

Duty of care in Africa: What does it really mean?

As senior managers in resources companies, how often have we deployed an enthusiastic new employee to a remote location on the African continent, without taking the time to really inform him or her of the nature of risks that are likely to be encountered and how best to manage them?

How often have we completed sufficient due diligence to be in a position to map out the risks and put in place risk mitigation measures and appropriate training so that our employees are equipped to manage the associated risks? It is suspected that we have all come up a bit short at one time or another with respect to our duty of care obligations.

So what is duty of care?

It can be defined in both social and legal terms and is the implicit responsibility or the legal obligation of a person or organisation to avoid those acts or omissions, which can be reasonably foreseen, to be likely to cause harm to others.

As directors and senior officers of resource industry companies, we are expected to not only know what goes on within the company, but also to have some appreciation of what goes on in the industry in which we are involved. We are expected to have an understanding of the dynamics of the environments in which we are working and a general knowledge of experiences of others, good and bad, in the industry in similar working environments elsewhere.

How many new employees, who have no prior experience of working in Africa, are likely to have an acceptable level of understanding of how to deal with complex Africa-specific issues such as political and social risk, the occasional unpredictable actions of host country military forces, the behaviour that is promoted by extreme poverty, health risk, and how to deal with institutions that lack the capacity to function properly. The answer is likely to be "not many, if any".

Directors and senior officers in resource industry companies have a duty of care responsibility to provide an appropriate level of

guidance and training to employees before they are deployed to projects and mine sites in Africa. This training must be consistent with the employee's experience in dealing with the risks likely to be encountered.

Poverty and lack of capacity of governments to pay their officials a reasonable and regular salary can lead to adverse behaviour dressed up in local cultural norms, but internationally recognised as acts of bribery and corruption. Employees need to be aware of the domestic and international laws relating to bribery and corruption, particularly the extra-territorial reach of most anti-bribery and corruption legislation. While under some jurisdictions, facilitation payments are legal, employees working at the coal face need to have a clear understanding of where the boundary is between a facilitation payment and an act of bribery. The consequences of not understanding this, and perhaps inadvertently putting a foot wrong, can be serious indeed.

Dealing with the sometimes unpredictable behaviour of military forces can also be a big challenge. Many countries have laws that provide for the military and certain government officials to be able to requisition vehicles and equipment in times of natural disaster or a national security emergency. Such demands if not handled with sensitivity can descend into dangerous situations with extremely adverse consequences.

Health issues on the African continent often demand attention well beyond having the obligatory yellow fever vaccination and a pack of malaria tablets. As resource companies push further and further into previously, relatively undisturbed animal habitats, the opportunity for zoonotic (animal) diseases to jump from animals to humans increases. It is understood that some 75% of emerging infectious diseases come from animal reservoirs. The recent outbreak of the haemorrhagic fever Ebola in West Africa is a disturbing example of this.

The development of modern mining operations in remote locations on the African continent invariably throws up issues of inequity

and asymmetry between the well-being of those at the mine sites and those in the surrounding local communities.

Companies need to have been dealing with such issues well before production starts and in so doing, have engaged appropriately with communities and gone a long way down the road to developing a social licence to operate. Employees who do not appreciate the need to start this process at the first encounter with local communities are unlikely to "not get a second chance to make a good first impression". At the extreme, if handled inappropriately, this can lead to the development of a disaffected community and social unrest with often serious adverse consequences.

Furthermore, a social licence to operate is something that needs to be constantly renewed. Getting off on the right foot is very important to being able to do this.

Directors and senior officers of resource industry companies have a duty of care to their employees, to assess their employees' capabilities of managing the range of risks likely to be encountered during deployment and properly preparing them in advance. This also requires directors and senior officers to have completed appropriate due diligence in order to have identified the risks in the first place. Furthermore, there is a duty to continually monitor situations and refresh the training as circumstances change.

The degree to which a company focuses appropriate attention on duty of care issues will affect the people it can employ, and importantly, the experienced people it will be able to retain. It is simply good business for directors and senior company personnel to deliver on their duty of care obligations to employees. It is also the right thing to do.

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