



'No easy wins for responsible investors' – Interview with Bennett Freeman

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Leading expert on human rights & natural resources on what needs to be done to advance an embattled agenda

Bennett Freeman has been a key figure in a number of influential initiatives over the past decade to improve sustainability, transparency and respect for human rights in the natural resources industries. He now manages the Sustainability Research Department at the US responsible-investment firm Calvert.



As US Deputy Assistant Secretary for Democracy, Human Rights and Labor in 1999-2000, he led the multi-stakeholder development of the Voluntary Principles on Security and Human Rights, which set out standards to guide extractive companies' security arrangements in zones of conflict. He co-authored one of the world's first Human Rights Impact Assessments for BP's Tangguh project in Indonesia. He has also sat on the board of the Extractive Industries Transparency Initiative (EITI) from 2007-09, representing Oxfam America (of which he is a director), and also serves on the Boards of the Revenue Watch Institute, the Institute for Human Rights and Business, the Genocide Intervention Network and EG Justice (an NGO focused on Equatorial Guinea).

1. To start with your current role at Calvert – your company only recently began to invest in oil, gas and mining firms. Until recently, like many other socially responsible investors, you screened them out from all your products. What brought about the change?

Although Calvert has never excluded oil, gas and mining firms as we have (for example) companies producing tobacco, alcoholic beverages and certain types of weapons, very few extractives sector companies have met each and every one of our environmental, social and governance (ESG) criteria as required for potential inclusion in our traditional

"Calvert Signature" SRI funds. In December 2008 we launched Calvert SAGE Strategies, which for the first time offers our shareholders the chance to own companies which do not pass all of our ESG criteria and to benefit from highly focused advocacy—what we call "enhanced engagement"—with some of the largest and most important companies in the world at the same time. Among the holdings in the flagship SAGE offering, the Calvert Large Cap Value Fund are ExxonMobil, BP, Royal Dutch Shell, Conoco Phillips, Marathon, Anadarko, Devon Energy and Newmont. Besides wanting to add a Large Cap Value fund to our array of two dozen SRI mutual funds, this fund allows

us to acknowledge that progress on many of the most critical global sustainability challenges and opportunities is being made by companies which do not meet all of our traditional criteria, and that more progress is necessary and attainable. This approach has been made possible by the mainstreaming of the CSR and broader sustainability agendas over the last decade that has made so many major companies—not least in the extractives sectors—willing to engage on critical issues raised by shareholders and others stakeholders.

Some traditional SRI investors may not want to invest major oil and mining companies that are laggards on certain issues even as they may be emerging leaders on others. We at Calvert understand and respect that choice. But we also are finding that many are attracted by our approach and want to invest in a fund that allows them to be in the trenches trying to influence some of the highest impact companies in the world.

2. What issues do you feel you need to push hardest on during engagement with extractive companies?

We often push on an open door when it comes to human rights and revenue transparency-related issues because we are often asking companies to strengthen established commitments and practices—whether with respect to the Voluntary Principles or the EITI—although we are pushing hard now on the mandatory disclosure legislation—the Energy Security Through Transparency Act (ESTT discussed below).

Clearly we must push hardest on the whole nexus of company positions on climate change-related public policy and their willingness both to establish serious carbon emissions targets and make significant commitments to invest in alternative energy. We believe that all the major oil and gas companies in which we invest face an increasingly carbon-constrained world to which they must adjust, even as they do so in different ways by playing to their own distinct and varied capital structures, technical capabilities, and geographic strengths. We are pragmatic enough to accept that no one company will align its policy commitments and business strategies quite alike—that for example, some may develop low carbon competitive advantage through renewables such as wind, solar and/or biofuels while others are shifting their low carbon investments towards natural gas. Despite some very real competitive differences in their U.S. and global asset bases, we had been impressed by the alignment of BP, Shell and ConocoPhillips in the U.S. Climate Action Partnership (USCAP) in support of cap-and-trade legislation alongside major environmental groups, together with non-extractives behemoths such as GE and DuPont. ConocoPhillips's exit from USCAP was little surprise as it made its discomfort with the Waxman-Markey and then Senate bill clear, but BP's February exit apparently reflected an assessment that the passage of cap-and-trade legislation was no longer inevitable and its own disappointment with what it considered to be the inadequate treatment of natural gas in the legislation.

We will push harder than ever because we believe as profoundly as ever that

climate change poses inescapable risks and irresistible opportunities alike for oil and gas companies. We will further differentiate our approaches with the major extractives companies in our portfolio by emphasizing company-level emissions reductions—along with the more aggressive development of different types of alternative energy most appropriate to those individual companies' capabilities and markets. At the same time we will continue to support energy legislation in the U.S. that will provide further incentives to the development of alternative energy—especially renewables—at a time when oil prices remain too volatile to be a catalyst for investment.

3. Are you making much progress? Is it really worth companies making the changes to their operations that you request, given that Calvert controls a relatively small slice of the world's finance?

Drawing on the relationships that I brought to Calvert in 2006, we had already engaged on several issues with BP, Shell and ExxonMobil for a couple of years prior to the launch of the Calvert Large Cap Value Fund—even though these companies were not yet held in any Calvert fund. But since we only began to engage comprehensively with the launch of the fund in December 2008, our first year goal has been to establish high-level, high quality engagement with these and other non-extractive companies in the fund (such as GE, Dow Chemical and Wal-Mart) around Calvert's specific objectives. We have succeeded in doing so across the board, and even scored a clear victory when Newmont agreed at our urging and Oxfam America's-- to endorse

publicly the Energy Security Through Transparency Act (ESTT) when it was introduced last September. We have seen progress towards one or more of our objectives with many of the companies-- extractives and non-extractives alike-- and we expect to see more in 2010.

But even though we believe that our objectives are not only desirable but also potentially attainable within several years, we know how difficult it is to move some of the biggest companies on some of the toughest sustainability issues in the world. There are few clear let alone easy wins in the shareholder advocacy and corporate engagement business, whether for investors or NGOs.

4. Turning now to revenue transparency and the EITI, where you were a board member until last year. 2010 is a big year for the initiative, with 22 of the 28 implementing countries facing their validation deadline in March. Is the EITI ready to meet the challenges?

This spring—and indeed throughout 2010—the efficacy, accountability and credibility of the EITI will be tested on a series of tough validation decisions. The fact that 20 of the 22 implementing countries missed the first-ever validation deadline is very disappointing, as appropriately emphasized in a round of press statements released by the Publish What You Pay Coalition, Global Witness, the Revenue Watch Institute, Oxfam International and Human Rights Watch. The missed deadlines reflect the slow progress towards compliance in many of these countries, and reinforce the pressure on the EITI Board at its Berlin meeting in April and beyond to uphold the rules of the game and grant

extensions only on a transparent basis to those governments that fell short for largely technical reasons and are very close to being deemed compliant. But I believe that it is premature to conclude, in the words of one those NGO statements, that “so far the results have been dismal.” There will be a far more substantive basis on which to reach such a judgment—or not—at the Berlin meeting and beyond as the EITI is forced to show its mettle.

I have confidence that the progress can and will be achieved through the EITI, but it will take even longer to achieve than expected as candidate countries demonstrate varying degrees of political will and administrative capacity to meet their commitments. It is important to appreciate the efforts of many of the implementing governments, along with those of the many supporting governments, companies and civil society that have come together to promote revenue transparency under the EITI umbrella. Most important is to stand by the civil society activists who look to the EITI as one of their best if not only chances to promote not only revenue transparency but even more fundamentally, accountable governance as the best means of lifting or avoiding the resource curse that has bedeviled too many countries. Standing by them means building their local capacity to engage and protecting them against the harassment or intimidation that has limited their activities in some countries (and compelled the EITI Board to deny candidate status to Ethiopia)—and continuing to do both even (or especially) if their government leaves the EITI process altogether.

The EITI is unlikely to generate sufficient

progress on its own without being complemented by other mechanisms. There are two clear complements, both of which are now in play. One is mandatory disclosure, already on the table in the form of legislation introduced in the U.S. Congress. The other is country-by-country revenue reporting on the part of companies, currently under consideration by the International Accounting Standards Board (IASB). Both have serious prospects, and together they would form a triangular structure with the EITI to make revenue transparency in the extractives sector a global reality far sooner than any one approach could achieve alone.

5. Revenue transparency is heating up as an issue in the US – a bill currently before Congress would among other things require US-listed companies to report publicly on payments made to foreign governments for natural resources. Is this sensible? Wouldn't it put US firms operating overseas at a competitive disadvantage?

The disclosure required by the Energy Security through Transparency Act (ESTT) is not only sensible, but a vital tool that provides material data necessary for investors to adjust their expectations of the future cash flows of extractive industries companies for the reputational, country and tax risks unique to this sector. The proposed legislation would not put U.S. firms operating overseas at a competitive disadvantage since it covers all companies registered with the SEC, regardless of where they are based. The most significant group of companies not covered by the legislation are the few oil and gas national operating companies

(NOCs) operating outside their home countries without entities registered with the SEC. Moreover, the disclosure required by the bill would level the playing field for U.S. and other companies that seek competitive advantage through their ability to win concessions and deliver returns to their investors based on their technical expertise and large-scale project capability, not their ability to navigate corrupt governance of the oil, gas or mining sectors in certain countries.

Passage of this bill will hardly lift the resource curse, but it would accelerate and extend the progress towards greater revenue transparency already underway in a (thus far) limited number of countries through the EITI framework. There is no need to choose between EITI and ESTT; both of these complementary approaches are needed. Plus the argument that ESTT will threaten progress already being made through the EITI is a red herring, especially when 20 of 22 countries missed their validation deadlines on 9 March and when even some committed supporters of the EITI (such as myself) acknowledge that progress will continue to be sluggish in too many countries while others remain outside the process altogether. Companies that want to operate in countries with greater transparency and lesser corruption will find this legislation to be in their interest—even if they find that to be an inconvenient truth to admit in public when it comes to certain countries in particular.

6. One particular developing country you have an interest in is Equatorial Guinea. Should the international oil companies operating in EG be doing more to promote development and democracy in the country? What can they do in practical terms?

I have been interested in Equatorial Guinea for a decade, initially on two issues on behalf of the State Department in 2000—pushing to attach human rights provisions to an OPIC-supported energy project and to an export license for security force training. In my view, the dominance of American companies in the development of EG's oil resources give both the companies and the U.S. Government a shared responsibility to help improve governance and the rule of law in what remains—despite some limited progress over the last decade—a country with one of the most repressive and corrupt regimes in the world. Independent civil society, media and opposition political parties do not really exist, despite the space allowed a few individuals. Plus the vast majority of the island and mainland population alike has yet to benefit from the oil wealth that has flowed to the Obiang family and the small elite surrounding it, with most of the population living on less than \$2 a day in a country with per capita income now matching Italy's.

The international oil companies with the greatest presence and stake in EG—above all ExxonMobil but also Marathon and Hess plus others—recognize their interest in promoting better governance and the development of the rule of law. They understand that progress on these fronts will improve the long-term business operating environment and diminish the short and long-term

reputation risks that they must manage given their association with such a regime. But the companies should view their support for community development programs in conjunction with the Corporate Council on Africa and the State Department as philanthropy that, while laudable, barely touches on the corporate responsibility that they must assume as they operate in EG.

Far more important, as the companies seem to recognize, is their support for EG's participation in the EITI as the single most important platform for addressing the core governance, rule of law and corruption issues through revenue transparency. The companies have been working hard behind the scenes with ministers and other officials since even before EG became an EITI candidate country in February 2008 to emphasize the importance of meeting both the initial candidacy criteria and then the validation indicators against which compliance is determined. But the technical assistance and encouragement that they have offered every step of the way should not translate into lobbying and cheerleading to rush a determination of compliance this year that may not be warranted. The decision will likely turn on whether, even if technical compliance has been achieved with the EITI revenue transparency validation indicators, the in-country multi-stakeholder process has included genuinely independent representatives of civil society-- independent of the regime-- as required by the EITI and present in almost all other EITI candidate countries. At stake is both the global credibility of the EITI and concrete progress towards revenue transparency in EG that empowers civil society and contributes to accountable

government and the rule of law. The companies should bear in mind their stake in advancing both of those objectives at the same time.

There is something more that ExxonMobil, Marathon and Hess can and should do without assuming the roles of human rights NGOs like Amnesty International, Human Rights Watch or Global Witness that are denied access to the country (let alone EG Justice with its singular focus). They can ask another actor with a stake— and a new embassy— in EG to play elements of those roles. That actor is the U.S. Government and it is in the companies' clear interest, even if they will not say so in public, to urge the State Department in Washington and the new Ambassador in Malabo to take on the tough issues that they cannot take on themselves beyond the EITI process— development of the rule of law and respect for human rights. Besides supporting the participation of independent civil society in the EITI process, the USG should support its emergence beyond the individuals included in the EITI process by pressing for the elimination of restrictive laws and offering technical assistance to lay the basis for an independent judiciary and independent political parties. While continuing to report the realities of the human rights situation through its annual Country Reports, it can set concrete benchmarks for human rights improvements as conditions for future visits to Washington by President Obiang.

These kind of actions fall under what UN SRSG for Business and Human Rights John Ruggie would call the USG's "sphere of influence." The companies can do their part to protect human rights

by implementing the Voluntary Principles on Security and Human Rights in their security arrangements and far more fundamentally by supporting progress towards greater revenue transparency and better governance under the banner of an EITI process which is globally credible as well as locally effective. But the companies should quietly but powerfully lend their support to a U.S. Embassy in Malabo with the instructions and resources to provide more than commercial and consular functions-- and a USG in Washington that brings both an energy security interest and a human rights commitment to promoting better governance in EG.

7. Some final questions on human rights – it's now ten years since you led development of the Voluntary Principles on Security and Human Rights. How much have they achieved, and what future do you see for them?

The Voluntary Principles on Security and Human Rights plenary convened in London on 18-19 March to address the pivotal issues and decisions which must be made if the VPs are to fulfill their potential a decade after the original dialogue began. A long-time friend of the process, I am more optimistic than at any time in the last several years that the determination and leadership necessary to move the VPs forward is finally coming together.

A lack of focused, energetic and accountable leadership allowed the VPs process to drift into a governance crisis, at times paralysis, from 2006 until early 2009. That disarray in the process distracted focus on—and even appeared to discredit—the concrete

implementation progress made on the ground in priority countries on the part of many companies. Now the gap between governance process and implementation progress can be closed and the accountability architecture of this once-flagship multi-stakeholder initiative—still the key global human rights standard for extractives companies operating in conflict zones—can finally be completed.

Three critical factors now set the stage for the VPs to deepen their impact and finally establish their credibility over nine years after their launch in December 2000:

First, the Oslo plenary last spring finally resolved the fractious issue of “participation criteria” for governments and agreed interim reporting criteria applicable for 2009. These outcomes, following the 2007 resolution of the equally contentious issue of establishing a complaint/expulsion mechanism for non-compliance, ended the rancor that had gripped the process beginning shortly after the January 2006 plenary in London. Through a combination of sheer exhaustion and cool pragmatism, company, NGO and government participants alike began to rediscover common ground around the common interests in balancing human rights safeguards with security arrangements that had first brought them together in 2000—and to agree on some of the fundamental issues still to be addressed and resolved if the VPs were not only to survive but thrive.

Second, there is a simple recognition that the VPs have greater operational relevance in more countries than ever. While the civil war in Colombia has

cooled and the Aceh conflict in Indonesia ended, they remain critical in both countries but above all in Nigeria with the intensification of violent conflict in the Niger Delta since late 2005. Indeed, the Delta is probably the most volatile crucible for the VPs in the world as the political crisis in that country continues and the prospects for a lasting cease-fire let alone political reconciliation and economic development remain uncertain. Plus, the VPs are more important than expected in a number of other countries around the world such as in the Andean region (Peru, Ecuador and Bolivia), West and Central Africa (the DRC, Ghana and Gabon); and the Asia-Pacific (especially Papua New Guinea)—and for this reason Peru, DRC and Ghana are under active consideration as new priority countries.

Third, there is an expectation that the new political leadership in the Bureau of Democracy, Human Rights and Labor at the State Department (from which the VPs originated) can give a decisive impetus to completing the tasks of finalizing that overall accountability architecture and gaining the operational resources—diplomatic and financial—that are necessary to strengthen implementation on the ground in priority countries in conjunction with host governments. Moreover, the entry of Canada, Colombia and Switzerland alongside the U.S., UK, Norway and the Netherlands can contribute to those resources as well as attract new companies and NGOs to an increasingly inclusive global process.

Assistant Secretary Mike Posner and his State Department team will take over the chair of the Voluntary Principles plenary process and Steering Committee

following the 18-19 March plenary in London. They are poised not only to chair meetings and calls, but to drive an agenda and provide the kind of leadership that is urgently needed to tackle several key issues that will, over the next year, determine the continuing viability of the VPs as a multi-stakeholder initiative in its current form. And they will have their work cut out for them, with the clock ticking towards the Washington plenary that State will chair in early 2011.

The VPs Secretariat must, at last, receive a clear mandate and adequate resources to carry it out—with different configurations on the table. The governments and companies must reach into their budgets to lift funding beyond the paltry levels at which it has long languished, or otherwise accept that the process cannot be sustained. At the same time, careful but urgent consideration must be given to a long-term governance structure to replace the unwieldy, rigidly consensus-driven plenary process that may have worked when the VPs started as a robust and innovative dialogue in 2000 but cannot provide either the leadership or the accountability that a contemporary multi-stakeholder initiative requires in 2010 and beyond. Transition in 2011 to an EITI-style board is the most obvious path for the VPs, not least since it is a model familiar to so many of the same companies as well as governments.

No less critical to the prospects for sustaining the VPs as an accountable and effective multi-stakeholder initiative is the adoption of some reasonable and credible form of public reporting. There is no multi-stakeholder initiative worth the name without it, and the VPs can no

longer be the exception. Building on the criteria adopted for public reporting last year, the new U.S. chair will no doubt drive hard to develop an agreed methodology and timeline while permitting and even encouraging individual companies to report in public in some form in 2010 at their discretion while such criteria are established.

Some degree of non-aggregated, company-specific reporting (by company name) can and must be developed that does not put companies at undue risk with respect to either the security of their personnel and facilities, or their potential exposure to litigation in connection with specific incidents.

Companies that are actually implementing the VPs should have plenty to report in connection with training of company personnel and contractors, briefings with host country governments and security forces, and stakeholder engagement with local communities.

This agenda sounds daunting. But it is achievable because most committed VPs participants among the three pillars—governments, companies and NGOs—accept that the time has come to complete the work of construction and to get on with the business of implementation for a battle-scarred initiative that has yet to prove fully its mettle on the ground where it matters most.

8. You did one of the first Human Rights Impact Assessments for BP's Tangguh project. Now there's a push from John Ruggie, the UN Special Representative on Business and Human Rights, for all big companies to do HRIAs. But is it

realistic to expect HRIAs to become as widespread as Environmental and Social Impact Assessments? And will they add much to what's already covered in ESIAs?

It has been eight years since Gare Smith of Foley Hoag and I delivered what we were told was the first stand-alone HRIA for a major energy or extractives project in the world, and seven years since we presented our recommendations to international stakeholders in London and Washington. While researching the human rights issues at stake in the Tangguh project in West Papua and conducting several weeks of consultations and field research in Indonesia, we developed the methodology of the assessment (and lengthy document) without a template to follow. Since then, a small cottage industry has emerged around HRIAs with significant work undertaken by the Danish Institute for Human Rights and the International Finance Corporation (IFC) together with the International Business Leaders Forum (IBLF), among others.

But by far the most significant impetus to HRIAs has come from John Ruggie and his team, who have used the SRSG mandate to promote the utility of HRIAs for a variety of sectors, geographies and specific issues for companies (as well as investors). I hope that the growing use of HRIAs will become one of the most tangible operational legacies of the Ruggie mandate and will shape stakeholder expectations and company practice alike for years to come.

HRIAs will demonstrate that utility across sectors, geographies and issues to the extent that they are flexible, not rigid

instruments. There will be some situations, above all for new or expanding extractives projects, when a stand-alone, comprehensive "Full Monty" HRIA makes sense. The stand-alone approach may also be useful in sectors as disparate as agriculture/food and internet/information technology (as Yahoo! is beginning to demonstrate and the new Global Network Initiative to promote). But less important than the form—HRIA, ESIA or otherwise—is the human rights content and the awareness of human rights-related risk and the

management discipline to address it.

What matters are the questions asked, risks identified, stakeholders consulted, and actions taken and where appropriate, the results reported and assurance provided. If companies think in these terms, human rights risks will be addressed routinely along with broader social and especially environmental factors, and that will be a positive development for a diverse range of companies, their investors and above all the communities where they operate.