conflicts and accidents over the last decade has seriously damaged the reputation of the extractive industry, in particular since critics have increasingly gained attention in international politics (Szablowski 2007).

The VPs are the only transnational human rights guidelines directed specifically to oil, gas and mining companies, which face particular problems in balancing security concerns with the respect for human rights and fundamental freedoms, and which have faced particularly strong criticism for (complicity with) human rights abuses. The non-binding VPs were established in 2000 as a response to several incidents of human rights violations by security forces seeking to protect oil and mining installations of MNCs with headquarters in the UK and the US. The initiative came from the UK and US governments in order to ensure the operation of their key oil companies in Indonesia, Columbia and Nigeria at the time, and were thus jointly developed with seven major Anglo-American extraction companies and human rights NGOs (Freeman 2002; Hansen 2009). While the VPs were created before the Extractive Industry Transparency Initiative (EITI) and the Kimberley Process Certification Scheme, the VPs have gained less recognition. To date, they may be the most comprehensive and specific standard with regard to private business and human rights (Freeman/Hernandez Uriz 2003).

Yet, the VPs are not very specific, hardly monitored or enforced, and face many problems with implementation, and it remains to be seen if the reforms of the VPs will significantly change their effectiveness in practice (Freeman 2005; Ruggie 2010). The VP governance institutions lack centralized monitoring and sanctioning powers, which reflects the dominant interest coalition of business and government and their preference for soft regulation. For this reason, Global Witness, the leading INGO in the area of resource extraction, security, and human rights, did not take part in the VP process, and Safer World left the Initiative in 2007 (Freeman 2005; Global Witness 2007a). In 2007, formal participation criteria were adopted for the first time. The participation criteria also detail provisions for the expulsion of participants that fail to comply with the VPs. This, however, requires a unanimous decision by all members. Participants may also raise concerns regarding whether other participants have met the VP criteria or show a sustained lack of effort to implement the VPs (The Voluntary Principles 2009). The VP dispute resolution process was used for the first time by Oxfam in 2009, criticizing Newmont for its

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<sup>4</sup> The 2002 DRC Mining Code, for instance, prohibits small-scale mining on concessions which have been licensed to larger mining companies, even though it is the only viable source of income for many people.

security and human rights practices. Newmont agreed to an independent review (VPs 2010a: 2).

Limited membership raises another problem for the VPs. The VPs had initially been confined to the US and UK governments and seven US and UK companies. Ten additional extractive companies have become members,<sup>5</sup> which include some major MNCs. Yet, corporate membership remains confined to Northern Europe and North America. In that same year, the organization removed a requirement that companies or NGOs could only participate in the plenary if their home governments were also participants, which paved the way toward an expansion of the Voluntary Principles membership. And while only seven out of the top 25 international metal mining companies joined the initiative (UNCTAD 2007), less visible small and medium-sized companies, in particular in exploration and trade, are not represented at all. This is also true for the governments involved. Five other governments have joined the initiative: the Netherlands in 2001, Norway in 2003 and Switzerland, Canada and Colombia this year, the latter being the only host country of MNCs that has joined the VPs so far. Important European countries, such as France or Germany, have declined to participate, as have all of the new major home countries for investors in oil and mining in Africa and elsewhere, such as Brazil, India, Russia, South Africa and China.

Due to the limited data available and accessible, there are hardly any studies on corporate compliance with the VPs. The few that exist are either not fully independent of the company studied (Jim Freedman Consulting 2006; Kapelus 2006), limit themselves to an analysis of company policies (output) (Hofferberth 2010), focus mostly on the politics behind the VPs and the resulting lack of clarity and accountability of the principles themselves (Hansen 2009), or use sporadic evidence from different companies and places (Global Witness 2007a). There are a few studies on company security practices at the local level, yet most of them do not explicitly discuss the direct and indirect effects of the VPs on local security practices, nor do they explain non-compliant practices (Zalik 2004; Frynas 2000). Ultimately, both compliance and corporate security practices in a broader sense can only be assessed at the level of individual company operations.

The next section will demonstrate the limitations of a top-down compliance perspective and the added value of a bottom-up approach, focusing on corporate practices at two mining sites of two major mining companies in the DRC: AngloGold Ashanti (AGA) and Anvil Mining. Both have been subject to international human rights campaigns, resulting in their comparatively strong commitment to implementing the VPs. Although AGA and Anvil differ in size, their activities are of similar importance to the DRC. The governments of their home countries (South Africa and Australia) are not members of the VPs. Nor do the two MNCs belong to the group of the “most likely cases” of North American and European firms, which are the leaders in integrating human rights into their management systems (Hamann et al. 2009: 455-456).

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5 Current members are AngloGold Ashanti, Anglo American, the BG Group, BHP Billiton, BP, Chevron, Conoco Phillips, Exxon Mobil, Freeport McMoRan Copper and Gold, Hess Corporation, Marathon Oil, Newmont Mining Corporation, Occidental Petroleum Corporation, Rio Tinto, Shell, Statoil, and Talisman Energy (VPs 2010b).

Finally, AGA and Anvil are mining companies which, unlike oil firms, have not received much attention in the literature.

AGA was founded in 2004 as a merger of Ghanaian Ashanti Goldfields Company Limited and South African AngloGold Limited. It is the third largest gold mining company in the world with 21 operations across four continents. Listed on eight stock exchanges and employing 63,364 people in 2009, the company is headquartered in South Africa (AngloGold Ashanti 2009a). AGA invested in the parastatal gold company Office of Kilo-Moto (OKIMO) and gained shares in a 10,000km<sup>2</sup> concession situated in the remote north eastern Ituri area. The MNC is concentrated around the city of Mongbwalu, close to the Ugandan border. In 1996, it began detailed explorations, the same year in which the cross-border conflict between warring militias and government forces began. AGA left its exploration site in Mongbwalu in 2002 when the war made mining impossible. One year later, AGA returned and entered talks with the Front of National Integration (FNI), an armed militia linked to Uganda, which controlled Mongbwalu at the time. The financial and other support AGA gave to the FNI in 2004 in return for allowing its exploration activities to resume in Mongbwalu, in the same year it joined the Global Compact<sup>6</sup>, gave rise to significant pressure by the human rights community (HRW 2005) and fuelled the debate on the role of big business in conflict and weak governance zones (Kapelus et al. 2008). In 2005, AGA publicly renounced its financial support of FNI in the DRC as a regrettable mistake and a breach of its principles and values, but pledged to continue its exploration program (AGA 2005). In 2007, AGA became a member of the VPs. A report by Human Rights Watch of 2005 denouncing the activities of AGA in the DRC claimed that the VPs would have helped the company to make the right decisions on when and under which circumstances to start operations in Mongbwalu (HRW 2005).

Anvil Mining, employing 4,390 workers in 2008, is an Australian company listed on the Toronto stock exchange (Anvil Mining 2008a).<sup>7</sup> It operates only in the DRC (since 2002) where it was the major copper-producing company until recently. Anvil's main operation is a large open-pit copper mine at Kinsevere in a rural area close to the provincial capital Lubumbashi (Anvil Mining 2011a).<sup>8</sup> In 2004, Anvil was involved in human rights abuses carried out by the Congolese army (FARDC) near its Dikulushi Mine. During its attempt to recapture the town of Kilwa, serious human rights violations occurred, such as summary executions of rebels. Congolese soldiers also used Anvil's vehicles to transport looted goods and corpses. Moreover, the airplanes which Anvil had chartered to evacuate its employees were used for troop transports. Anvil admitted that it had provided food, tents, and pay to Congolese soldiers during the operation. In the military prosecution of war crimes, three of Anvil's employees were charged with aiding and abetting the FARDC in committing crimes in 2006 (Global Witness 2007b). The Congolese military

6 The first two of the ten principles of the Global Compact require businesses to support and respect the protection of internationally proclaimed human rights, and to make sure that they are not complicit in human rights abuses (UN Global Compact 2006).

7 Due to the Financial Crisis the number of employees has been declining sharply since mid-2008. Anvil currently employs only 248 people (Anvil Mining 2009).

8 Anvil sold its Dilukushi concession at the beginning of 2010 (Anvil Mining 2010).

court did find Anvil and its employees not guilty in 2007. Yet, the case received considerable international attention and put Anvil under sustained pressure from human rights groups who did not accept the court ruling due to its lack of independence.<sup>9</sup> While the company has not become an official member of the VPs, it has committed itself to apply the principles in its operations.

At the same time, the two companies show some important differences, which should increase the capacity to generalize our findings. While gold miner AGA has been in the exploration phase in Mongbwalu and Kibali in the DRC since 1996, Anvil gained its first contract as early as 1998 and has produced copper and cobalt from the DRC since 2002 (Ministère des Mines 2007). Moreover, Anvil operates in the relatively stable Katanga province, which had been controlled by the Kabila governments throughout the Congolese wars. The Ituri Province, where AGA works, is still conflict-ridden and government has little control. Analyzing the security practices and their compliance with the VPs of the two companies will provide us with a sufficiently broad empirical basis for probing the added value of our analytical framework.

In the following sections, we will evaluate to what extent AGA and Anvil have honoured their commitments and complied with the VPs, and will discuss the results in light of the broader range of corporate security practices. Our empirical analysis is based on documents provided on the websites of VPs, AGA, and Anvil, as well as human rights NGOs that have been active in the DRC. If available, we have also consulted annual reports, business principles, country reports, case studies on human rights, and specific site reports. Additionally, we draw on extensive field observations and interviews conducted in the DRC.

#### **4.1 Companies and security governance: top-down**

While remaining rather unspecific and hardly institutionalised, the VPs provide an operational approach for companies to identify human rights and security risk, as well as to improve the human rights record of their security agents by engaging and collaborating with state and private security forces on these issues (VPs 2011a). They are divided into three sections covering the internal management system of the company and its external relations with public and private security forces.

##### *Transnational demand*

While the VPs themselves are rather broadly defined, guidelines provide some indication of what companies are expected to do in the implementation (VPs a).<sup>10</sup> First, companies shall integrate the VPs into their management systems, contracts and agreements, preferably prior to starting

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<sup>9</sup> Interviews with Pact Congo and ACIDH, October 2008, Lubumbashi.

<sup>10</sup> An implementation guidance tool was published by World Bank MIGA in cooperation with Anvil Mining in 2008. Its update and increased use is on the agenda for the next five years (VPs 2010a).



an operation. This includes most importantly putting a specific human rights policy in place and conducting regular risk and impact assessments based on extensive background information on various criteria (e.g. causes and potentials for local conflict, human rights records of security forces and law enforcement officers, and the rule of law performance of domestic institutions) drawn from and shared with a wide variety of actors, including local and national governments, security firms, other companies, home governments, multilateral institutions, and civil society (VPs 2011b). Compliance requires companies to adopt a human rights policy and adapt their risk assessments to the criteria stipulated by the VPs, develop performance indicators and guidelines for risk and impact assessments (output), and conduct them accordingly (outcome). They may also embed the VPs in their annual performance reviews, develop implementation manuals and training materials (output), and organize implementation workshops and training programs for their employees (and their security contractors, see below) (outcome). Finally, companies shall set-up communication channels (output) and use them (outcome) to share risk assessment information and report human rights violations inside and outside the company.

Second, companies shall help ensure that actions of governments and public security providers are consistent with the protection and promotion of human rights (VPs 2011c). This involves making corporate security policies transparent to the public security providers and the public, particularly with regard to the “ethical principles” they are based upon. In addition to engaging public security forces into a regular dialogue on the importance of human rights, companies shall engage in capacity-building by supporting human rights training and education for public security forces, and helping to strengthen state institutions to ensure accountability and respect for human rights. Except for the provision of equipment, no further reference is made to how exactly companies shall engage in human rights capacity- and institution-building. Finally, companies shall report any human rights violations and support state investigations. While remaining rather vague, compliance with the VPs on public security asks companies to clearly state their security policy and make it publicly available, and to establish common communication channels and policies (responsibilities, personnel, time, money) with governments, public security forces, civil society, local communities, and other companies on human rights issues. These policies should particularly represent responses to human rights violations (e.g. whistleblower protection). At the same time, they should provide technical and financial assistance to train public security forces and state authorities on respecting human rights (output) and to actively engage in consultation and capacity-building accordingly (outcome).

Third, companies that enlist the assistance of private security companies (PSC) because the host country is not willing or capable to protect the company’s production site shall make sure that the PSCs comply with international and national human rights standards (VPs 2011d). Using their contractual relationships, companies shall act as enforcement authorities committing PSCs to human rights, monitoring their compliance and sanctioning violations, e.g. by blacklisting. To comply with the VPs on private security, MNCs must only contract private security companies, if governments are unable or unwilling to provide sufficient public security (outcome). Moreover, companies should have a policy to only contract PSCs that have a clear human rights policy, a clean human rights record, adequately trained personnel (output), and no business relations

with PSCs that do not fulfil these requirements (outcome). Companies should conduct human rights screening, make background checks, and consult with other companies, home country officials, host country officials, and civil society regarding experiences with private security (outcome). Finally, companies must have a human rights clause, put procedures in place to monitor and sanction the human rights behaviour of their contractors, develop HR training programs (output), and use them accordingly (outcome).

However, guidance for effective implementation remains limited. An in-country implementation process involving representatives from participant companies, the host government, civil society and local communities shall support compliance with the VPs by helping to formally integrate them into host country policies and practices, and by facilitating dialogue between private, public, and civil sectors around human rights and security practices (VPs b). Yet, such in-country implementation processes are still the exception (VPs a). With the exception of Colombia, lack of engagement by home states and the initiative itself with host governments seems the major impediment for effective implementation (Freeman 2005: 4).

There is also a range of reporting requirements. Participants shall prepare and submit to the steering committee, one month prior to the Annual Plenary Meeting of VP, a report on their efforts to implement or to assist in the implementation of VPs. The Reporting Working Group drafted reporting guidelines, which were used as a basis for the 2010 reports for the first time (VPs a). In 2007, formal participation criteria were adopted for the first time. In that same year, the requirement that companies or NGOs could participate in the Plenary only if their home governments were also participants was removed, which paved the way toward an expansion of the Voluntary Principles membership. With the amendment of the criteria in 2009, the “fractious issue of participation criteria for governments” was finally resolved and interim reporting criteria were agreed upon (Freeman 2010). Participants are now required to publicly report on the implementation of the VPs or on their support of implementation. The participation criteria now also include provisions for the expulsion of participants. Participants may even raise concerns regarding non-compliant behaviour by other participants (VPs a). While the members of VP seek to make requirements more precise, VP reports, files and proceedings remain non-public.

### *Company output*

The VPs are rather vague as to what they expect companies to do, and do not specify how companies should fulfil these expectations. This renders a compliance evaluation difficult. Also, the lack of an internal auditing system that provides for an independent verification of whether VPs are put into practice further undermines the effectiveness of the voluntary program (VPs a).<sup>11</sup>

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<sup>11</sup> See UNSG SR John Ruggie’s call for more engagement in his plenary address to the VP meeting 2010 (Ruggie 2010).

AGA includes a statement on the VPs on its website. However, it is very general and not integrated in the “Corporate governance and policies”. The latter refers to obligations in terms of the US Sarbanes-Oxley Act of 2002, NYSE and JSE Rules, and the King Report on Corporate Governance 2002, and does not include the VPs; the obligations cover health, safety, environment, and community standards, but do not mention human rights. Anvil, by contrast, adopted a “Code of Business Conduct” in 2007, which prominently features human rights, including a section on security and human rights, which commits Anvil to observing “the principles set out in the Voluntary Principles on Security and Human Rights in relation to security, risk assessment and the maintenance of human rights” (Anvil Mining 2007: 11). Moreover, Anvil’s Corporate Social Responsibility Statement refers to the VPs as part of the company’s commitment to the “highest standards of corporate governance, ethical behaviour, and respect for human rights” (Anvil Mining 2011b).

AGA claims that its Environment and Community Affairs Committee develops company policy and guidelines “to assist operations in acting in accordance with the group’s business principles and policies,” which should include human rights. There have also been plans for the conduct of a company-wide security review in 2008 (AGA a). Equally broad is the reference to a new Global Security Framework (GSF) developed by the newly established Global Security Department in 2008, headed by the Global Security Vice President and progressively implemented since 2009 (AGA a). The GSF’s nine key processes include “Voluntary Principles, Policy Standards and Compliance” (AGA 2009b). Procedures, standards and best practices have been set-up and constantly reviewed with the help of self-audits to ensure compliance (AGA 2009b). They include a code of conduct, operational standards, a risk assessment toolkit, and accompanying guidelines (AGA 2008: 5). The annual performance report explicitly addresses human rights and refers to the VPs as part of AGA’s global security framework. The Sustainability Reviews also specify performance criteria on human rights, such as human rights clauses and human rights screening of investment agreements, human rights screening of suppliers and contractors in the application process, employee and security personnel training on policies, and procedures concerning aspects of human rights (AGA 2009c). Next to the Sustainability Reviews (AGA 2009d; AGA a), AGA has issued Annual Voluntary Principle Reports since 2008 that broadly outline its human rights policies and procedures (AGA b).

Similar to AGA, Anvil initiated a comprehensive implementation project to imbed the VPs in the corporate culture and management system. Together with the Multilateral Investment Guarantee Agency of the World Bank, Anvil funded a diagnostic study by a consultant that developed a VP implementation program for Anvil’s operations in Africa, including an implementation toolkit for a mining company operating in a post-conflict African country (World Bank Group 2008). The toolkit provides a detailed manual on how to systematically put the VPs into practice, including a time-phased implementation plan. Moreover, Pact Congo, an American developmental NGO, drafted a Framework on Security and Human Rights on Anvil’s request, which guides the company’s incorporation of human rights into its security program (Jim Freedman Consulting 2006). Like AGA, the company issues annual Sustainability Reports, which have a short section on risk assessment that also makes reference to the VPs. However,

no details are given and the last report available on the website is from 2007. While risk assessments procedures appear to exist in both companies, there is no information on whether VP criteria are taken into consideration. AGA has developed an internal audit system with a VP checklist to review progress on implementing the VPs at local facilities. This will be integrated into the ISO 14001 management system, along with the incorporation of community standards (AGA a). Equally unavailable is specific information on human rights screening, training of public security forces and private security companies, which are enlisted for protection of its production sites (AGA a: 2, 5). In conflict zones such as the DRC, AGA and Anvil both employ public and private security forces. AGA justifies its reliance on “fee for services” support by the police, the army, and private security companies (AGA 2008: 1) on the basis of threat and risk assessments which indicate that security threats are “sufficiently elevated” (AGA 2009b: 2). Both companies have developed programs to communicate with and train staff, and incorporate the VPs into contracts with public and private service providers. Procedures have been introduced to report and investigate security-related incidents with human rights implications by public/private security forces deriving from the company’s activities (Jim Freedman Consulting 2006; AGA a: 2-3).

Finally, AGA claims to have recently established a government relations function in order to give public policy strategy a greater focus in the business. It has also developed an engagement strategy for government and a management standard related to engagement with stakeholders, to be introduced across all its operations in 2010 (AGA a: 5). Again, no specific information is available. In a similar vein, Anvil and the government of Katanga have signed a Protocol to govern the interaction between Anvil and the Province of Katanga (Jim Freedman Consulting 2006). To what extent this Protocol provides for communication channels on human rights issues is unclear.

Overall, AGA and Anvil appear to have incorporated the VPs into their corporate policies, management systems and agreements with service providers. The VPs are explicitly referred to and form part of the companies’ corporate identity. Both companies have introduced substantial changes to their management policies and procedures including the dedication of human, financial and technical resources. While the Global Compact also includes human rights principles, human rights only gained prominence after AGA joined the VPs in 2007, even though they feature less prominently than other standards (so far). Anvil, too, only started to develop a human rights policy based on the VPs after it had been subjected to an international campaign, even though it did not become an official member of VPs. At the same time, it is difficult to assess the comprehensiveness of the related changes in the corporate policies and management systems of the two companies, given that AGA and Anvil provide rather general information on the measures and actions taken. Overall, Anvil seems to have introduced more comprehensive changes; this, however, might be a foregone conclusion based only on the more detailed information given by the OECD audit report.

*Company outcome*

Unlike Anvil, AGA annually reports on its implementation of the VPs to shareholders through its Annual Financial Statements, and to all stakeholders through its VP Reports and the corporate social responsibility report. The company states, for instance, that in 2009 86% of AGA's employees and security personnel received human rights training (AGA 2009c). The reports also mention that AGA's security departments engage in self-reporting to the company, local authorities and local communities regarding human rights violations by employees, contractors and public security forces (AGA 2009b: 2). Such incidents are documented in the annual VP Reports. There is, however, no external review of this information. Anvil, by contrast, does not report on these issues. However, the company participates in and prominently supports the Katanga security forum, in which representatives of large mining companies, state security forces, the UN mission MONUC and others discuss security and potentially also human rights issues, and exchange information on incidents of human rights abuses.<sup>12</sup>

AGA claims to conduct risk and impact assessments in the DRC, e.g. to decide whether to enlist the service of public and private security forces (AGA 2009b: 2). To what extent these assessments apply the VPs is unclear. Anvil has not conducted risk assessments on its own (Jim Freedman Consulting 2006). With regard to integrating human rights into contracts with public and private security forces, AGA announced a general review of all contracts on the basis of a contractor vetting checklist, as well as the standardization of contract requirements with service providers in 2010. This includes briefing government officials on human rights, as well as training public and private security forces, personnel employed by contractors, members of the police and military, community groups, and civil society organizations on the company's human rights policies and the VPs (AGA a: 3, 5-6). While Anvil's own security personnel is well trained and informed, neither the private security company, Securicor, nor the local police and Mine Police that Securicor works with seem to have received any substantial training on human rights (Jim Freedman Consulting 2006). Anvil, however, tries to get government approval for human rights training for Mine Police forces through contracted NGO Pact Congo.

Finally, both companies have sought to set up communication channels in neighbouring settlements for discussions with the local communities (Jim Freedman Consulting 2006: 17-18). It remains unclear to what extent they engage in human rights dialogues with local authorities, local communities or civil society. AGA does not seem to have established any regular contact or information sharing with the local communities. In 2006, it had set up the Mongbwalu Forum of Stakeholders, which, however, is not used for advancing VPs. It is not part of the Ituri Stakeholder Forum in the provincial capital Bunia, which organizes important NGOs and social groups. Working closely with INGOs, HRW and Pax Christi, the forum has remained highly critical of AGA's social and human rights policies and impact.<sup>13</sup> While it has apparently

<sup>12</sup> Interview with Pact Congo representatives, 17 October and 6 November 2008, Lubumbashi; see further discussion in Hönke (2010a: 224f).

<sup>13</sup> Interview with manager community relations and social development, AGA, 3 October 2007, Johannesburg.

conducted a risk assessment, AGA has not published a human rights or any other assessment for the Mongbwalu project that includes the participation of affected communities (CAFOD 2010). To what extent AGA has used the renegotiation of its mining contract with the DRC government to communicate its human rights policy and to engage the government in a human rights dialogue is questionable as well.<sup>14</sup>

Overall, available information renders it extremely difficult to assess the behavioural compliance of AGA and Anvil with the VPs. Implementation only started in 2008 and 2007, respectively, and many changes have just been introduced or are still under way.

#### **4.2 Companies and security governance: bottom-up**

The top-down analysis of company security practices above takes a voluntary program, such as the VPs, and examines to what extent company policies and practices comply with them. In the following, we demonstrate how a bottom-up approach focusing on local practices re-evaluates the VPs and corporate governance contributions and broadens our understanding of business in local governance.<sup>15</sup> We aim to overcome two limitations of the top-down perspective. First, top-down studies tend to emphasize (transnational) policy formulation and politics, resulting in a narrow view of the actual security practices of MNCs at their production sites and a neglect of local discourse and politics. Second, focusing on corporate governance contributions as defined by the VPs omits from the analysis other everyday security practices employed by MNCs. By using a particular transnational standard, such as the VPs, as a yardstick to assess company behaviour, it is easy to neglect competing understandings and expectations of what should be considered security and human rights issues in the local arena, and who should care about them. It is important in this regard to remember that the VPs emerged as a minimal consensus between two governments, a small number of extractive MNCs opposing strict regulation, and a few NGOs.

A bottom-up perspective starts from the other side. We demonstrate in the following the value of studying local, everyday security practices of the two mining companies, as well as the accompanying conflicts and contradictory understandings of security and rights. This new focus improves our assessment of transnational voluntary programs and enhances our understanding of non-compliance and security practices that follow different and often competing norms.

##### *Perceptions of security issues – defining and scoping an issue*

Anvil's and AGA's security managers share a narrow understanding of security as the protection of property and personnel against threats from intruders. Their concern is security as a private

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<sup>14</sup> In 2007, the DRC government embarked on a review of over 60 mining contracts signed between 1996 and 2003 during the Congolese war, including the contract with AGA.

<sup>15</sup> For a comprehensive development of the approach see Hönke (2010a: 49-74).

good. They list “illegal mining” and theft among the most serious security challenges faced by their companies in the DRC. In the eyes of the security department of Anvil, the company is threatened by organized groups, members of the local communities, and its own workers. Cobalt, copper cable, cement, petrol and equipment are among the disappearing goods. In particular, thousands of artisanal miners infiltrate Anvil’s concessions and are described as a major security risk.<sup>16</sup> While petty theft seems to be less an issue in the smaller exploration sites around Mongbwalu, AGA, too, identifies artisanal miners who “illegally” mine gold on their concession as major security risk. There are more than 100,000 small-scale miners in the gold mining area, many of them former militias with strong political allegiances in the area (Kapelus et al. 2008: 127).

Like other mining companies in the DRC, Anvil’s local managers believe that security risks increasingly emanate from the society and local communities in which they operate. Mining sites – e.g. on-shore oil operations such as those in the Niger Delta – cannot be fenced off easily from the social and political conflicts in which they operate and which they partly cause (Hönke 2010a: 169; Szablowski 2007: 27-60). While the situation in Ituri is more volatile, in both areas companies operate in a complex social and political context characterized by the legacy of war and divided by political factions, in which mining companies are part of popular memories of warfare, suffering, and political conflict (Hönke 2009; Kapelus et al. 2008). Reputational risks related to social and security issues have grown over recent years. Incidents such as community protest and violence of security forces against the population are now seen by some firms as security issues, in the sense that they may negatively impact shareholder value, profits and contracts.<sup>17</sup>

The VPs do not question this framing of company security concerns. Having been developed by governments and companies favouring economic liberalism, they start from the assumption that, first, companies’ legal title and property rights needed to be defended, and second, that the business of business was essentially doing business. Yet companies should at least reduce negative externalities, such as harming the human rights of others with their daily security practices. In this context the VPs provide some guidelines for reducing the negative effects of corporate private protection measures on communities. They do not, however, require companies to provide security for others at the local level. Asking them to teach human rights to state security agents may contribute to better security provision for the broader local public; however, companies’ willingness and ability to influence the local police or military are limited in this regard. Also, specific local measures are countered by companies financing

<sup>16</sup> Interview with company security manager DRC, Anvil Mining, 22 November 2008, Lubumbashi.

<sup>17</sup> The International Council of Mines and Metals, a transnational business association representing a number of large MNCs from the mining industry in public relations issues in the area of sustainable development, started explicitly recognising problems related to corporate security practices as an issue in 2003. Since 2005, the association engages with the UNSRSG special representative John Ruggie, and has published guidelines that shall help member companies in managing human rights and security-related issues (in: <http://www.icmm.com/page/225/business-and-human-rights>; 6 August 2010). Concerning companies in the DRC and Anvil in particular: Interview with security and VP managers, Anvil Mining, October 2008, Lubumbashi, Interviews with Pact Congo 17 October and 6 November 2008, Lubumbashi.

and strengthening an unreliable and repressive regime and its security forces in the DRC (see below).

Second, the VPs are largely oblivious to the concerns of the people living in the areas in which these mining companies intervene. Insecurity and conflicts evolve around the highly contested question of who has legitimate access to resources, of who shall have access to land, and who has to bear the costs of mining. To artisanal miners who used to work on Anvil Mining's concession, the company's claim to the resources is illegitimate because it is based on a questionable contract with a distant government in Kinshasa. As they reclaim their right to make a living from "their resources", local community members demand the redistribution of company profits to them in order to provide social security (Hönke, 2010a: 201-228). Both point to the important underlying struggle over how the access to and the benefits from extraction should be distributed. Investment in industrial mining in the DRC might not bring many changes for the political networks that are in power, but could alter the ways in which they benefit from resource extraction. For competing political networks and in particular for the local population and migrants who make up the large artisanal mining community, mining activities of MNCs change everything and often put their source of income at risk (Hönke 2010b).

Third, and related to the previous points, the VPs are insensitive to the governance expectations in areas of limited statehood. Both AGA and Anvil face huge expectations and demands for social benefits. In the context of a state that does not redistribute wealth or provide social services, people expect those actually extracting natural resources from their area to not only compensate them for negative externalities, but also to take responsibility for local development.<sup>18</sup> Finally, there are more frequent encounters with security forces, both private and state, because of their high numbers in these areas – making these encounters less violent is a main concern of the VPs.

In short, there is a fundamental difference between the MNC position and transnational liberal-economic discourse on security on the one hand, and the perceptions of local communities on the other. Companies use a legal argument rooted in liberal-economic discourse emphasizing their private property rights: Security concerns refer to the protection of their private assets. MNCs are confronted with a social and political environment that poses much more fundamental questions to them than the security of their assets: access to and redistribution of benefits from natural resources.

#### *Routine security practices*

How do AGA and Anvil, who have gained high visibility internationally and do commit to various voluntary initiatives, such as the VPs, address these conflicts and security challenges? The compliance perspective focuses on activities that conform to liberal human rights oriented

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<sup>18</sup> Interview with manager community relations and social development, AGA, 3 October 2007, Johannesburg; Kapelus 2006.



governance. However, local company agents and contracted state and non-state security forces invoke three sets of security practices. They combine practices of communication, engagement with communities described above, and reduction in the use of violence with two other strategies: a traditional fortress strategy employing practices of coercion (violence), and a strategy of indirect rule which often reproduces and strengthens unaccountable and repressive state and local non-state political structures. The three sets of security practices are embedded in different norms and discourses (the following part builds on Hönke 2010a). The research agenda on non-state actors and governance should consider and explain all three. Accordingly, we need to look for the different discourses, practice fields, and competing norms informing these different practices to better understand the limitations of (compliance with) voluntary transnational principles.

The first set of security practices evolves around the logic of fortress protection, and best represents the distinction between companies as private entities and the state as being responsible for issues in the public sphere, established by liberal economic thinking. Within this logic of fortress protection, the main strategy of firms is to block themselves off from their environment and thus from theft, small-scale mining and popular protest (Hönke 2010b). Both AGA and Anvil work with private and state security forces to this end.<sup>19</sup> Unlike in South Africa, for instance, companies operating in the DRC have to work with state security forces and intelligence on every mine site, since only state security forces are allowed to carry arms. The mining companies call on special state security forces for robust operations, such as protection against social unrest and armed patrols. In Katanga, some police stations, and in particular the provincial inspectorate of the PNC in Lubumbashi, hold special contingents of the Police d'Intervention, which both the firms and the governor can rely on when they feel order is getting out of hand.<sup>20</sup> Anvil, for instance, called in rapid reaction forces of the police to suppress protest by artisanal miners and “clean” their concession. Having been evicted from the large new concession owned by Freeport McMoRan, about 7000 artisanal miners worked on the riverbanks of the concession of Anvil Mining in Kolwezi. Even though Anvil Mining claims there had been no problems, media reports describe how tensions over plans for eventually evicting miners from the concession led to conflict and police intervention (Bavier 2008). Private security agents (PSCs) and state security forces, but also fences, barriers, controls and searches in villages, exercise violence and decrease security in the local arena. While the VPs seek to reduce the level of direct, physical violence, they do not address more indirect violence and insecurity beyond direct physical threats.

The second set of corporate security practices revolves around strategies of indirect rule, using personal networks, bribes and paying the state “as-you-go” (see also Hönke 2010b). It comprises building relations with key persons in important political networks and positions within the fragmented, personalized and dysfunctional state apparatus, as well as with powerful

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<sup>19</sup> Interview with the security managers of Anvil, 22 November, 2008, Lubumbashi; also with security manager AGA, 3 April 2007, Johannesburg.

<sup>20</sup> Interview with chief of operations, Congolese National Police, provincial head offices in Katanga, 7 November 2008, Lubumbashi.

local authorities such as traditional chiefs. In areas of limited statehood, such as the DRC, the state may seem dysfunctional when compared to the ideal of a modern welfare state with constitutional democracy. This does not necessarily mean that the state is absent. Companies depend on maintaining good relations with agents at all levels of the state apparatus. Security issues in the more narrow sense concern the provincial governor and key figures in the local and provincial police. In order to secure the concession and political support for its operation, a company needs to relate to the power players in government, including the president, Joseph Kabila, and the former minister of mines, today special advisor to the president. Investing in the lucrative Congolese mining sector hardly works without a “political umbrella” (Global Witness 2006: 42). Anvil paid the key brokers of mining deals in Laurent Kabila’s AFDL and later in the government by adding them to its board of directors for several years.<sup>21</sup> In Mongbwalu, it was the militia controlling the area, the FNI, to which the local AGA manager felt obliged to pay 8000 \$ in 2005 (HRW 2005).

In the DRC, state agents use state office for private gains. Without paying proper salary, Congolese state office is synonymous with economic opportunities (Hönke 2010a: 228-237). When AGA called in the police for investigating a theft that had occurred on the concession, the police officer asked for 50\$ to cover the expenses of getting to the concession and doing his work. After being denied the money, he refused to hand over the results of his investigation – without which AGA could not pursue the case.<sup>22</sup> Such everyday service-by-demand behaviour of state representatives is not an exception from the rule, but rather the norm.<sup>23</sup>

The third set of practices refers to forms of participatory company community engagement (Hönke forthcoming). As shown by our top-down compliance analysis of Anvil and AGA, transnational norms have strengthened proactive engagement with communities and security forces through communication and development initiatives with the former, and training with the latter. Both Anvil and AGA work with Pact Congo, which has set up forums in the communities living adjacent to extraction sites, in which issues of concern may be discussed and people are supposed to participate in decisions regarding social investments. These VP-related activities need to be analysed, however, in context with the other “practical norms” (Olivier de Sardan 2008) guiding companies’ security behavior at the local level.

#### *Unintended effects, competing norms, and changes in local power structures*

Studying local perceptions of (in)security and corporate security practices from the bottom up puts the VPs in context and raises several important issues that should be addressed more systematically and more in depth by research on companies and governance in areas of limited statehood.

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<sup>21</sup> Interview with Bill Turner, CEO of Anvil Mining, broadcast of “The Kilwa Incident”, Four Corners, Australian Broadcasting Corporation, 6 June 2005.

<sup>22</sup> Interview with social relations and community manager, AGA, 3 October 2007, Johannesburg.

<sup>23</sup> See for instance the concise statement by DRC expert Timothy Raeymaekers on this topic (Raeymaekers 2009).

First, transnational standards contradict and conflict with local norms that are relevant for the security practices of multinational companies in the extractive industries. Both AGA and Anvil have developed human rights training programmes in compliance with the VPs. Yet, in the DRC, foreign companies are not allowed to get involved in any training of state security forces. Out of historical fear of state capture, and in order to support the new Kabila government and its sovereignty, local, provincial and national police have not agreed to receive any training. Anvil negotiated that the company be allowed to give a briefing on the VPs to the commander in chief of the Congolese police who would then decide how to integrate this into the police training. State officials, in turn, emphasize that they were providing their own training. Yet, it remains well-known that the state security sector barely receives any training at all in this respect (Hönke 2010a: 225-27).<sup>24</sup> Moreover, there are few structural incentives for police agents to change behaviour. Not receiving any salary, police officers usually ask for money and extort revenue from artisanal mining. Those who gained experience in the Mobutu police force or militias during the Congolese wars are used to repressive regime policing.

Companies depend on working with state police and state police services, and thus pay for services such as the enforcement of their contract and their property rights (see the fencing-off strategy) as well as for complying with host state regulation (Hönke 2010a: 310-311). Seeking to comply with the VPs, AGA and Anvil unavoidably come into conflict with competing norms that structure the transnational field of extraction. One of those can be described as a “politics of the belly” (Bayart 1993 as used in Hönke 2010a: 182-188). Expecting security agents to behave like agents of a Weberian rational-bureaucratic state does not match the realities of postcolonial political economies. Interactions between transnational company and national and local elites follow a pattern of remunerating state agents and their services in a “pay-as-you-go” and informal manner. Local communities expect immediate benefits in return for being affected as distribution of revenues through the state rarely takes place.

Thus, companies are expected to comply with contradicting norms, the politics of the belly, and the VPs. Sanctions may be more immediate for non-compliance with the older, and in the local arena more strongly institutionalised norm of the politics of the belly. This is the case for practitioners working with mining companies at the operational level, transnational security professionals as well as national and local elites.<sup>25</sup>

Another advantage of the bottom-up approach we propose lies in its ability to bring into view unintended effects on local communities. Compliance research asks whether the Voluntary Principles are adopted and effectively implemented. Such an approach dismisses the important – often unintended – effects that transnational standards may have. One revolves around the

<sup>24</sup> Interviews with the Chef des Operations PNC, Inspection Provinciale de Lubumbashi, 7 November 2008, Lubumbashi; Inspecteur et Commandant Police Minière et des Hydro (PMH), PNC, Inspection Générale, 10 November 2008, Lubumbashi.

<sup>25</sup> Interviews with the Chef des Operations PNC, Inspection Provinciale de Lubumbashi, 7 November 2008, Lubumbashi; Inspecteur et Commandant Police Minière et des Hydro (PMH), PNC, Inspection Générale, 10 November 2008, Lubumbashi.

indirect strengthening of unaccountable state institutions. The other revolves around shifts in security, power and increased conflict within communities.

The managerial approach of the VPs, emphasizing risk assessment, awareness raising, communication, and training, neglects the material and discursive context in which local company and state agents work. State security forces are financed through individuals using their position within the state to pursue private goals. Clientelism and corruption are organising principles of local polities and the Congolese state. This is a long-established social system. Working with the state and its security forces inevitably leads to reproducing that apparatus, which in turn may facilitate extortion and human rights abuses. Companies such as Anvil in the DRC emphasize now that they were providing neither money nor fuel to local police officers – but doubts about how that may have worked in practice remain (see also the example of AGA and the police officer above).

More in-depth research is required to study the effects of corporate community engagement. Participatory structures at village level, such as elected development committees deciding on the allocation of company development money within a community, often come into conflict with pre-existing local power structures and competition over influence and resources. They might support democratic procedures in local politics. However, they might turn out to be old wine in new bottles if used for strengthening local hierarchies and co-opting those who may cause trouble, such as in the Niger Delta. Companies' need for stability, on the one hand, and requirements for participatory approaches by transnational standards, on the other hand, often conflict with each other (Hönke forthcoming). Companies have a tendency to work with powerful actors in the local arena who are able to provide legal security and stability – such as formally recognised customary authorities or state agents – thereby sidelining other groups and opinions at the local level (Hönke forthcoming, see also Welker 2009, Reno 2001).

Overall, colonialism, previous extraction from the area, patterns of indirect rule, and the clientele position of the DRC vis-à-vis the US and other Western countries turned the Congolese state into a “shadow state” (Reno 1995). State representatives use their status to get paid by the population – and by companies. As a result, mining companies following transnational standards are subject to competing norms at the local level. By complying with them, the companies systematically reproduce autocratic and corrupt polities in the DRC through their payments in bribes and taxes, through legitimizing these regimes and enlisting their sovereignty (Reno 1998; Reno 2001), and through their local governance practices.

## 5. Conclusion

Transnational voluntary programs, such as the Voluntary Principles, have gained importance for MNCs. Respecting human and social rights, protecting the environment, or promoting local communities has become part of a global script, which is codified in a growing number of transnational institutions seeking to keep MNCs socially responsible. MNCs, in turn, increas-

ingly commit themselves to the transnational norms and rules, partly because their practices have become subject to public scrutiny and criticism. The naming and shaming by transnational NGOs also helps to make companies honour their commitments. Our case studies on Anglo-Gold Ashanti and Anvil Mining testify to the efforts of companies to become more sensitive to human rights issues while securing their assets in zones of weak governance and conflict.

From a top-down perspective, which takes transnational programs as a starting point and evaluates corporate compliance with them, MNCs have been making at least partial progress, particularly on the output side. AGA and Anvil have incorporated the VPs into their corporate policies and management systems. They have also changed their security practices engaging in communication with local communities and in human rights training for public and private security forces.

Yet, we also find serious problems of non-compliance. Our bottom-up approach, taking the full range of company security practices into perspective, reveals systemic limits of the VPs, which go far beyond vaguely defined performance criteria, weak enforcement mechanisms, and a narrow membership base. Companies' communication and participation structures with communities lack autonomy from the company and are seldom representative of all groups in the areas affected by mining. Protecting company assets through fencing off and deterrence with the help of state security forces and PSCs is complicity in violence. There is a very thin line between working with state security forces in particular and not supporting extortion and repression by them. Human rights training to police deployed on site does not take place.

Making efforts to implement the VPs, MNC nevertheless remain profit-oriented. They are not turned away by hostile environments afflicted by insecurity, corruption, and human rights violations (UNCTAD 2007). Although the World Bank lists the DRC as one of the worst countries to do business in (World Bank 2008), it has received high international mining investments since 2004. Companies' priority of doing business implies acceptance of conflicts over access to land and relocation, as well as other issues related to who has to bear the costs of mining and proper compensation. Issues of (re)distribution of wealth and access to resources are not addressed by the VPs. Property rights raise serious issues about the legitimacy of contractual relations between the MNCs and governments. In fact, one may argue that the VPs help MNCs avoid such issues by deflecting public pressure and allowing them to continue operations, thereby sustaining existing political regimes and economic structures (Hönke 2010a; Reno 2001).

The effectiveness of the VPs can certainly be improved by giving them more teeth, e.g. by making their rules more precise, by stepping up monitoring and sanctioning procedures, or by placing MNCs under (more) NGO scrutiny. Conflicts over property rights and the (re)distribution of economic and political resources, however, will not be solved by the prevailing managerial approach to the governance of business and human rights. If the VPs do not account for the political rationalities and competing norms of the local and transnational context in which MNCs do business (Hönke 2010a), their effectiveness is likely to remain limited. The bottom-up approach thus points to serious limitations of transnational voluntary programs such as the

VPs. They ignore the global political economy of mining in which MNCs, home and host state governments, transnational expert communities and non-state actors not only push for softer regulation, but also tend to sustain inequality in access to natural resources and welfare.

Finally, other important issues emerge in a bottom-up (re)evaluation of corporate security practices and their effects on local collective security and human rights. A major concern is the question of how inclusive corporate contributions are to security governance. *Cui bono?* Do companies provide security as a private or club good, or do companies aspire to extend their reach to the entire community surrounding their production site? And even if they do, what are the effects of corporate security governance on neighbouring communities, i.e. to what extent does the security of one community simply shift the problem to another (see Hönke, with Thomas, forthcoming)?

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