Abstract

Crude petroleum remains the single most imported commodity into Australia and is sourced from a number of countries around the world (Department of Foreign Affairs and Trade (DFAT), 2011a). While interest in crude petroleum is widespread, in recent years Australia’s focus has been drawn to the continent of Africa, where increased political stability, economic recovery and an improved investment climate has made one of the largest oil reserves in the world increasingly more attractive. Despite improvement across the continent, there remain a number of risks which have the potential to significantly damage Australia’s economic interests in the petroleum sector, including government policies and legislation, corruption and conflict. The longest exporters of crude petroleum products to Australia – Nigeria and Libya – have been subject to these factors in recent years and, accordingly, are the focus of this paper. The current conflict and instability in Libya and the Niger Delta, together with the pervasive corruption within political institutions, has resulted in an uncertain, volatile and, at times, lawless operating environment. The tenuous socio-economic and legal climate in the two countries highlights the need for mitigation strategies to be employed with consideration towards their socio-legal impact.

1. Introduction

Australia’s commercial interests in Africa’s resource sector have been steadily increasing for a number of years – effectively tripling since 2005 (Australian Trade Commission, 2011). The Australian High Commissioner to South Africa, Ms Ann Harrap, revealed that as of 2011 there were approximately 220 Australian mining and oil companies operating within Africa, with some 595 projects across 42 countries (Australian Trade Commission, 2011) and investment in the sector expected to increase over the next five years (University of New South Wales, 2011). Of those 42 countries, Nigeria and Libya are two of the most important destinations for Australian mining companies given their significant oil reserves (Future Directions International, 2012; Francis et al., 2011: 5). As a consequence of the continuing growth in Australian mining interests within the two
countries it is important to identify and manage risks, such as systemic government corruption and internal armed conflict within Nigeria, or the more recent risks associated with the Arab Spring in Libya – a wave of demonstrations and political unrest throughout the Arab world (Banks and Sokolowski, 2009; Bahgat, 2012: 58).

2. Australian investment in Africa

Australia’s investment in the oil and petroleum market in Africa has followed an upward trend in recent years, with imports of crude petroleum rising 322% from 2009 to AUD$1.9 billion in 2010 (DFAT 2011b). Within Africa, Nigeria and Libya were two of the highest suppliers of Australian crude petroleum; with Nigeria exporting AUD $1.277 billion and Libya exporting AUD $342 million to Australia between 2010–2011 (DFAT, 2011c; DFAT, 2011d).

Despite recent increases in political and economic stability within particular countries in Africa, a number of persistent risks continue to negatively impact on Australia’s mining interests within the continent. In Nigeria for example, a group known as the Movement for the Emancipation of the Niger Delta (MEND) continue to engage in conflict in the Niger Delta, where the majority of oil and gas reserves are concentrated. In addition to this conflict, significant environmental degradation persists within the Delta; endemic corruption pervades both private and public sectors of the country; and ineffective governance, legislation and infrastructure have created a complex and unstable socio-political climate (Africa Growth Initiative, 2012; Okeagu et al., 2006: 200; Rwabizambuga, 2009: 87).

In Libya, the recent uprising associated with the Arab Spring has had a significant impact on the operations of transnational oil companies (TNOCs) within the country. The fall of leader Muammar Gaddafi and the subsequent instability of Libya have resulted in a continued presence of armed militia groups and an uncertain and corrupt interim government known as the National Transitional Council (NTC), which pose a risk to the infrastructure, employees and investment prospects of TNOCs (Azikiwe, 2012).

3. Background of the conflict in the Niger Delta

The conflict between local communities, TNOCs and the government in the Niger Delta, which has persisted since the 1980s (Idemudia and Ite, 2006), is seen to be a result of a range of issues, including the lack of compensation payments to communities, land acquisition, and environmental degradation through regular gas flaring and oil spills. These issues are compounded by elevated infrastructure costs and the poor economic position of the region due to the oil industry’s capital-rather than labour-intensive nature, which provides little employment for its population (Francis et al., 2011, 5; Ukiwo, 2010, 45).
In 2005, a variety of armed resistance groups joined together to form MEND. MEND is the most recent and most renowned of the large militant groups in the Niger Delta, and pursues a number of agendas, in particular gaining greater control of the region’s resources and infrastructure developments; forcing a more transparent management of oil revenues; and putting a halt to, or gaining adequate compensation from, environmental and community degradation (Francis et al., 2011: 6; Watts, 2007: 655; Hanson, 2007).

Despite MEND’s significant presence within the Niger Delta, the organisation is highly secretive and elusive due to their decentralised structure – with members numbering anywhere from the hundreds to thousands (Hanson, 2007). In the past, MEND has been able to disrupt approximately 60% of the output of Niger Delta oil as a consequence of their activities, which include the destruction of oil extraction infrastructure, bombings, the kidnapping of foreign oil workers, and the extortion of TNOCs (Hanson, 2007; Geneva Academy of International Humanitarian Law and Human Rights, 2012; LeBillon, 2005; Forest and Sousa, 2006).

In order to protect its equity interests and joint venture production projects, the Nigerian Government often support TNOCs in conflicts between MEND and the oil companies, using varied legislative means, public policy and military reprisal (Omeje, 2006: Okeagu et al., 2006: 203). This is seen as a contradiction to the government’s promise of regional security, and as a consequence Omeje (2006) further argues that the government’s response often exacerbates existing conflicts.

In May 2007, a presidential peace initiative was initiated by the late president Umaru Musa Yar’adua in response to an increase in MEND’s activities. Several of these offers of amnesty were made to fighters between mid-2008 and October 2009, all of which were refused on grounds of scepticism (Francis et al., 2011: 17). In May 2009, however, amnesty was eventually accepted by more than 20 000 Delta fighters following a month-long offensive between MEND and the government’s Joint Military Task Force. The amnesty offered by the late president Yar’adua is seen as a historic opportunity for peace – one which brought years of uneasy calm to the region despite ignoring the persistent underlying causes of the unrest (Francis et al., 2011: 1).

It was argued that the continued disadvantage and environmental destruction within the Niger Delta would lead to a resurgence of criminal/insurgent activity despite the presidential amnesty (Okeagu et al., 2006, 207). These predictions were realised on 4 February 2012, when MEND militants attacked the Italian-operated ENI Spa oil pipeline at Nembe-Brass. An emailed statement claimed that the ‘relatively insignificant attack’ was a ‘reminder of [MEND’s] presence’ and ‘a sign of things to come’ (AllAfrica, 2012). A second attack on a police checkpoint on 1 March 2012 that killed four people placed serious doubts on the government’s Joint Military Task Force’s claims that MEND were unlikely to have been the perpetrators of the attacks (Daniel, 2012). With this recent
spate of attacks by MEND in the Niger Delta, TNOCs are once again faced with violence, kidnappings and disruptions to their operations.

4. Corruption, government policy and legislation in Nigeria

It could be argued that despite the Niger Delta’s potential for prosperity, the Nigerian Government has done little to embrace this opportunity for the good of its communities (Allen, 2010: 6-7; United Nations Development Program, 2006). Although projected as a modern government administration with a formal structure of institutions, in actuality these institutions are weak and corrupt, and its centralised democracy is characterised by complex and deeply entrenched networks of political alliances and patronage (Francis et al., 2011: 1; Banks and Sokolowski, 2009; Smith, 2007). In fact, of the 182 countries included in the 2011 Corruptions Perceptions Index, Nigeria ranked as the 37th most corrupt state (Transparency International, 2011). Compounded by the reality that the government is the sole vehicle through which oil revenues are both collected and redistributed, politics within the country have been reduced to securing and controlling increased oil revenues – leading to calls for ‘resource controls’ and social justice by both local communities and armed insurgent groups. This inability to represent the interests of its people has led TNOCs to develop a means of ‘social license’ in order appease local communities and retain the ability to operate in the region (Francis et al., 2011: 1).

Environmental legislation, such as the Mineral Oils (Safety) Regulations 1963 and the Petroleum (Drilling and Production Amendment) Regulations 1973, are ineffectively implemented and enforced in Nigeria. The lack of commitment to this legislation has resulted in the degradation of the environment and local communities due to the continued flaring of gas and persistent oil spills (Allen, 2010: 5–7). The destruction of the environment is seen as a major catalyst to the ongoing conflict and continued risks to TNOCs in the Niger Delta (Francis et al., 2011: 5; Ukiwo, 2010: 45).

The Nigerian oil and gas industry, and those companies that operate within it, are primarily regulated by the state – namely the Nigerian National Petroleum Corporation (NNPC) and the Ministry of Petroleum – and legislation including the Petroleum Act; the Oil Pipelines Act, Cap P10; and the Petroleum Profits Tax Act, Cap P13 LFN 2004. The NNPC publishes very little financial information and is not properly monitored, and although some amendments have been made to the legislation they remain for the most part unchanged. This lack of currency has restricted the NNPC’s ability to respond to issues that have only gained prominence in the past few years – such as those surrounding environmental conservation (HG.org, 2010; Richter, 2011).

The Petroleum Industry Bill (PIB) was introduced in 2008 in an attempt to consolidate the numerous pieces of legislation that exist within Nigeria’s petroleum industry. Through key considerations of the Bill, including the allocation of land, environment and air quality emissions,
community development, and the use of Nigerian content (Nigerian National Petroleum Corporation, 2010), the PIB has the potential to clarify the expectations and requirements of TNOCs, and more effectively enforce elements of the legislation that have in the past led to an increase in tensions in the region, including gas flaring, oil spills, acquisition of land, and lack of administrative transparency. It is unknown if the PIB will be enacted into legislation however, as the Bill is still being considered at the Nigerian National Assembly despite being subjected to 165 amendments by parties including the World Bank, industry participants and labour unions (Richter, 2011; Ofikhenua, 2012). It is argued that Nigeria may experience a 25% drop in oil production within the next two years if the PIB is not passed and enacted into legislation (Amanze-Nwachuku, 2012).

5. Background of the Libyan uprising

The Libyan uprising began in February 2011, when Libyan protestors took to the streets to demand that the current leader of the country, Colonel Muammar Gaddafi, step down from office. The civil unrest was seen as a response to similar events within the Arab Spring – namely the toppling of leaders in both Tunisia and Egypt (Dalacoura, 2012: 65). Anti-Gaddafi insurgents suffered thousands of casualties during the wide-spread protests and subsequent conflict but managed to seize and hold several cities and towns in the East, including Benghazi, the second-largest city in Libya and the centre of the uprising. Following a counter-offensive on Benghazi by Gaddafi forces, the United Nations (UN) eventually endorsed a rebel-led military operation on 19 March 2011 by American, British and French forces, subsequently changing the course of the conflict (Geneva Academy of International Humanitarian Law and Human Rights, 2011). In August 2011, rebel forces captured the capital city of Tripoli following a coastal offensive, and on 16 September 2011 the NTC was recognised by the UN as the legal interim parliament of Libya. Gaddafi remained at large until 20 October 2011, where he was eventually captured and killed (Dalacoura, 2012: 65).

Although Libya’s oil and gas infrastructure suffered losses during the conflict, the sector escaped initial fears of large-scale destruction. Oil production in the country is likely to return to pre-conflict levels by the end of 2012 (Future Directions International, 2012).

Despite the volatility caused by the continued presence of armed militias, it has been claimed the NTC has been unable and/or unwilling to disarm, integrate or demobilise the groups (Pack and Barfi, 2012). These regional and ideological militias have challenged the effectiveness of the NTC’s government, and as a consequence have placed both the council’s authority and the TNOCs operating in the region at risk. This was evidenced in early February, where fighters from Misratah and Zintan engaged in gunfire within the capital city of Tripoli. With the NTC powerless to stop these conflicts, the council is faced with the risk of a further decline in security and domestic and international confidence in its ability to maintain law and order and good governance in the country (Pack and Barfi, 2012).
In addition to the continued presence of armed militias within Libya, the fall of Colonel Gaddafi has allowed past tensions and regional divisions to emerge (Lacher, 2011). The most serious and potentially disruptive example of this is the declaration of an autonomous region in Cyrenaica in eastern Libya, which contains 80% of the country’s oil in the country’s two largest oil fields – Mesala and Saraya (Cato Institute, 2011; Norwegian Council for Africa, 2012). It is argued that if the region achieves autonomy, the entire country’s oil industry will be significantly impacted with confusion over existing oil contracts and disruptions in production and exports a likely consequence (Mejia, 2012).

6. Libya’s political situation and the National Transitional Council

The NTC was established on 17 February 2011 as the transitional parliament of Libya with the aim of ‘steering’ Libya during the interim period’ and ‘guiding the country to free elections and the establishment of a constitution’ (The Libyan Interim National Council, 2011). Following the fall of Gaddafi, the NTC has been faced with establishing a functional democracy and guiding the country into a positive future. This has proven difficult, as the unifying factor of overthrowing the Gaddafi regime appears to have dissipated following the dictator’s death and subsequent end of military operations, leading to disagreement on how Libyan society should be organised (Sawani, 2012: 2; van Genugten, 2011).

The Libyan NTC has several links with Gaddafi-opposition abroad, such as those which formed the National Conference for the Libyan Opposition, but also with the Gaddafi regime (van Genugten, 2011). As a consequence, the NTC faces real difficulties in building domestic legitimacy and balancing pluralism and democracy while preventing a further degeneration into conflict (van Genugten, 2011). The NTC is also burdened by the legacy of mental and physical repression, human rights abuses and civil war – all of which have compounded into a situation that remains characterised by uncertainty and illegitimacy (Office of the High Commissioner for Human Rights, 2011).

The NTC is also faced with attempts by a number of groups in Libya to prevent the council from extending its authority to their estates and/or domains – a weakness compounded by the lack of functioning institutions and political cohesion (Pack and Barfi, 2012). Although recognised by most of the international community as the country’s legitimate government, it has been difficult for the NTC to impose its political will and implement a transitional governance programme due to its lack of authority, which has led to widespread criticism, calls for its dissolution and, consequently, a delay in the transitional phase (Sawani, 2012: 9).

Libya today exists in a state of transition and uncertainty, with its entire system of governance, democracy and politics being rebuilt from the ground up. The existing Libyan state, ‘institutionally speaking, is an empty space’ (van Genugten, 2011). As a result, TNOCs’ activities in Libya are, and
will be, characterised by instability and insecurity. Without stable forms of government, investment contracts and static legislation, investment projects within Libya will continue to be exposed to significant risks.

7. Managing the risks of conflict, corruption, government and transitions to democracy

The majority of direct foreign investment projects within extractive industries tend to be medium- to long-term in nature, often meaning TNOCs are tied to the ground and cannot simply withdraw when conflicts arise. As such, it is critical that the Australian Government and TNOCs are able to identify and manage potential risks in order to mitigate the impact on their continued operations (Oetzel et al., 2007: 338; Bennet, 2002: 405).

The activities of insurgent and militia groups within the Niger Delta and Libya pose significant risks to active TNOCs engaged in oil-related activities in the regions. The groups in Nigeria operating under the MEND-umbrella employ strategies including kidnapping, bombing of oil installations, violence against workers and ‘petro-violence’ (fireballs, oil leaks, and explosions aimed at the oil industry) (Geneva Academy of International Humanitarian Law and Human Rights, 2012).

In Libya, the continued presence of militias within the country has led to violent conflict, illustrated by the 250 lives which have been lost in clashes between Arab and non-Arab tribesmen in the cities of Sabha and Kufra since February 2012.

In addition to the issues arising from conflict within Libya, the operational standards of the TNOCs within the region have become increasingly important following the fall of Colonel Gaddafi, as they now find themselves operating in a country which will take a long time to install a broadly accepted, stable host government (Adams, 2011). Although the NTC has stated it will honour existing contracts with TNOCs in Libya, concerns have been raised regarding the status of these contracts and permits as a result of the current inability of the NTC to effectively govern the country (Lewis, 2011; Morse and Lee, 2011; Bjelland, 2012). Wade and Percival (2011) argue that although contracts entered into by a state must, under international law, remain in force under any other subsequent government, the possibility remains that the future government of Libya may attempt to distance itself from the former Gaddafi-regime and create difficulties in continuing existing contracts. Although technically protected by such eventualities under the international law doctrine of state continuity, the will of a government to interfere in oil-related contracts is a significant risk to TNOCs (Wade and Percival, 2011). It must be understood that any change in government rule is likely to involve major changes for TNOCs as they are dependent on the new government’s policies and attitudes towards the oil and gas sector (Lewis, 2011).
Presently the activities of armed insurgent/militia groups and the actions/inaction of the host government in the Niger Delta and Libya have the potential to impact upon social and political cohesion within the two countries – consequently disrupting the production of oil and threatening the safety and security of the managers and employees. As a result, it is necessary for the Australian Government and TNOCs to identify and effectively manage these risks in order to reduce their impact on Australia’s mining interests in the region.

Proceeds of the oil and gas sector contribute to 80%–85% of total government revenues in Nigeria, and 80% in Libya. As such, TNOCs should expect a proportionate level of government scrutiny and regulation in regards to the activities of Australian organisations within these regions. Consequently, an in-depth understanding and appreciation of Nigeria’s and Libya’s history, legislation and culture in relation to the oil industry, as well as all fiscal, political and legal issues, is important to the successful operation of Australian organisations within these countries (IPAA, 2003). It could be argued that an international company without such an understanding would be unable to recognise the underlying causes of conflict and consequently would be ill-prepared to adequately respond to and manage the risks posed.

The literature suggests that TNOCs must conduct their international business practices in compliance with both domestic and international law, and with the highest standards of ethical practice (Independent Petroleum Association of America (IPAA), 2003; Rewane, 2005: 14-15). The IPAA (2003) recommends including a clause in all agreements with local businesses and governments stating the company’s compliance with international codes regulating deviance and corruption. Fair and ethical trading will assist in building an integrous relationship with local communities and will reduce the likelihood of being targeted by bribes and other corrupt practices – effectively contributing to the company’s social license and subsequent ability to continue operations.

It could be argued that the conflict within the Niger Delta is a direct consequence of the corruption, policies and legislation of the Nigerian Government (Francis et al., 2011: 1-5; Ukiwo, 2010: 45; Omeje, 2006; Banks and Sokolowsk, 2009; Smith, 2007). While these factors often result in reduced oversight and restrictions on the operations of TNOCs, it is still essential to comply with all domestic and international standards to contribute to the stability of the region. As argued by Ikelegbe (2006: 24) and Okeagu et al. (2006: 207), decades of oil exploitation, environmental despoliation, and state neglect has created an impoverished and marginalised citizenry which has produced resistance, criminal violence and insecurity. Consequently, although not compelled by the host government to do so, it is important that TNOCs comply and enforce the provisions of the enacted policy by the Nigerian Government and ensure comprehensive anti-corruption compliance procedures are in place within their own operations (Bennet, 2002: 399). While corruption is often implicit in Nigeria (Ayobami, 2011; Independent Corrupt Practices & Other Related Offences Commission, 2011;
Oluwaniyi, 2010), TNOCs should remain diligent in discouraging employees from engaging in corrupt practices with local business partners so as to avoid any resulting legal or reputational risks (Allen, 2010: 7; Maplecroft, 2011). In complying with relevant environmental legislation within Nigeria, TNOCs may establish a rapport with local communities which may provide a degree of protection from the destructive activities of local insurgent groups (Bennet, 2002: 399). Although faced with a different situation, it is equally important for companies operating in Libya to act in a similar fashion to reduce the likelihood of being the target of corrupt behaviours (IPAA, 2003; Rewane, 2005: 14-15).

It is important that the Australian Government and TNOCs establish long-term connections with Libya and Nigeria to ensure their continued presence in the oil and gas sector in the respective countries (Moen, 2012: 13-15). In doing so, the Australian Government should consider involvement in activities related to healthcare and infrastructure rebuilding; increasing coordination and their support of existing capacity-building and demobilisation programs; creating capacity-building partnerships with motivated locals and supporting propaganda efforts that legitimise the Nigerian Government, the Libyan NTC and overall democracy while denouncing the militias and insurgent groups (Pack and Barfi, 2012; IPAA, 2003; Rewane, 2005: 14-15; Fraser and Bomford, 2012). In doing so, TNOCs will support stabilisation efforts and establish social license within the regions, thereby increasing opportunities for direct foreign investment.

In order for TNOCs to avoid charges or legal action in the event that a cessation and withdrawal from operations seems likely, TNOCs should purchase risk insurance and prepare an effective exit strategy, including obtaining exit visas or other forms of authorisation from government agencies permitting expatriates to leave the country (Oxford Business Group, 2010: 116; IPAA, 2003). Companies should also obtain necessary permits from the relevant customs agency to re-export imported goods (IPAA, 2003). While these measures may not be successful in mitigating the risk posed by post-revolution Libya and conflict in the Niger Delta, they remain a necessary precaution.

While it remains the responsibility of each TNOC within Nigeria or Libya to ensure its operations assist local communities and mitigate the impacts of instability and conflict, the Australian Government should continue to work together with TNOCs to promote ethical and socially responsible practices through the support or ratification of a number of international conventions or principles (Bennet, 2002, 406). The Voluntary Principles on Security and Human Rights is one example, which provides guidance to TNOCs in maintaining safety and security in their operations within ‘an operating framework that ensures respect for human rights and fundamental freedoms’ (U.S Department of State, 2011). This initiative demonstrates the ability of TNOCs to work closely with host governments in developing solutions to issues faced by operating in regions of conflict (Bennet, 2002: 406).
Along with the Australian Government, a number of federal government agencies such as DFAT and the Australian Federal Police (AFP) also seek to advance/protect Australia’s interests both domestically and internationally (AFP, 2012a; DFAT, 2012a). Due to the growing presence of Australia’s mining interests within Nigeria and Libya, it will become increasingly important and necessary for Australian Government agencies to respond to risks in order to mitigate their impact on the country’s ability to operate within the oil industry (DFAT, 2011a). The AFP’s International Deployment Group, for example, has the capacity to assist in domestic and international stability and security operations by working together with the UN, the Australian Defence Force, DFAT, and the Australian Government Overseas Aid Program (AusAID) (AFP, 2012b). The agency provides support to public order policing, high quality risk assessments, needs analyses, personnel security risk management and critical incident risk management to private sector organisations that deal with Commonwealth interests in order to help turn security obligations into opportunities that protect organisations while assisting them in achieving strategic goals (AFP, 2012c).

The Direct Aid Program (DAP) funded through AusAID and managed by DFAT is a program aimed ‘to advance Australia’s national interests by helping developing countries achieve sustainable development’ (DFAT, 2011e). As discussed above, Australia’s involvement in capacity, healthcare and infrastructure building generates goodwill between TNOCs and local communities contributing to their social license while simultaneously helping achieve stability in the regions (Pack and Barfi, 2012; IPAA, 2003; Rewane, 2005: 14-15). As such, DAP should consider expanding its aid in Nigeria to help address underdevelopment and insufficient infrastructure to facilitate Australia’s mining interests within the Niger Delta region. In 2010–2011, for example, DAP provided funding for a community health clinic in Nigeria (DFAT, 2011e). Australia was also the fourth-largest donor of humanitarian assistance to Libya in mid–2011 (DFAT, 2011e); it should maintain and consider increasing this support in an attempt to achieve stability within the country.

Despite attempts to mitigate all risks within the countries of Nigeria and Libya, the possibility remains that Australian companies will become targets of insurgent activity, such as physical attacks and kidnapping (DFAT, 2012b). As such, it is critical that companies develop and maintain security protocols, purchase risk insurance, and increase monitoring activities, personnel background checking, site-security, target minimisation and implementation when faced with these possibilities (Oxford Business Group, 2010: 116; Fraser and Bomford, 2012). The contracting of private security companies will likely complement existing security protocols and assist in mitigating potential risks (Avant, 2005). Additionally, in educating high-risk employees in negotiation, business continuity and response procedures, TNOCs can lessen the potential impact on their operations. It is vital for TNOCs to constantly review and amend these strategies to accommodate changes in the nature of potential risks. Unfortunately, there is no guarantee that risk management strategies will be fool-proof or completely effective (IPAA, 2003).
7. Use of private security within unstable regions

Due to the political instability and persistent conflict within Nigeria and Libya, TNOCs commonly utilise the services of private security companies (PSCs) when situations arise where the host government is either unable or unwilling to protect and secure their interests in the region (Percy, 2009). It is important that the Australian Government and TNOCs understand the potential impacts of private security companies in countries such as Libya and Nigeria and how this may affect the safety of their employees and/or their continued oil-related operations.

PSCs provide a range of services to companies operating in unstable regions, including operational and logistical support, risk assessment, crime prevention and intelligence, and site security, often due to ‘bureaucratic’ or ‘political’ failures to meet threats (Avant, 2005). This is evidenced by the current situation in Libya, where the NTC has welcomed foreign PSCs to the region in an attempt to revive its threatened oil and gas industry due to persistent in-fighting between tribes and rival militias (Elframawy, 2011).

Fraser and Bomford (2012) argue that the use of ‘hard’ risk management techniques within Libya, such as employing private security, is problematic due to the potential negative impact such measures would have upon community perception. It has been claimed that PSCs operate outside the law with little consideration of the politics of the international system – often violating established international conventions (Singer, 2004; Percy, 2009; Gerrick, 2008: 5). Attempts which have been made to restrict the operations and use of private security personnel, including Protocol 1 (Article 7) of the Geneva Convention, have not received widespread international support due to difficult to meet legal standards and weak enforcement provisions (Gaston, 2008: 232; Gerrick, 2008: 9). Due to the legal ambiguity surrounding the operations of PSCs, it is often unclear to which country or government they are to be held accountable to in matters of the law (Maogoto, 2006). This legal ambiguity may have serious implications for TNOCs as communities or insurgent/militias groups are likely to hold Australian companies responsible for crimes committed by PSCs under their authority – likely leading to retaliation or prosecution. The potential for PSC personnel to act in a manner contrary to the standards of their employer is high, as Gerrick (2008: 18-19) emphasises that their missions goals and objectives are limited to the overarching contract they are hired under and as such they do not feel accountable to the state. Consequently, TNOCs must manage the risks resulting from the ineffective legislation which regulates the operations of employed PSCs.

Wing (2010: 38) and Gerrick (2008: 30) identify a number of practice and policy initiatives the Australian Government can employ in order to mitigate the risks posed by the contracting of PSCs in regions characterised by instability and conflict. These include:
• developing an appropriate legal framework to make contractors accountable for their actions under Australian law;
• creating an international register of all PSCs in an attempt to promote transparency surrounding the capabilities and performance of the industry; and
• promoting effective contract and liaison practices.

In addition, TNOCs within Nigeria and Libya can mitigate risks by thoroughly screening personnel before placing them into service and restricting the carriage of weapons to necessary areas of operation only.

8. Conclusion

Australia’s interest in the African petroleum sector has been on the rise for a number of years. The countries of Libya and Nigeria in particular have received the majority of Australia’s attention due to their significant oil reserves, despite the persistent risks of ongoing conflict, corruption and weak and ineffective governance and legislation. In Nigeria, the activities of the insurgent group MEND have the potential to threaten both the production of oil in the region through attacks on infrastructure, and the safety of employees through violence and kidnapping, while corruption and ineffective governance and legislation has created an uncertain investment climate with weak institutions and oversight. In Libya, the recent uprising within the Arab Spring and the subsequent overthrow of the Gaddafi regime has left the country without an effective, recognised governing body; compounding this are the persistent armed militias present in the region – both of which have resulted in uncertainty surrounding the current operations and contracts of TNOCs, as well as fears for the safety of employees.

In response to this it is critical that Australian companies present in Nigeria and Libya effectively manage the risks posed in an attempt to secure Australia’s present and future interests in the continent. In an attempt to mitigate the risks posed, the Australian Government, national agencies and TNOCs must have an in-depth understanding of the history, laws, cultures and religions of Nigeria and Libya; conduct their operations in accordance with domestic and international law, and with the highest standards of ethical practice; and develop and maintain adequate procedures and protocols relating to operations, security and withdrawal. The potential impact of the use of PSCs on the socio-legal climate in the two countries, including violations of international conventions, legal ambiguity and unaccountability will require mitigation strategies to be employed with consideration towards their socio-legal impact. The Australian Government and national agencies must also respond to these risks as Australia’s interests within Nigeria and Libya continue to grow, through providing development assistance to the two countries and advice relating to security and risk.

References


