

Dealing with fragility:

A practice note for oil and gas companies



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Introduction

A large and growing number of oil and gas companies operate in fragile contexts. These contexts present substantial complexity and drive a range of practical and operational challenges for companies, as well as conflict and human rights risks. This practice note is intended to help oil and gas companies working in fragile areas to address those challenges.

What is fragility?¹

Fragility refers to the ineffectiveness of public and governance institutions in fulfilling their governance and service provision functions. In many fragile states and contexts, the public, or sections of the public, perceive public institutions and institutional processes as serving narrow and sectarian interests, having low levels of legitimacy and competency, or as illegitimate.

Specific forms of governance weakness vary substantially from one fragile state to the next, making it difficult to generalise about them. Furthermore, within some states that are not seen as fragile, there are regions that are marked by fragility.

Fragility and conflict

Fragility and conflict tend to drive each other. Sustained conflict may weaken public institutions. Weak public institutions are often incapable of mitigating social conflict, resolving conflicts peaceably, or monopolising the use of force within their territory. Fragile states are therefore significantly more likely than other states to experience political instability, widespread violence and disruption of public life, chronic conflict, or sustained and organised criminal activity.

Companies operating in fragile contexts should consider the risk of conflict and violence in their risk analyses and in their human rights' due diligence.

Why does fragility matter to companies?

Fragility may compromise a state's ability to perform a range of functions effectively that are fundamental to stable business operations and foundational to constructive relationships between companies, communities, and other stakeholders. Table 1 offers some illustrative examples.

Table 1: Examples of the impact of fragility on companies

Laws and regulations	<ul style="list-style-type: none"> Regulatory frameworks and regimes are partial, outdated, unenforced, and/or lack credibility among the public Informal and/or traditional institutions and sources of authority coexist and overlap with official ones Land laws mandate substandard compensation, do not define ownership clearly, or are manipulated by influential parties Substantial acreages are untitled and not demarcated; complex unofficial claims and perceived use rights exist
Public services	<ul style="list-style-type: none"> Services and/or infrastructure are uneven, inadequate, or non-existent Levels of real and/or perceived misappropriation or misuse of royalties and other public funds are high Politicians and civil servants, including police, use their offices to solicit bribes, embezzle public resources, or exploit citizenry
Justice and security	<ul style="list-style-type: none"> Levels of crime, insecurity, and/or violence are high; violent and/or corrupt parties act with relative impunity Access to justice is inadequate, inequitable, or constrained Public security forces have poor human rights track records, inadequate capacity to protect people and property, and/or are deployed against legitimate political opposition groups
Politics	<ul style="list-style-type: none"> The public lacks confidence that the government acts in the public's interests and/or is sceptical of formal political processes (e.g. elections) Personal networks and group affiliations are more influential than governance norms and formal policies Political and economic competition involves interpersonal and intergroup violence
Capacity to manage relevant activities	<ul style="list-style-type: none"> Government cannot effectively manage public consultations; government disseminates partial and/or misleading information about the company's activities State actors demonstrate indifference to international human rights norms and official legal procedures; land acquisition or involuntary relocation are coercive or heavy-handed Administrative capacities diverge widely across local offices; the state is unable to establish uniform approaches across local administrative units

As a consequence, companies operating in areas of fragility commonly find that:

- it is more difficult to maintain a social licence to operate² and to ensure that efforts to generate positive social and economic impacts are successful and sustainable;
- levels of instability and insecurity in the vicinity of the company's sites are higher; and
- it is harder to meet standards of responsibility, including the International Finance Corporation (IFC) Performance Standards.

How should companies approach fragile contexts?

The deficiencies of host-state institutions may not be of the company's making, and it is not the company's remit to fix them. Furthermore, companies should avoid taking on the state's role by, for example, unilaterally delivering public services or building public infrastructure.

On the other hand, deciding to operate as though the state were effective simply ignores the reality of state fragility³ and the risks that weak governance presents for the company and its stakeholders.

Options

Because of the diversity of fragile contexts, there is no uniform approach to operating that will be effective in all of them. Operating effectively in fragile states requires understanding the context and adapting the operation to it. In many cases, companies have options for operating in ways that mitigate, offset or account for the weakness of local institutions. There is often a clear business case for considering these.

Options for working with government

Companies have no choice but to work with the government – central, regional and local government authorities who have mandates to perform certain functions with regard to company activities and certain community issues. The question is how should companies work with government offices when they are unwilling or unable to play their appropriate role.

Find the right people. Within even the most ineffectual governments there are competent and well-intentioned officials, often at all levels. Some companies have found that it repays the effort to identify and channel cooperation with governments through such individuals.

Effective partners

In an African country that is an emerging oil producer, companies have observed that elected local government officials seek to influence companies to channel resources and opportunities through their offices and may attempt to benefit personally from the activities of investor companies. By contrast, technocrats within central government agencies have been effective partners with companies in implementing community development initiatives and demonstrate considerable technical expertise and experience working with community-level actors.

Lobby the government on the basis of international norms of good practice. A company's public commitments or formal obligations to international standards of responsibility can be an effective talking point for influencing the conduct of governments, particularly when project finance is predicated on compliance with a standard. Even when finance is not at issue, however, some companies have found governments to be receptive to company concerns about meeting their public commitments.

International standards and negotiations with high-level authorities

A mid-stream oil and gas operator in an African country found that the national government's compensation rates for land had not been updated in several years and were well below market rates. The government was not inclined to raise compensation rates for fear of setting a precedent that might drive up the costs of future capital projects throughout the country. Prior to the final investment decision, the company made the need for project finance, and therefore the need to meet IFC standards, a discussion point in its dialogues with national authorities about land acquisition and compensation. The company argued that if the government did not adopt rates that met IFC standards, project finance might be in doubt.

Companies might therefore request human rights training for public security forces on the grounds that the company is a member of the Voluntary Principles Initiative. They might encourage governments to disclose royalty payments on the grounds that they support the Extractives Industries Transparency Initiative. They might encourage governments to update land compensation frameworks in line with the IFC stipulation that populations that are resettled involuntarily should be compensated at a fair market value, and so on.

Engaging senior officials

One multinational oil company operating in Asia had established a constructive relationship with several key, high-ranking officials. The company invited the host-state's Minister of Energy to an international conference convened by the Extractive Industries Transparency Initiative in order to gain his buy-in and encourage the host government to join as a member state.

Work through business associations. The efforts of individual companies to argue for certain government actions are sometimes perceived as being self-interested; chambers of commerce and business associations may have more credibility. They may also have a bigger 'platform' from which to present their arguments. Risks that might be associated with particular activities or public statements can be shared across a range of actors if they are spearheaded by a business association.

Support existing development plans. In some contexts, local development plans are based on inclusive, participatory planning processes and reflect the needs and priorities of local communities. In those scenarios, local development plans may be useful foundations for social investment activities that align with the priorities of local authorities and needs identified by communities themselves. Because local actors bear responsibility for implementation, companies may be able to adopt supporting, rather than leading, roles and development efforts may be easier to sustain. Follow-up activities, such as maintenance of infrastructure, may also fall within the remit of local actors. Companies should engage broadly with local stakeholders to determine how much credence local communities place in local development plans.

Build the capacity of local actors. Where local administrative units such as mayors' offices lack administrative capacity to manage issues such as planning, accounting, and tendering, companies have partnered with third parties to deliver technical capacity development to those offices. In cases where local communities are challenged to hold local officials accountable for their management of public affairs, some companies have partnered with non-governmental organisations to deliver human rights and advocacy training to local communities to enhance their capacity to engage local authorities and advocate for their needs and rights.

Involve the relevant authorities in social investment.

When companies are the primary drivers of development initiatives in local communities, paternalistic relationships may develop between the company and the community. When this happens, companies sometimes see community support decline, even as spending on community projects increases, and companies sometimes find themselves under increasing pressure to take on roles that more properly belong to the state. Companies should seek to build local ownership over projects and initiatives by involving the appropriate government authorities in leading roles in social investment projects (e.g. the Ministry of Health and local health authorities in projects in the health sector). Similarly, social investment projects should be based on communities' own perceptions of their needs.

Options for working with local communities

A major challenge companies face when operating in fragile settings is that the state and its various offices cannot be relied upon to work in ways that communities perceive to be fair, transparent and inclusive. It may fall to companies themselves to work directly with communities to supplement the efforts of the state in key processes. Here we look at how companies can work with communities.

Best practices in stakeholder engagement. In areas where the government does not function effectively, many companies find it significantly easier to operate if they have strong relationships with a broad range of local stakeholders. Building such relationships requires stakeholder engagement that is:

- **Early:** Many companies plan stakeholder engagement on the basis of project phases, doing relatively little engagement when the company's own activities are minimal or low impact (such as during early seismic exploration) and ramping up engagement as the project's needs and impacts intensify. In fragile contexts, however, engagement should be proportional to the risk and complexity of the operational context. Communities may be affected in a range of ways by the company's presence alone, even when its activities are relatively inconsequential. Community perceptions of companies begin forming in the earliest phases of projects, in some cases before the company has personnel 'on the ground'. Early engagement can be fundamental to shaping these perceptions and to ensuring that communities have appropriate expectations about the company's project. It is also much harder to fix relationships that have gone awry than to build constructive relationships from the start.

- **Ongoing:** To understand the concerns and needs of stakeholders, companies should ensure that communities have access to multiple, overlapping, two-way channels of communication with the company at all times. Being responsive to community members' questions and concerns on an ongoing basis can significantly reduce work interruptions and make communities feel that the company takes their needs and issues seriously. Companies that engage communities only when the company needs something from them may be perceived as cynical and disrespectful.

- **Broad:** People living outside project impact zones are often defined as 'unaffected' and are not seen as stakeholders. Where engagement, hiring, and social investment are confined to delimited geographical areas, people living beyond them are typically excluded from the benefits of the company's presence and activity. This can create groups of 'haves' and 'have-nots' and can drive tensions between them. Companies should engage broadly to ensure that they understand how their presence and activities affect relationships among communities inside and outside official impact areas.

- **Inclusive:** Communities are not monolithic and companies should be sure to understand the

range of perspectives that exist within them. Companies should engage supporters and opponents of their projects, with government and citizens, with men and women, and with representatives and the people whom they represent. Where there are multiple social groupings within the community (e.g. different ethnic or religious groups), companies should be sure that they engage all groups robustly.

The points above should be understood as a foundation for the remarks that follow, which address more specific situations or issues.

Do not use local authorities as proxies (if possible).

Local officials, even well-intentioned ones, are not always reliable intermediaries. Companies should not assume that they are, even when local regulations require companies to rely on them for certain purposes. They may present the company's activities and intentions to communities in ways that omit important information, drive inappropriate expectations among local people, and exclude important segments of the community. They may also misrepresent community concerns to the company. In the context of large-scale, capital- and land-intensive business operations, the ability to control the flow of information between the company and its stakeholders (in either direction) can be a source of considerable influence and power. Officials in key positions acting in bad faith may misrepresent issues and positions deliberately to advance their own interests, while those who are careless or unskilled may inadvertently harm the company's interests or damage the company-community relationship. To guard against these possibilities, companies should maintain relationships and communicate directly and past the point of redundancy with a broad range of local people. They should do so through multiple, overlapping channels of communication.

Work with the right representatives. Communities, or in some cases segments of local communities, do not always see local authorities or intermediaries (whether formal or informal) as their legitimate representatives. Relying on representatives who do not have the confidence of the local community to speak and make decisions on their behalf can drive conflict and tensions within communities, or between the company and communities.

At the same time, avoiding the duly constituted authorities may not be an option. Although companies may not be able to prevent opportunists from trying to pursue their interests, they may be able to contain or limit this by taking steps to ensure that representatives are accountable to communities. Companies have found a number of effective ways to adapt to these scenarios by balancing the need to recognise duly constituted authorities with the need to ensure that a broad range of community perspectives are accounted for in decision-making. Companies should:

- ask community members who they trust to speak on their behalf in negotiations and discussions with the company;
- convene meetings with representatives in open, public settings and ensure that the community is able to observe the meetings;
- establish processes for validating publicly the decisions made by representatives and the perspectives articulated by representatives in discussions by, say, convening community meetings to review the minutes of discussions with representatives;
- establish participatory processes, such as rapid rural appraisals, for determining community needs. Ask putative representatives to lead or participate in those processes alongside other members of the community; and
- facilitate engagement of marginalised groups (such as women or indigenous groups) that do not participate in community discussions alongside members of other groups by providing dedicated channels or discussions.

Recruitment of unskilled labour. In areas where there are few economic opportunities, communities in the vicinity of company projects may have very high expectations for employment. Individuals who manage labour recruitment processes, whether outside or inside the company, may engage in corrupt or nepotistic practices, or experience pressure to engage in such practices. In areas where social groups that are in tension with one another are eligible for the same

employment opportunities, competition over jobs can generate or deepen conflict.

Companies should determine an appropriate modality of local recruitment through dialogue with a broad range of local stakeholders; they should ensure that they engage across local lines of tension and conflict. Companies should endeavour to facilitate agreements among parties in tension or conflict with each other about how fair and transparent hiring should be implemented, and how fair outcomes are defined, before hiring begins. Some companies have found it useful to engage third-party, professional mediators for this purpose.

Hand over as much real responsibility as possible.

Inviting communities or their representatives into decision-making processes as full participants ensures their input, contributes to transparency, and may also strengthen the company's positive reputation within communities. Companies might achieve this by, for example, inviting a number of local people (selected or endorsed by the community) to sit on grievance or social investment committees. Companies that consider this option should be prepared to give appropriate levels of real decision-making power to those representatives. Including community members on committees may backfire if the community's legitimate representatives feel that they are sidelined in committee processes.

No free services. Providing services directly, or building infrastructure for the benefit of communities, may be understood as a signal that the company accepts responsibility for the community and for its development. Companies that take this course of action often find that demands for services only increase, and that communities grow frustrated with the company if it does not maintain the infrastructure that it has put in place, at its own expense. This is the opposite of sustainability. Charge modest user fees or solicit matching funds or volunteer labour from the community for such projects, if government offices are unable to implement them.

Conclusion

Fragile contexts are among the most difficult operating environments for companies. Operating in a manner that is not well adapted to governance deficits in the operational environment does nothing to mitigate the risks that fragility exacerbates; in some cases, it may intensify them.

Companies may be able to identify constructive ways of working with local stakeholders that help to address or mitigate deficits in governance. This practice note describes operational approaches that companies have found effective in a range of different fragile contexts. Companies with ongoing operations in fragile settings might also find them useful, with appropriate adaptations to their own contexts.

About this note

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Endnotes

- 1 This practice note is based on International Alert and CDA's collective experience working with companies in fragile and conflict-affected contexts. It includes concrete examples drawn from the experience of companies and builds on insights that have in some instances been articulated in other International Alert or CDA publications.
- 2 Tacit approval of local communities based on their perception of the balance of positive and negative impacts of a company's presence and activities
- 3 UN Working Group on Business and Human Rights, Business, human rights and conflict-affected regions: Towards heightened action, New York: United Nations, 2020, p.5, para 17

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Cover photo: A worker walks at aTullow Oil explorational drilling site in Lokichar, Turkana County, Kenya, February 8, 2018.
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