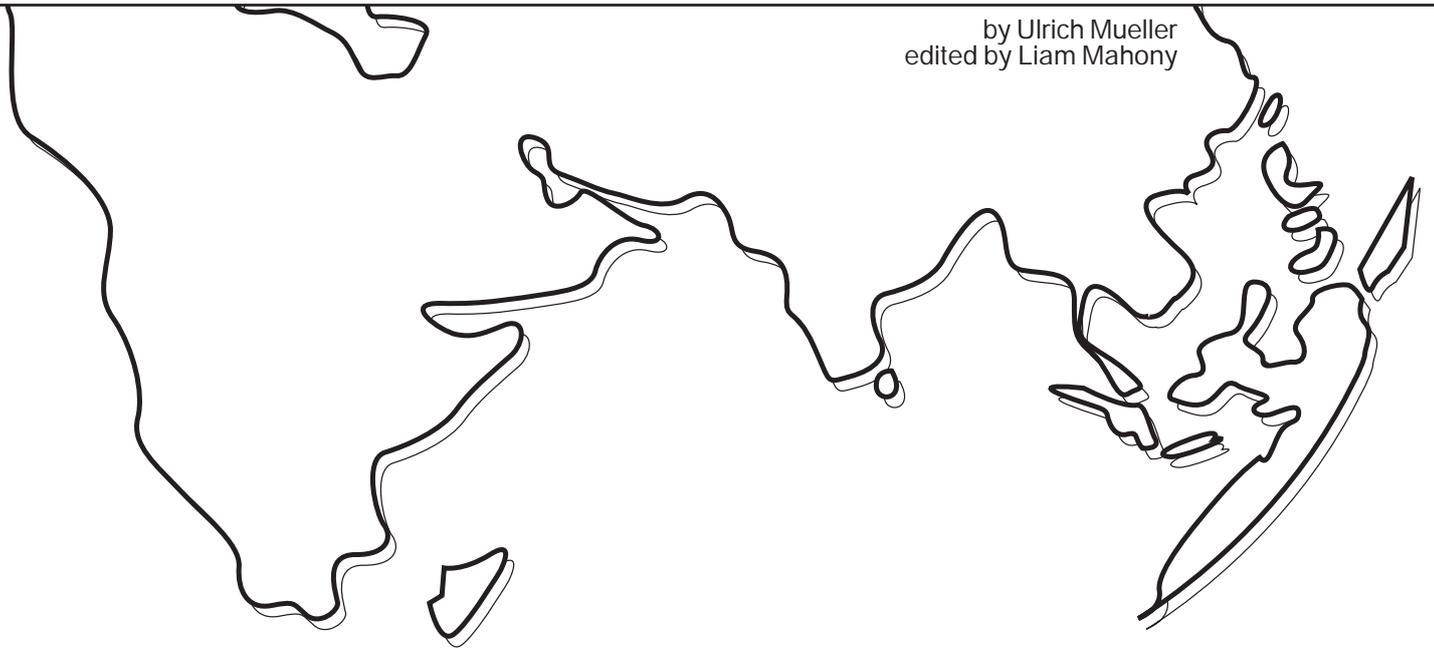


Leveraging the Money

Enforcing human rights by influencing financial institutions

by Ulrich Mueller
edited by Liam Mahony



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FoodFirst Information and Action Network

The FoodFirst Information and Action Network (FIAN) is the international human rights organization for the right to food. Our vision is the full realization of the human right to food. We assist national and international struggles to realize the human right to adequate food through specific actions. FIAN documents and publicizes violations of the right to feed oneself and works towards ending those violations through international interventions, campaigns, lobbying activities and human rights education.

FIAN is a grassroots organization with members in some 60 countries and sections (established offshoots) and coordinations (informal networks) in 19 countries in Africa, Asia, Europe and Latin America. FIAN Germany has about 1,200 members and runs campaigns on issues like agrarian reform, human rights standards in the flower industry and on human rights violations in the gold mining industry.



September 2004

Dear Friend,

Welcome to the New Tactics in Human Rights Tactical Notebook Series. In each notebook a human rights practitioner describes an innovative tactic that was used successfully in advancing human rights. The authors are part of the broad and diverse human rights movement, including nongovernment and government perspectives, educators, law enforcement personnel, truth and reconciliation processes, women's rights and mental health advocates. They have both adapted and pioneered tactics that have contributed to human rights in their home countries. In addition, they have used tactics that, when adapted, can be applied in other countries and other situations to address a variety of issues.

Each notebook contains detailed information on how the author and his or her organization achieved what they did. We want to inspire other human rights practitioners to think tactically — and to broaden the realm of tactics considered to effectively advance human rights.

In this notebook Ulrich Mueller describes a strategy of the FoodFirst Information and Action Network to influence large mining operations that were causing various human rights abuses, by putting pressure on banks and other financial institutions that invest in those mines. The notebook provides a thorough analysis of the kinds of research and pressure tactics that can provide an important new source of leverage for communities that are trying to counter the damage that can be caused by huge corporate projects on or near their land. This tactic can be extended to cover a broad range of issues in which there is a need to pressure corporations, as it takes into account their crucial dependence on the globalized financial community to invest in their operations, and the growing sensitivity of that financial community to sociopolitical pressure.

The entire series of Tactical Notebooks is available online at www.newtactics.org. Additional notebooks are already available and others will continue to be added over time. On our web site you will also find other tools, including a searchable database of tactics, a discussion forum for human rights practitioners and information about our workshops and symposium. To subscribe to the New Tactics newsletter, please send an e-mail to newtactics@cvt.org.

The New Tactics in Human Rights Project is an international initiative led by a diverse group of organizations and practitioners from around the world. The project is coordinated by the Center for Victims of Torture and grew out of our experiences as a creator of new tactics and as a treatment center that also advocates for the protection of human rights from a unique position — one of healing and reclaiming civic leadership.

We hope that you will find these notebooks informational and thought-provoking.

Sincerely,

A handwritten signature in cursive script that reads "Kate Kelsch".

Kate Kelsch

New Tactics Project Manager

Introduction

This notebook explains how the FoodFirst Information and Action Network influenced financial institutions to promote better protections for human rights or to prevent projects that would lead to human rights violations. FIAN Germany used this tactic mainly in a campaign against violations of the right-to-food caused by large surface gold mines. The campaign cooperates closely with affected communities and local organizations. Together with these partners, FIAN investigates the human rights problems of specific mines. We then use a number of instruments to bring the findings to the attention of investors and the pub-



Tailings dam in Ghana.

lic: fact-finding mission reports, calls for urgent action among members, involving human rights bodies at the national and international level, media work, speaker tours, conferences and lobbying. This combination provides new leverage to influence financial institutions and mining companies. And this in turn helps affected communities to claim their rights under difficult circumstances.

We started to support mining-affected communities in 1995. The first contacts we had were with communities in Peru and Turkey. In some of these cases, German investors were involved in financing the mines. This gave us an opportunity to link human rights violations in other countries to actors in Germany. And it also proved to be an effective tool to put pressure on the mining companies. From that starting point, FIAN began using investor pressure as a primary tactic in its gold mining campaign.

The tactic of directing campaigns toward financial institutions is not limited to mining. As financial institutions are, more and more, a powerful economic force worldwide, this tactic could be used in a variety of ways in other cases of corporate abuse:

Industry-wide campaigns are pressing financial institutions like banks or pension funds to withdraw support from specific industrial sectors or to pressure companies in that sector to adopt new standards or practices.

Campaigns might also focus on an individual company or a specifically harmful project (like large infrastructure projects, dams, mines, etc.). In these cases, investors might be urged to withdraw their support from a specific project or to pressure the company to change their behavior.

Additionally, campaigns might focus on financial market practices themselves and demand new investment rules and practices like ethical investment.

This notebook focuses on project-level campaigning, using the example of a gold-mining project in Ghana. It will start with background information on the human rights impacts of surface gold mining. The elements of the tactic will be explained and illustrated through the example. The second part will discuss what questions are important when using the tactic and how the tactic could be transferred.

Background: A new gold rush

In the 1980s there was a new gold rush in many countries, especially in developing countries. It was mainly fueled by the deregulation of the mining industry, the privatization of mining companies and the spread of new, cheap technologies—in particular cyanide leaching for large surface mines. This technology uses highly toxic cyanide to dissolve the gold contained in the ore. It makes it profitable to mine ore with as little as 1 or 2 grams of gold per ton. As a consequence, many new surface gold mines were built or planned.

COMMUNITIES BEAR THE BURDEN

The mines severely affect the livelihoods of communities near the mine and cause human rights violations and environmental destruction. Without going into too many details, the most common problems are:

Land conflicts. The mines use large pieces of land. A single mining concession might cover about 150 to 300 square kilometers. Companies and state authorities evict people from that land or take parts of their farmland. For example, in Ghana, about 30,000 people were displaced by gold mining operations between 1990 and 1998. In most cases, compensation was nil, or far too low to sustain the livelihoods of the people displaced.

Water and soil pollution. The mines often pollute wells, streams and soil in the region. The pollution stems from accidents like cyanide spills or leaks as well as from the regular operation of the mine. The water is polluted mainly by heavy metals from the crushed ore, cyanide or acid. Cyanide is a highly toxic chemical that

even in small quantities can kill animals and humans. The water pollution creates health problems and also destroys or diminishes fish resources that are a food source for the communities.

Harassment and repression. Communities experience a lot of harassment from security personnel. Also, state authorities often react with pressure and repression against people who claim their rights or try to resist the companies. “Our people have suffered beatings, imprisonment and murder for standing up for our community rights against multinational mining companies,” says Daniel Owusu-Koranteng, a mining activist from the Tarkwa district of Ghana. In some cases, the gold mines also fuel regional conflicts and foster militarization.

Other possible problems include health impacts, often related to water but also dust; the disposal of tailings (residues created during ore processing) into rivers or the sea; unclear rules for mine closure; and others. Communities normally don’t have a chance to participate in the planning of new mines. (For more on a tactic that brings together indigenous communities and large corporations in fair negotiations see *Recipe for Dialogue*, by Jo Render, available at www.newtactics.org.) Normally, states have full control over the land once gold is found. Even if communities fear or know that the mines will have negative impacts on their livelihood, it is difficult for them to make their voices heard.

A new tactic to support affected communities

Mining also provides difficult political challenges for the communities:

- Mining companies enter the scene like a new, large actor that seems out of reach.
- Mining companies often don’t seem to care much about the communities.
- In many cases, the mining and environmental regulations are weak—often purposefully so, to attract mining companies and foreign investments.

- Mining companies tend to have close relationships with government authorities, not only with the ministries responsible for economic affairs and mining, but also with environmental departments and local authorities.

As a result, the communities are in a very weak position to claim their rights and stand up against the mining companies (see figure 1). The mining company operates on a favorable terrain due to good relationships with state authorities, weak regulation and weak law enforcement. The communities, then, find themselves largely without influence. Figure 1 refers to an already existing mine; in most cases, the situation would be very similar during the process of developing the mining project.

CHANGING THE TERRAIN: BRINGING FINANCIAL INSTITUTIONS INTO THE PICTURE

In this difficult situation, confronting investors in gold mines with the human impacts of their investments can be effective. The mining companies depend on external capital for their operations. Large-scale surface mining is capital-intensive, and financial institutions have played and continue to play a major role in the growth of the gold mining industry. Confronting them with the human rights violations of projects or companies they invest in provides new leverage for the communities (see figure 2).

Investors have influence over companies. For many large projects, like mines and dams, companies need large sums of external capital. Even when a project has already been financed, financial institutions have some sort of oversight over the companies. Their actual day-to-day oversight usually is very weak but they have the potential for much greater power. And it is exactly that gap between power and weak routine oversight that can be the starting point for financial advocacy.

Investment institutions tend to be more responsive than the mining companies. They don’t want to be associated with human rights violations because it threatens their image. Because they have more rela-

FIGURE 1: COMMUNITIES ARE OFTEN IN A WEAK POSITION AGAINST MINING COMPANIES.

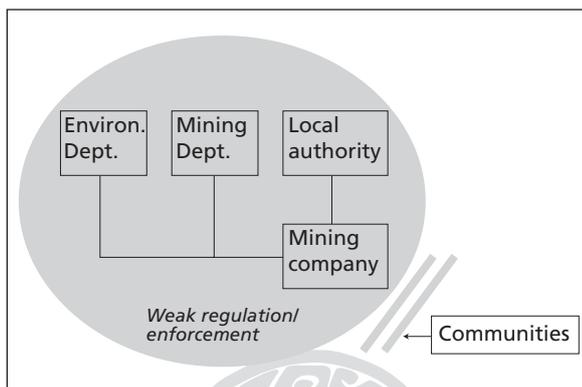
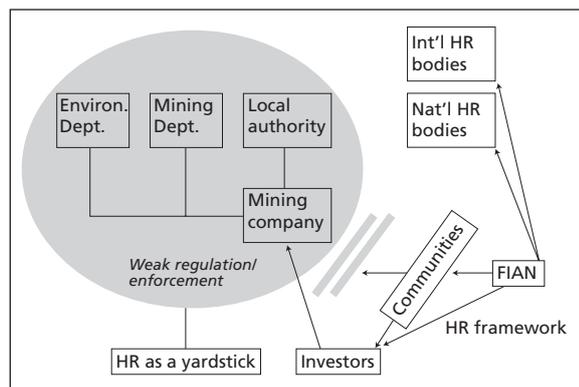


FIGURE 2: CHANGING THE TERRAIN BY BRINGING IN INVESTORS



tions to consumers, they tend to be more sensitive than a gold mining company. They might also come under political pressure—this is especially true for public banks. For them, mining is just one of many sectors they invest in, not their core business.

Investment relationships provide an opportunity to connect human rights violations in other countries to actors in our own countries, like Germany. So, we can raise awareness and public pressure. This is important because gold mining companies don't enter the consumer market, making them less susceptible to public pressure than diamond or oil companies (DeBeers, BP, Exxon, Shell and are all consumer brands).

Bringing in the human rights discourse expands the tools available to the communities. The issues these communities are confronting are often viewed as questions of economic development or perhaps as environmental concerns. By placing these questions within the context of "human rights," the communities have access to additional tools to defend themselves.

It allows them to engage national human rights commissions, courts or the human right bodies of the United Nations. Courts and human rights commissions sometimes are more independent from the mining companies than other state authorities.

International human rights law can provide a more rigorous yardstick for judging impact on communities, especially if national law is weak. For example, in Ghana the law allows land to be used for mining by companies in exchange for compensation to farmers only for the plants growing on their land, not for the land itself. This clearly violates the farmers' right to food, so within a context of economic and social human rights it can be argued that national law cannot be the only guiding criteria.

Defining the issue in terms of human rights is also empowering to the community. They become rights-holders instead of victims. This gives them a more confident attitude towards the mine, investors and authorities.

The tactic requires close cooperation with affected communities. This cooperation is one of FIAN's guiding principles, but it is also necessary from a tactical point of view: Close ties to affected people informs the research and helps monitor ongoing developments on the ground. The partners engage in local activities to build up the pressure. It's a two-way approach: pressuring mining companies in their local contexts as well as through their international, financial ties.

In short, the tactic confronts financial institutions with the human rights impacts of the projects in which they

invest. The investors provide new leverage points and opportunities to circumvent existing roadblocks for the communities or mechanisms of exclusion. This approach changes the terrain of the struggle by engaging new actors (financial institutions as well as human rights organizations) and by using a different perspective and yardstick to influence the debate.

THE GOALS AND THE TACTIC IN CONTEXT

We used this tactic in the gold mining campaign in order to stop or prevent human rights violations by gold mining companies. The specific goals vary from case to case, from the prevention of a new mine to the mitigation of human rights violations and environmental problems at existing mines. To set these goals, FIAN relies on the positions and goals of the affected communities. Additionally, the work done on single gold mines should serve as precedents and thereby contribute to the development of stricter rules for mining and a better handling of human rights issues by investors overall. The tactic is part of a larger campaign on gold mining that uses other tactics as well, like legislative proposals or court cases.

ACHIEVEMENTS

The tactic brought good results in specific cases: Investors changed their investment decisions or adopted additional measures to mitigate or solve the human rights problems. We have so far only made limited progress in incorporating human rights into the general policy of investors. FIAN contributed to the general pressure on banks and lenders to acknowledge and meet their own responsibilities brought by a wide range of campaigns all over the world.

THE IDUAPRIEM EXAMPLE

Ghana has seen a new gold rush since the 1980s. In the Wassa West District in the Western Region of Ghana, many people and communities suffer because of the number of open surface mines near them. The city of Tarkwa is surrounded by gold mines. A local organization, the Wassa Association of Communities Affected by Mining (WACAM), organizes the communities and fights for their rights. WACAM works in about 55 communities with a total estimated population of about 150,000 people.

One of the mines near Tarkwa is the Iduapriem mine, owned by Ghana Australian Goldfields (GAG). One of the lenders for GAG is the German Investment and Development Company (DEG, for Deutsche Investitions - und Entwicklungsgesellschaft). DEG gave a loan to GAG early in the 1990s in cooperation with the International Financial Corporation (IFC, part of the World Bank Group). IFC holds 20 percent of the shares of GAG.

Investigation and launching the campaign

In autumn 1999, FIAN did its first fact-finding mission in the region, in cooperation with WACAM. During that visit, FIAN investigated the impact of the Iduapriem mine: People had been forcibly resettled without proper compensation and had lost access to their former land. Water pollution and its health effects were also a major problem. There were reports of harassment by security forces, as well as other problems.

In October 2000, we presented our findings to the public during a conference in Berlin on cyanide-based gold mining and its effects on sustainable development.

The conference focused especially on DEG because DEG was involved in several mines we were working on at that time, including those in Peru and Papua New Guinea. The clear focus on the lender DEG also emphasized the connection to German people and corporations. During that conference, a representative of DEG denied the charges. But after the conference, the company took us more seriously as an organization. DEG also informed its partner IFC about our claims. While we are targeting both lenders, we first focused on DEG, later shifting more attention to IFC, which was the main lender and shareholder.

In December 2000, we sent a written report of the human rights violations at the mine to DEG, including eight recommendations for immediate action. DEG promised to examine our claims. In April 2001, we received an aggressive rejoinder to our report from the mine. We investigated the allegations again in 2001 in a second fact-finding mission and prepared a short second report confirming its findings.

MULTIPLE PRESSURE STRATEGIES

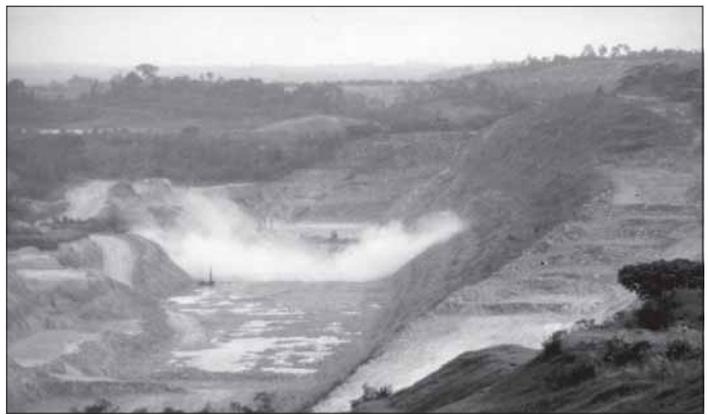
FIAN had further meetings with DEG and IFC in 2001 and 2002. The meetings weren't particularly fruitful. On the one hand, DEG said that it would need neutral, objective evidence of the human rights violations to

Acronyms of Key Players

GAG	Ghana Australian Goldfields
DEG	Deutsche Investitions - und Entwicklungsgesellschaft (German Investment and Development Company)
IFC	International Financial Corporation
WACAM	Wassa Association of Communities Against Mining
FIAN	FoodFirst Information and Action Network



Representatives from lenders and NGOs on a field visit to Adisakrom, adjacent to the Iduapriem mine, 2002. On left: Daniel Owusu-Koranteng from WACAM.



Blasting in the active pit of the Iduapriem mine, 2002.

do more. On the other hand, DEG claimed to already be pressuring the company to produce a community development plan during a process to restructure the loan. But there was no visible progress on the ground and no investigation underway by DEG or IFC themselves. DEG always asked for objective information or "proof" of human rights violations before they could take up the issue. We argued that it was their duty to investigate the issues at stake.

While that exchange was going on, FIAN tried to build up pressure in other ways. The Ghanaian Commission for Human Rights and Administrative Justice started its own research on the problems caused by gold mining after receiving our reports. Their own preliminary report confirmed our results and spoke of "gross violations of human rights" by gold mining operations in the Wassa region.¹

We also included the violations at the mine in a parallel report to the United Nations Committee on Economic, Social and Cultural Rights. Along with two other NGOs, we argued that the case showed how the Ger-

¹The commission has also been involved in successful efforts to use the influence of community leaders to end the traditional practice of sexual slavery known as *trokosi*. To learn more, see *Powerful Persuasion: Combating traditional practices that violate human rights*, by Emile Short, available at www.newtactics.org.

man government didn't comply with international obligations under the International Covenant on Economic, Social and Cultural Rights. The concluding observations of the committee encouraged the German government to do all it can as a member of international financial institutions to ensure that the policies and decisions of those organizations are in conformity with its human rights obligations. The UN committee didn't mention the lenders, but nevertheless the NGO report was known in the government and added to the pressure on DEG from the German development ministry.

In early 2002, the German parliament adopted a resolution that criticized cyanide-based gold mining and stated that a heap-leaching mine (like the mine in Ghana) could never get permission to operate if it were in Germany. The catalyst for the resolution was the cyanide disaster in the Romanian mine Baia Mare in 2000. We supported the resolution and used it later in letters and press work. The resolution did not mention DEG explicitly, nor did it bring up the issue of financial support to gold mines by public lenders, but DEG felt the implied pressure. While they didn't respond officially, it became clear in some discussions

that they were not happy with the resolution. Simultaneously, there were developments on other issues related to gold mining in Ghana that helped keep the topic alive.

In 2002, FIAN organized another conference that focused on a better way to deal with gold. The Iduapriem mine served as one example for the problems of surface gold mining. We invited the executive director of Wassa Association of Communities Against Mining to the conference and organized a speaking tour that included a meeting with DEG representatives and a visit to the German development ministry, which is the supervising ministry for DEG. We thought it would be good for the representatives of DEG and the ministry to hear the stories from local representatives. During that visit, DEG made some vague comments about an ongoing restructuring of the loan to the mine. They mentioned that the contracts should be signed very soon and that there should be a field visit afterwards.

At that point, we decided that more pressure was needed to move things forward. We sent a harsh letter to DEG and the development ministry informing them about the "vague comments" made by DEG. The letter emphasized that this way of moving ahead was unacceptable and that the human rights violations must be investigated prior to any new contract. The letter was addressed to the top level of DEG and the minister herself. Before that time, most of the contacts had been on the working level. We and WACAM also sent letters to DEG's partner IFC and asked international partners to do the same. Additionally, we organized some press work. Although there was not much press coverage, one article in a leading newspaper showed that there was media interest in the story, a potential threat to the lenders.

Action plan summary

The action plan agreed to by the mine, the lenders and the NGOs includes important steps for the communities:

Water: New boreholes for two villages; independent water analysis and regular information on water quality; construction of appropriate sanitation facilities.

Compensation: Reexamination of past compensation and appropriate remedial measures to restore or replace livelihood; better access to land; agricultural survey (looking into reduced yields); and capacity building.

Health: Health survey; support for communities in access to medical assistance.

Employment: More and more transparent employment processes.

Education: Commitment to set up new educational facilities, scholarships for students and sponsorship for schools.

Better consultation with the communities.

Other issues linked to transportation, infrastructure and blasting, as well as to specific communities.

Additionally, a community development plan was set up to support communities in developing new sources of livelihood.

Some issues remained unresolved, including reparations for people affected by the cyanide spill in 1996.

THE JOINT FIELD VISIT AND ACTION PLAN

This combination of pressure finally yielded results, when the lenders agreed to do a joint field visit together with WACAM and FIAN. This joint field visit set in motion a much more action-oriented negotiation. WACAM and FIAN managed to ensure that the lenders on the trip took enough time to visit the affected communities. Normally the mining company would have shown them showcase areas and only talked to people who supported or profited from the mine. We negotiated a terms-of-reference paper before the field visit, which included a list of communities the lenders were committed to visit. The village of Nkwantakrom, one of the worst affected communities, was on that list. It would otherwise not have been visited, as it is treated as an illegal settlement by the mine. In the field, our main approach was to let the people in the communities tell their stories themselves and make sure that the lenders would listen. In addition to the meetings in the villages, we had meetings

inside the mine, where we would once again bring up the issues of the communities.

In one of the meetings at the end of the trip, FIAN and WACAM proposed a list of issues that needed to be addressed. This list formed the starting point for the mine, the lenders and the NGOs to negotiate an action plan in the months following the field trip. This negotiation was done mainly by e-mail or phone on the basis of the list presented in Ghana. After the field trip, IFC was the leading agency among the lenders, so the focus of our contact shifted from DEG to IFC. During this process, we were willing to compromise to keep things moving and in some cases we agreed to disagree. In other cases the action plan eventually listed initial steps, like studies, instead of full-fledged solutions, in our view. Nevertheless, there seemed to be a willingness to try to mitigate the abuses. The fact that GAG needed to restructure its loans may also have helped. The action plan was included in the restructuring negotiations.

The action plan included provisions on water, land and compensation, health, education and more (see summary p.10). This action plan doesn't solve all problems, but it is a positive step forward. It also lays out rules for ongoing monitoring. The process of implementation is still ongoing and problematic on some issues. Our main relationship now is with IFC, as DEG delegated the implementation to them. But we also stay in touch with DEG. A second joint field visit of lenders and NGOs in 2004 showed that there is still a lot to do. FIAN and WACAM are still monitoring the process and pointing out problems and unresolved issues.

Why the tactic works: Finding the leverage points

The foundation of the tactic is that financial institutions are strong and vulnerable at the same time. They have enormous economic and political clout. But their public image is important to them and political pressure will influence them. They are often in a disadvantaged position in terms of information, dependent on the assurances and reports of their clients that their behavior is in line with legal and moral standards. Therefore, human rights organizations can make a difference. To find the right leverage points and constituencies, let's take a closer look at the range of financial institutions and the features of project finance.

BACKGROUND: FINANCIAL INSTITUTIONS AND PROJECT FINANCE

There is a wide variety of institutions providing capital for companies: commercial and investment banks, government-owned institutions, multilateral development banks, pension funds, mutual funds, insurance companies and more. They all perform three important financial services:

Credit extension: providing debt financing by making loans to companies

Equity: providing equity by buying stock in companies

Underwriting: helping companies handle risk by agreeing to buy a guaranteed amount of new stocks, bonds or options from a company that will be resold to the public with a certain price difference or issuing insurance for a certain project.

These services are provided by private enterprises as well as by public institutions such as bilateral development banks or multilateral banks, like the World Bank Group. To finance a large project like a gold mine, normally all three types of financial services would be combined. For example, IFC might provide a loan together with other public banks like DEG and buy a limited amount of equity. Additional loans would come from commercial banks. They might also be stakeholders of the mining companies. Any large extractive industries project would also need risk guarantees that might come from insurance companies, export credit agencies, the Multilateral Investment Guarantee Agency of the World Bank Group and other multilateral banks.

The loans might run for 10 to 15 years or even longer. The amount involved is rarely less than \$10 million and up to several hundred million dollars. Often banks work together in providing such loans. The primary source of repayment is the cash flow generated by the project itself. The liability of the corporate borrowers is usually limited: They don't need to put extra money into the project if the project fails. The consequences of this limited liability are:

- Lenders have high interest in the profitability of the specific project.
- Project risks are of specific interest for the lenders.

Thus, risk assessment is crucial to financial institutions. Risk can be financial or operational, but also political. Perceived risks related to human rights, social or environmental concerns include:

- possibility of a lawsuit or legal complications over these controversial issues;
- costly delays in construction or permitting and siting;
- political unrest or local opposition;
- future clean-up and mitigation costs or fines;
- regulatory or market changes, which may reduce returns;
- labor issues, including work stoppage or liabilities for injuries;
- negative publicity.

Lenders try to identify the risk associated with a project in a process known as "due diligence." A credit





Cyanide leaching in Peru.

officer or analyst looks into all the information relevant to meeting regulatory or other disclosure guidelines. This process is important for the financial institutions because of possible litigation threats. For activists, it's an important entry point. They could argue that the human rights issues might lead to risks and that by not taking these concerns into account the lender doesn't fulfill its "due diligence." This kind of risk-exposure approach is also known as bottom-line leverage—one of many types of leverage in financial advocacy.

DIFFERENT TYPES OF LEVERAGE OVER FINANCIAL INSTITUTIONS

Below is an overview of four basic types of leverage for convincing financial institutions it's in their best interest to support human rights. The categories are adapted from *Leverage for the Environment: A Guide to the Private Financial Services Industry*, World Resources Institute 1998, by John Ganzi, Frances Seymour and Sandy Buffett.

Bottom-line leverage demonstrates to financial institutions that taking human rights and community issues into account will improve the financial performance—or, in contrast, that not taking them into account will lead to increased financial risks. To use this approach you must translate your concerns into a language of risks (and opportunities, if any). Targets for contact could be the credit officers or project managers responsible for the specific project, technical experts and counselors involved in analyzing, clearing and monitoring the project as well as senior management and external analysts or rating agencies.

Policy leverage exploits the sensitivity of financial decision-makers to changes in regulation or to taxation consequences or the more direct influence of policymakers in the case of public financial institutions. Policy leverage might target senior management as well as regulators and policymakers. Depending on the specific target, there might be a whole list of dif-

ferent instruments to use, ranging from letters and meetings to publicity actions.

Reputational leverage uses the (potential) impact of human rights issues on the financial institution's public image. It requires actions to generate positive or negative media attention, like public actions and media work. It might also include encouraging pressure from clients and customers or shareholders.

Values-based leverage exploits the willingness of individual and institutional investors to promote human rights even at the possible expense of financial value. It requires that the financial institutions have at least some demonstrated belief in those values (for example, they may be ethical investment funds or certain pension funds linked to unions).

IDENTIFYING THE RIGHT LEVERAGE POINTS

The value of each leverage point will vary in a particular campaign depending on the financial institutions involved and the specific situation. In project financing there is an important difference between commercial financial institutions and public lenders like the World Bank Group or other bilateral and multilateral banks. Commercial banks are the largest provider of credit worldwide, but public lenders play a special role in project finance. They provide political backing to projects and can open the door to other capital for the borrowers. They have a self-image of being more responsible than private investors, which increases their tendency to address problems and to stay involved in a project. In contrast, commercial banks sometimes divest quickly if the investment is marginal for them.

These differences also have tactical implications. Bottom-line leverage could be used with both kinds of financial institutions. Public lenders might open some new opportunities for policy leverage, whereas commercial banks, which are brand sensitive, might respond better to reputational leverage. In a case involving a commercial bank, we used a more reputational approach with actions and press work around their shareholder meeting. In the Iduapriem case, we exploited the fact that DEG is linked to the German development ministry. With the Social Democrats and Greens in the German government at that time, that opened opportunities for policy leverage. Additionally, the DEG case involved reputational and value-based elements.

A second aspect to consider is that project finance involves different people, departments and institutions throughout the process. Usually, the corporate client would contact the financial institution via an account officer. Then the deal would be discussed within the financial institution by credit officers, credit committees or even the bank's board. Senior management would set criteria and offer guidance for

this process. Internal and external counsel and the technical service departments would review the proposed deal. After approval, the responsible account officer or project manager would handle the project.

These different people have different responsibilities and might be targeted differently. For technical services and credit officers, a bottom-line approach usually would be the best. Senior managers might not look into all of the details, but are likely to be more aware of the overall picture. Therefore, they might react more strongly to policy, reputational or value-based pressure. It should be noted that these people will come from different backgrounds and might be individually more sympathetic or hostile to your campaign.

It is also important to ascertain the stage of the lending process. Are the financial contracts already signed or are loans still being negotiated? Has the project already been running for a while or is it still in a phase of preparation and construction? During a first assessment of a new project proposal, financial institutions would be more open to new information on possible risks.

How the tactic works

KEY PHASES OF THE TACTIC

The following scheme tries to outline some key phases of the tactic. It's an ideal model; in reality, phases tend to get mixed and the events might jump back and forth.

These steps presume that a human rights problem has already been identified and that a relationship has been established with the affected communities. It proceeds from the stage where financial institutions are brought into the process.

Phase 1: Planning and researching financial institutions.

What financial institutions are involved? What kind of new leverage might they provide? Is this leverage promising enough to attempt to use this tactic?

Phase 2: Publicizing the human rights violations.

You may choose to bring the violations to the attention of investors and the general public via written reports, media releases, etc., while informing the financial institutions of your actions.

Phase 3: Convincing the investors to reconsider their position.

This decisive period might be a longer phase. Depending on the investor, you may need to use a number of instruments. These might include meeting with the investors, working with the media, taking legislative

steps, sending reports to human right bodies and others.

Phase 4: Influencing how the investors want to solve the problem (up to negotiations).

Once the investors decide to act, it is important to influence the proposed solutions.

Phase 5: Follow-up: monitoring the implementation.

Phase 6: Possible extension: pressuring the investor to change its policies.

The timing and emphasis will depend on the specifics of the cases and the available opportunities. Let's look in detail at the key phases:

PHASE 1: DIAGNOSIS AND PLANNING

Is this the appropriate tactic in the situation?

Before approaching financial institutions you need to analyze the situation and think about the specific opportunity structures in your case. First, of course, you need to know what investors are involved in a specific project or company.

Helpful sources of information for this purpose (for details, see appendix):

The companies' annual reports and the investor-relations part of their Web sites. Here you should find a list of major shareholders of the company. Sometimes you might also find news about major financial contracts and financial relations, which are also helpful for collecting some basic information about the company.

Specialized and sometimes costly databases with information on project finance and other financial information are available. If these are too expensive, you might access these databases by either asking for a (time-limited) trial version or by seeking out a friendly analyst or ethical investment company that might help—or even a good library. Additionally, there are a number of specialized Web sites on companies and project finance. *The Campaigners' Guide to Financial Markets* lists many good sources of information.

A number of NGOs or networks monitor or pressure financial institutions (e.g. BankTrack, the Bank Information Center for the World Bank, IFIwatch or CEE Bankwatch). Ask them or search their Web sites for information. They might also have access to some of the commercial databases.

General Web searching might be helpful, too. You can find out whether other organizations work on the project or with the company and locate helpful news articles or presentations.





Affected communities protesting against mining, Ghana 2002.

unit or a board member with a special responsibility on these issues?

Have they signed the Equator Principles or other codes of conduct?²

To what extent do they provide a chance to bring a topic to the attention of the public? Does this investor's involvement help make the story more newsworthy?

Based on that information, strategize about potential leverage points and try to judge beforehand to what extent you could build momentum from within the financial institutions and what external momentum you would need. This is a crucial question because financial institutions will probably initially discount your claims, delay any action or try to satisfy you with vague commitments. Some questions that might help in analyzing that aspect include:

- How could you build momentum to act from within the financial institution? What kind of external support or pressure would you need to succeed?
- What kind of leverage do you think would be most effective with each relevant actor?
- Who else might support your case and might influence the investors?
- Can you work with others, such as human rights bodies or organizations that also have an interest in your issue area?

You should also think about what kind and level of public attention you need. Public attention, or the threat to seek publicity, is helpful, but the campaign doesn't need to make it to the front page in every case. This also depends on type of leverage you are using. Reputational leverage will need more public attention than bottom-line leverage. You should also think about what audiences you would address for various leverage points. For financial institutions, different papers or journals might be more relevant than in your normal press work.

If you are not sure how you might create the necessary momentum, think of other ways of campaigning. Financial institutions are unlikely to respond unless there is external or internal pressure for change.

Once you know the investors that are involved, you need to find out as much as possible about them, their specific involvement in that project and their position on human rights.

What is the economic situation of the companies involved? How dependent are they on the investors? On whom do the investors themselves depend?

What is the general position of the investors on human rights and social issues? Is there a policy on the environment, social issues or human rights? Is there a

² The Equator Principles are a voluntary set of guidelines developed by commercial banks for managing social and environmental issues related to the financing of development projects. Ten banks adopted them initially in 2003. By 2004, 24 banks had adopted them. NGOs initially welcomed the principles, controversial projects were going ahead virtually unaltered. Nevertheless, the Equator Principles might provide a useful entry point. More information can be found at the official Web site, www.equator-principles.com, or at the NGO Web site BankTrack, www.banktrack.org/index.php?id=47.

PHASES 2 AND 3: ENGAGING WITH THE FINANCIAL INSTITUTIONS

Engaging financial institutions involves holding ordinary lobbying meetings and presenting case studies and arguments. But there are some special considerations that might be helpful, regarding when and whom to contact and how to present the case.

It may be difficult to identify the people involved in a certain project. You can try to learn about them through conversations with a known investor in the project. Brochures for project finance conferences might be also helpful, as well as some directories of project finance or project finance Web sites (see the appendix). When you get to know more people and organizations involved, try to identify who might be potential allies.

Think about who needs to know about your concerns most. Where you have a strong case on financial risks, take it directly to the project finance people. If the campaign centers on the bank's reputation or poor practice, then senior management should be targeted.

A last aspect is the question of timing. As a general rule: Get in early, before many (financial) arrangements are already drawn up, which people from the financial institutions won't want to see collapse. Depending on your strategy, it might be better to contact the financial institutions before going public. This is especially true if you are using a bottom-line approach that tries to convey certain facts or risks to the financial institutions. If you attack first, your arguments might bounce against a strong wall of defense early on.

PRESENTING YOUR CASE

How you present your case will be shaped by the leverage points chosen. If you want to use a bottom-line approach, you should translate human rights concerns into terms of risk. If you primarily use policy, reputational or values-based leverage, you might decide to stick with human rights language, especially if that seems more helpful in public campaigning or feels more comfortable and easier to handle for you. If possible, you should tailor your presentation to different audiences in your campaign.

The suggestions below are for a bottom-line approach. This approach represents the greatest departure from the sort of work most NGOs are used to doing.

General recommendations:

- Keep it short. Present information in summary sheets.
- Stress that as an NGO, you receive valuable information from the field, particularly in regard to the political situation.

- Firsthand experience and direct contact with the affected communities can persuade investors to change their views and actions as they get to know the affected people as individuals and hear their stories directly.

Recommendations for achieving bottom-line leverage:

- Keep it factual and nonemotional.
- Try to translate your concerns into financial risk. Quantify risks when possible.
- Use financial concepts and buzzwords. For example, mention that not considering these issues would be "poor management practice" or might not fulfill their obligations for "due diligence."
- Briefly explain who you are and why you are occupying yourself with the project. Don't create an anti-development image and don't threaten a corporate smear campaign.
- If possible, let a friendly financial professional look over your materials before sending it to them.

And a last point: Be persistent. Sometimes lenders might not react quickly, especially if you are working on a project that is already running. It might be difficult to judge if and what kind of progress you really are making. In this case, try to take it step by step and set incremental goals. For example, in the Iduapriem case the first fact-finding mission report included a set of eight recommendations that outlined first steps. But the main goal at that time was to get the lenders to do a real investigation of the mine's impact. If you don't see any progress, think about different access points or consider escalating the argument. A lot of the specific campaigning work will depend on the reactions of the financial institutions. What are their arguments and lines of defense? What measures might you use to overcome those? In many cases you will need to maintain long-term engagement. If such a commitment isn't possible consider using another tactic altogether.

Limits and challenges

The tactical approach described here leaves the existing power of financial institutions mainly unchallenged. Considering some of the negative global impacts of that power, this is arguably a serious limitation. Achievements are limited unless at a certain point governments or international bodies take on the issues and lay down new rules.

Financial market campaigns often generate pressure to engage with companies, which can be controversial. To have a persuasive impact, you need to frame your concerns in a way that financial institutions can understand, especially if you use a bottom-line approach. This kind of engagement might lead to tensions with other more confrontational tactics by your organization or tensions with your partners. Local com-



munities might be especially opposed to dialogue. These potentially conflicting agendas need to be openly discussed before using this tactic. If there is no common ground or agreement on a joint strategy, then financial advocacy might not be the best choice of tactic.

When talking with company representatives, you must be careful not to slowly become co-opted or fooled. Companies might offer meetings and discussions without an actual will for change. They might try to use such meetings to learn about your plans, to steer away from public debate, to use you as an example of their engagement with civil society in their public relations work or to create division among their critics. You need to think about different motives in such a dialogue carefully and evaluate the process every now and then so that you will recognize such problems.³

An important challenge is to maintain a long-term engagement and ensure that the people who are actually affected keep the initiative. Strong and trusting relations with affected groups are important for this tactic.

Transferring the tactic

Clearly the tactic doesn't need to be restricted to extractive industries, nor to the right to food. This tactic has been used by various issue-oriented movements. It can be applied in many other situations where human rights violations are caused by investors or large companies relying on financial institutions. Financial institutions have influence in a whole range of problematic sectors. These investments and global economic processes are often relevant for economic, social and cultural rights—and in some cases, civil and political rights as well. Generally, leverage is greater in sectors that are capital-intensive.

A second important condition is that there must be ways to influence the financial institutions. Investors

must care about human rights, their image, political pressure or other risks that might result from ignoring the problems or concerns. Normally, investors are very sensitive to image threats—more so when they have stronger relations to consumers than to a mining company or other project companies.⁴

- When corporations and industries value their public image, similar kinds of financial advocacy campaigns might be effective.
- Campaigns might also focus on a financial market's practices themselves and demand new investment rules and practices like ethical investment.
- Industry-wide campaigns could urge people to withdraw support from specific industrial sectors or to adopt new standards or practices.
- Investments and financial institutions might also play a role in broader campaigns about human rights violations in specific countries, like the campaigns on divestment from South Africa in the 1970s and '80s.

One might also go a step further and use a similar tactic in relation to important suppliers of companies violating human rights. For example, the Ghanaian organization WACAM prepared a report in 2003 on human rights violations in the Obuasi mine that was sent to Swedish companies supplying the mine with machinery.

The main point is that even powerful companies depend on other actors, like investors, suppliers and buyers. They may think they can ignore communities or critics at the local level, but they do have to satisfy investors or other partners and become vulnerable at that point. So, the main question for the tactic is: Are there new leverage points when dealing with a company that shows no commitment to stop violating human rights? And in many cases, financial institutions open just such opportunities.

³ For discussion related to this concern see also Richter 1998. Also, read *Recipe for Dialogue*, by Jo Render, available at www.newtactics.org.

⁴ For more on external and internal monitoring of business practices, see also *Human Rights and the Corporate Actor*, by Reed Addis, available at www.newtactics.org.

Appendix: Further resources

PUBLICATIONS

Bank Information Center: Bank Information Center's Toolkits for Activists: A User's Guide to the Multilateral Development Banks. 2001.

Available in several languages at http://www.bicusa.org/bicusa/issues/misc_resources/292.php

Chan-Fishel, Michelle. Anatomy of A Deal: A Handbook on International Project Finance. Washington, D.C.: Friends of the Earth. 1996.

Everyone's Guide to Achieving Change: A Step-by-Step Approach to Dialogue with Decision-Makers. Third edition. Oxford Research Group. 2002.

Available at <http://www.oxfordresearchgroup.org.uk/publications/books/achievingchange.pdf>

Ganzi, John, Seymour, Frances, and Buffett, Sandy. *Leverage for the Environment: A Guide to the Private Financial Services Industry.* World Resources Institute 1998.

Looks into commercial banks, investment banks, mutual funds, pension funds, property and casualty insurance, life insurance, venture capital and foundations and discusses different leverage points for each of them. Available at http://www.pubs.wri.org/pubs_description.cfm?PubID=2929

Hildyard, Nicholas, and Mansley, Mark. *The Campaigners' Guide to Financial Markets.* Effective Lobbying of Companies and Financial Institutions. 2001.

Comprehensive guide with many case studies and how-to-do information. Available at <http://www.thecornerhouse.org.uk/pdf/document/camguide.pdf>

Hildyard, Nicholas, and Mansley, Mark. *Financial Market Lobbying: A New Political Space for Activists.* Corner House Briefing No.25. 2002.

Available at <http://www.thecornerhouse.org.uk/briefing/25finmkt.html>

Richter, Judith. *Engineering of Consent: Uncovering Corporate PR Strategies.* Corner House Briefing No.6. 1998.

Available at <http://www.thecornerhouse.org.uk/briefing/06pr.html>

WEB SITES AND ORGANIZATIONS

Bank Information Center

www.bicusa.org

An independent, nonprofit organization based in Washington, D.C., that provides information and strategic support to NGOs and social movements throughout the world on the projects, policies and practices of the Multilateral Development Banks.

BankTrack

www.banktrack.org

Network of activists and organizations working on commercial financial institutions.

CEE Bankwatch Network

www.bankwatch.org

International NGO with 12 member organizations monitoring the activities of International Financial Institutions in Central and Eastern Europe.

IFWatchnet

www.ifwatchnet.org

IFWatchnet connects organizations worldwide that are monitoring international financial institutions such as the World Bank the IMF, and regional development banks.

ECAwatch

www.eca-watch.org

Web site of the international campaign to reform export credit, finance and insurance agencies.

The Business & Human Rights Resource Centre

www.business-humanrights.org

Information on business and human rights, including human rights news and reports on specific companies or sectors.



Danish Institute for Human Rights—Business and Human Rights Project

www.humanrightsbusiness.org

Tools for internal monitoring of human rights standards within a business, research and advisory services.

Note: There are more organizations and networks that focus on different multilateral banks (like the Asian Development Bank) or export credit agencies. They normally can be found by following the links on the Web sites listed above or by using a search engine.

PROJECT FINANCE ON THE INTERNET

Project Finance Portal

www.hbs.edu/projfinportal

The site contains more than 900 links to related sites, which contain data as well as information about companies and particular projects.

International Finance Corporation

www.ifc.org

Includes a database of projects being backed by the IFC, the private sector arm of the World Bank.

Project Finance

www.projectfinancemagazine.com

In addition to providing a searchable database of projects, the site also gives details of companies and project financiers. Free trial period.

Project Finance International

deals.thomsonib.com

PFI is a bimonthly publication reporting on global project finance deals from inception to completion with news, feature articles and deal data (including league tables). For a fee.

World Bank Project Search

www.worldbank.org/projects

Contains information on more than 9,500 World Bank projects, from 1947 to the present.

Note: Further sources of information on companies, financial institutions and project finance can be found in *The Campaigners' Guide to Financial Markets* (see above).

NOTES



To print or download this and other publications in the Tactical Notebook Series,
go to www.newtactics.org.

Online you will also find a searchable database of tactics and
forums for discussion with other human rights practitioners.



The Center for Victims of Torture
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