

PRINCIPLES FOR THE CONDUCT OF COMPANY OPERATIONS WITHIN THE OIL AND GAS INDUSTRY

with particular emphasis on
ecologically and socially sensitive areas



A Discussion Paper

Brot
für die Welt

Prepared and submitted by *Bread for the World* together with a working group in which representatives of various German NGOs cooperated.

Contact address:

Bread for the World – Human Rights Desk
attn. Martin Petry
P.O. Box 10 11 42
D-70010 Stuttgart
Tel: (*49)-711-2159 151

e-mail: m.petry@brot-fuer-die-welt.de

1.	<u>Introduction</u>	3
2.	<u>Interpretation of terms used and scope of application</u>	5
2.1.	<u>Terms used</u>	5
2.2.	<u>Guide to interpreting this document</u>	7
2.3.	<u>Multiple parties</u>	7
2.4.	<u>Scope of Application</u>	8
3.	<u>GENERAL / OVERRIDING PRINCIPLES</u>	8
3.1.	<u>Observance of domestic laws and regulations</u>	8
3.2.	<u>State sovereignty over natural resources</u>	9
3.3.	<u>Company involvement in legislative and political issues</u>	10
3.4.	<u>Abstention from corrupt practices</u>	12
3.5.	<u>Peoples' Participation</u>	13
3.6.	<u>Scope of Participation</u>	15
3.7.	<u>Transparency</u>	15
3.8.	<u>Trust Fund</u>	17
3.9.	<u>Distribution of state income from oil</u>	17
3.10.	<u>Adherence to International treaties and codes</u>	18
3.11.	<u>Respect for the right to development</u>	19
3.12.	<u>Sustainable Development</u>	19
3.13.	<u>Community (local) employment</u>	20
4.	<u>LAND RIGHTS AND RELATED ISSUES</u>	21
4.1.	<u>Land ownership and traditional rights</u>	21
4.2.	<u>Resettlement</u>	21
4.3.	<u>Compensation agreements</u>	23
4.4.	<u>Protocols for negotiations</u>	23
4.5.	<u>Right to negotiate and veto</u>	24
4.6.	<u>Disjunctive versus conjunctive agreements</u>	25
4.7.	<u>Recognition of Indigenous Cultures and Traditions</u>	25
4.8.	<u>Uncontacted Peoples</u>	26
5.	<u>ENVIRONMENTAL STANDARDS</u>	27
5.1.	<u>International best practice</u>	27
5.2.	<u>Baseline data establishment</u>	28
5.3.	<u>Waste management, treatment and disposal</u>	28
5.4.	<u>Areas closed to exploration and production</u>	29
5.5.	<u>Precautionary principle</u>	29
5.6.	<u>Intergenerational Equity</u>	30
5.7.	<u>Definitions of environmental best practice</u>	30
5.8.	<u>Rehabilitation and rehabilitation bonds</u>	30
5.9.	<u>Polluter pays</u>	31
5.10.	<u>Continuous environmental improvement</u>	31
5.11.	<u>Hazards and contingency planning</u>	32
5.12.	<u>Environmental and social impact assessment</u>	32
6.	<u>HUMAN RIGHTS ISSUES INCLUDING CIVIL, POLITICAL AND SOCIAL RIGHTS</u>	33
6.1.	<u>General responsibility of companies</u>	33
6.2.	<u>Human rights in the companies' operations</u>	33
6.3.	<u>Promotion of respect for human rights</u>	34
6.4.	<u>Environmental impacts on human rights</u>	35
6.5.	<u>Best practice in human rights promotion</u>	35
6.6.	<u>Director for Human Rights</u>	38

6.7.	<u>Armed Conflict</u>	38
6.8.	<u>Legitimate security concerns</u>	38
7.	<u>LABOUR STANDARDS AND WORKERS RIGHTS</u>	39
7.1.	<u>Labour laws</u>	39
7.2.	<u>The Responsibilities of Companies</u>	40
7.3.	<u>Right to work</u>	40
7.3.1.	<u>The Right and Freedom to Work Principle</u>	40
7.3.2.	<u>Non Discrimination</u>	41
7.3.3.	<u>No slave or forced labour</u>	41
7.3.4.	<u>Standard of living</u>	41
7.3.5.	<u>Trade Union Rights</u>	41
7.4.	<u>Rights at work</u>	42
7.4.1.	<u>Conditions of employment</u>	42
7.4.2.	<u>Equal pay for equal work</u>	42
7.4.3.	<u>Just reward</u>	42
7.4.4.	<u>Right to holidays and leisure</u>	43
7.4.5.	<u>Vocational training</u>	43
7.5.	<u>Special regulations</u>	43
7.5.1.	<u>Health and safety</u>	43
7.5.2.	<u>The elimination of discrimination against women</u>	44
7.5.3.	<u>Children and Work</u>	45
8.	<u>INDEPENDENT MONITORING, AUDITING and VERIFICATION</u>	45
8.1.	<u>Codes of Conduct</u>	45
8.2.	<u>Independent Monitoring</u>	46
8.3.	<u>Independent auditing</u>	46
8.4.	<u>Independent verification</u>	47
8.5.	<u>Complaints mechanism</u>	47
8.6.	<u>Review of the principles</u>	47

Annex

I.	Table of Agreements, Charters, Conventions, Declarations, Resolutions, Recommendations and Treaties.....	49
II.	Table of Guidelines and Code of Conduct.....	52
III.	Legals Aspects Concerning the Principles for the Conduct of Company Operations within the Oil and Gas Industry	
	Abstract.....	53

Principles for the Conduct of Company Operations within the Oil and Gas Industry

with particular emphasis on ecologically and socially sensitive areas

1. Introduction

Extractive Industries have come under increasing scrutiny in recent years by Environment, Development and Human Rights organisations. This paper concentrates on the oil and gas industry and contains proposals for bringing the various critical aspects together and showing a way forward.

The paper is, in its present form, a proposal that is meant to stimulate and streamline the ongoing discussion. On the one hand it should help build up a network of NGOs interested in the role of the multinational companies in the area of development and human rights and help them to work out a coordinated approach. On the other hand it can hopefully serve as an instrument to open up meaningful dialogue with the companies.

The protection and promotion of human rights and standards for sustainable development fall, in the first place, under the responsibility of national governments and the international community. The Principles formulated in this document are based on the conviction that in this time of increasing globalisation multinational companies, while clearly having to abide by national and international laws and standards, have to accept growing shares of responsibility for respecting and promoting human rights and sustainable development.

Many examples indicate that so far companies try to avoid accepting this responsibility. What is needed therefore are rules and regulations that no longer allow companies to ignore this responsibility.

In this context it is essential to emphasize that the Principles formulated in this document are directed at oil and gas companies, while the responsibilities of the relevant national governments are not touched in any way.

There are encouraging signs that it is not unrealistic to assume that the Principles can serve as a useful instrument for getting into productive discussions with the oil and gas industry:

Some companies have already published relevant statements in official documents (e.g. Shell in their *Statement of General Business Principles* of 1997), others have expressed them verbally at various occasions. In most cases, however, these public expressions take the form of very general statements of intent. Detailed specifications of what "support for fundamental human rights" or "contribution to sustainable development" could mean for the actual operations of the companies are not available to the public, or they are unsatisfactory. It is the intention of the proposals offered in this paper to take the discussions forward in order to achieve better living conditions for those that today are still experiencing very negative effects from these industries.

It should be noted that transnational companies can yield a tremendously important influence on raising the level of the human rights culture in the countries in which they operate: Not giving in to the pressures of corruption, a strict observance of the rule of law, the open and visible recognition of NGOs and other representatives of civil society even if these are ostensibly critical of the companies, all this will not fail to make an impression on those who easily give in to the temptations of power and behave as if they were above the law. The companies will be seen as models to be emulated by both the population and those who want to do business with them.

There is wide agreement that the protection and promotion of human rights is also in the economic interest of the oil and gas companies. Companies which uphold their obligations on human rights are likely to build a stronger public reputation which is important for business in several ways:

- Companies which demonstrate moral leadership will gain the confidence of other businesses, governments, corporate partners and customers, build shareholder confidence, and contribute to community well-being and political stability in the locations of oil or gas production operation.
- They enhance their reputation amongst shareholders, corporate colleagues, and potential government partners by pursuing a human rights agenda as part of core business.
- Protecting human rights helps to build a stronger and more stable community and society within which company operations must take place. As John Browne, Group Chief executive of BP stated
- *“open markets, efficient and sustainable use of resources..., steady economic development and an open society are the conditions in which we can best pursue our business. They run directly contrary, of course, to the common belief that companies find it easier to deal with the apparent stability of repressive regimes than to manage the uncertainties of democracy. In fact, stability built on repression is always false.”*
- Companies that demonstrate moral leadership by supporting such issues as human rights are more likely to have an enthusiastic and committed work force.

It is obvious that labour laws and standards as evolved over the years must be an inherent component of the oil and gas companies' management systems. However, the perspective of this particular document is wider: It takes in the communities living in the areas of the companies' operations who will not be covered by modern labour laws but rather by traditional systems or communal structures. The labour laws, discussed in a separate chapter, should not be seen as substitute for or be set against the rules and regulations relevant for the wider population. In any case, they must be seen as an integral part of the Principles governing the oil and gas companies' conduct.

NGOs involved in producing this paper are of the opinion that multinational companies must become publicly accountable for their activities in the field of human rights and sustainable development, and that in order to be accountable such activities must be guided by very clearly defined principles. It is not in the mandate of either NGOs or multinational companies to make laws, and therefore these Principles cannot be legally binding. However, this does not mean that they can be considered as voluntary code of conduct which companies might adjust according to their own interpretation. The companies will, by accepting the Principles, become accountable to

the civil society at large. A system of public monitoring will have to become an inherent component of the Principles, and it will then be the stakeholders in the widest possible scope of definition - from the immediately affected people and communities to the consumers worldwide - who will guard over the principles being adhered to.

At the same time it should be pointed out that efforts are underway here and there to adapt international law in such a way that transnational companies become legally accountable for their activities. Particular mention should be made of the endeavours to give the numerous covenants and conventions that have grown out of the Universal Declaration of Human Rights legal status after their ratification. This paper does not directly address these developments, but it hopes to be able to contribute to the debate and to help speed up those efforts.

2. Interpretation of terms used and scope of application

2.1. Terms used

The following definitions apply in this document.

“*Affected People*” means any person, persons or community affected either financially, socially or environmentally by a project.

“*Affiliate*” means:

(a) in relation to a body corporate, each of that body’s:

- related bodies corporate;
- directors; and
- substantial shareholders; and

(b) in relation to a natural person, any:

- spouse;
- relative by blood or adoption of that person or that person’s spouse; and
- body corporate in which that person or Affiliates of that person hold in aggregate more than 20% of the voting shares.

“*Community*” means all those parties with an interest in a project or an area or issue affected by a project. The nature and extent of community will vary from place to place and time to time.

“*Ecologically Sustainable Development (ESD)*” means for the purpose of this document a process of change designed to effectively integrate ecological, social and economic considerations such that the needs of future generations are protected in the process of meeting the needs of the present generations. It is based upon a series of principles regarding such matters as resource use, global equity, intergenerational equity and the nature of development.

“*Entities*” means both parent entities, that is, entities which are the main source of influence over others, and other entities, unless otherwise specified.

“*Environmental Impact Assessment*” means the identification, assessment and evaluation of the potential environmental effects associated with any particular policy, program, project or development proposal.

“*Government Agency*” means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of law.

“*Home Country*” means the country in which the parent entity of a multinational enterprise or transnational corporation is located.

“*Host Country*” means a country in which an entity other than the parent entity of a multinational enterprise or transnational corporation is located.

“*Independent*” means not selected by or connected with a company or any body having vested (financial or ownership) interests in the company or the oil or gas industry in general.

“*International Best Practice*” means the changing and improving of standards by which a project should be operated, as defined jointly by the company, independent experts and the community.

“*Involuntary Resettlement*” means resettlement that is agreed to by the community, as a result of their agreement to a project proceeding on their land(s). Not to be confused with forced resettlement to which people have not consented

“*Landowners*” means to include both legally recognised landowners under the prevailing land tenure and traditional owners of land regardless of whether their land rights are recognised under prevailing land tenure.

“*Non Governmental Organisations*” (NGO’s) means organisations or special interest groups that represent people’s movements.

“*Participation*” means to take part as equal partners in any process, with full access to all necessary information and a share in the decision-making process, including the right to publish dissenting reports.

“*Regulatory Change*” means the introduction of, or change in, an applicable law or regulatory requirement or in its interpretation or administration by a Government Agency.

“*Social Impact Assessment*” means the identification, assessment and evaluation of the natural, or biophysical, environmental impacts to include the social and socio-economic impacts that may be associated with any particular policy, program, project or development proposal.

“*Stakeholders*” as used in this document has to be interpreted in broad sense and includes those individuals, community groups or other organisations whose interests are affected by a company’s actions. Among the most important of these stakeholders are, for example, residents of local communities in which companies have

production facilities or offices; business and trade associations; state and national governments; regional and international inter-governmental organisations; local, regional and international not-for-profit, non-governmental organisations working for human rights, education, welfare, economic or cultural development, environmental protection, and various other humane objectives; and employees and contractors who work for the company.

2.2. Guide to interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party.
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- A singular word includes the plural, and vice versa.
- A word which suggests one gender includes the other gender.
- If a word is defined, another part of speech has a corresponding meaning.
- If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- The word “agreement” includes an undertaking or other binding arrangement or understanding, whether or not in writing.

2.3. Multiple parties

If a term is used in this document to refer to more than one party:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and

- (c) any other reference to that party or term is a reference to each of those persons separately.

2.4. Scope of Application

(1) The following Principles apply to the resource-based MNCs active in the oil and gas industry. These usually comprise companies or other entities whose ownership is private, state or mixed, established in different countries and so linked that one or more of them may be able to exercise a significant influence over the activities of others and, in particular, to share knowledge and resources with others. The Principles are addressed to the various entities within the MNC according to the actual distribution of responsibilities among them on the understanding that they will co-operate and provide assistance to one another as necessary to facilitate observance of the Principles.¹

(2) The Principles are not aimed at introducing differences of treatment between MNCs and domestic corporations active in the oil and gas industry. Wherever relevant they reflect good practice for all. Accordingly, MNCs and domestic corporations are subject to the same expectations in respect of their conduct wherever the Principles are relevant for both.²

(3) The addressees of the Principles, as defined above, will hereinafter be commonly referred to as "Companies".

3. GENERAL / OVERRIDING PRINCIPLES

3.1. Observance of domestic laws and regulations

PRINCIPLE:

Companies are subject to the laws, regulations and administrative practices of the countries in which they operate.³ Companies should respect the right of each state to regulate and monitor accordingly the activities of their entities operating within the states territory.

COMMENTARY:

In Articles 1 and 2 of the *UN Charter of Economic Rights and Duties of States*, it is provided that each state has the right to choose its own economic system and to regulate and supervise foreign investment and the activities of MNCs within its national jurisdiction. Similarly, Paragraph 8 of the *ILO Tripartite Declaration concerning Multinational Enterprises and Social Policy* states that MNCs should obey the national laws and regulations. Accordingly MNCs should at any time adhere to the na-

¹ *OECD Guidelines*, Introduction, paragraph 8.

² *OECD Guidelines*, Introduction, paragraph 9.

³ *Charter of Economic Rights and Duties of States*, Art1 Sec(2)(b).

tional laws and refrain from violating the legislative sovereignty of the state in which they operate.

3.2. State sovereignty over natural resources

PRINCIPLE:

*Companies should respect the permanent national sovereignty of the countries in which they operate and the right of each State to exercise its full permanent sovereignty in accordance with international law over the natural wealth and resources within its territory.*⁴

COMMENTARY:

The principle of permanent sovereignty over natural resources emanating from the *ius cogens* principle of self-determination, is recognised as a fundamental principle of contemporary international law.

In the context of the United Nations, the principle has been formulated, developed and reiterated in a number of resolutions of the General Assembly, extending, *inter alia*, from resolution 523 (VI) of 12 January 1952 and 626 (VII) of 21 December 1952, through resolution 1803 (XVII) of 14 December 1962 (“the landmark resolution”),⁵ and resolution 2158 (XXI) of 25 November 1966, to resolution 3281 (XXIX) of 12 December 1974,⁶ by which the *Charter of Economic Rights and Duties of States* was adopted. The principle is also part of the right to development as established by the *Declaration on the Right to Development*.⁷

Moreover, the draft of the two international covenants on human rights proposed by the Human Rights Commission of the United Nations affirmed as early as January 1955 that the right of peoples to self-determination also includes permanent sovereignty over their natural wealth and resources. This right was accordingly incorporated in the common Article 1 (2) of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and the *International Covenant on Civil and Political*

⁴ *Charter of Economic Rights and Duties of States*, Art1 Sec(1). See also Article 6 of the “UN-Draft Code of Conduct on Transnational Corporations, September 1986 / May 1987” published in *UNCTC Current Studies Series A No. 4* and UN Doc E/1987/73 of May 1987 on Consultations undertaken on the outstanding issues in the Draft Code. The UN Draft Code of Conduct on Transnational Corporations in its current form provides that “transnational corporations should/shall respect the right of each State to exercise its permanent sovereignty over its natural resources and wealth”. See Commission on Transnational Corporations, *Completion of the Code of Conduct on Transnational Corporations*, UN Doc E/C.10/1986/S/2 Annex II, para10, p21. For a comment on the importance of the words “within its territory” see Seidl-Hohenveldern, *International Economic Law* (Martinus Nijhoff Publishers, Dordrecht, 2nd ed, 1992) pp29-30.

⁵ See UN General Assembly Resolutions 837 (IX) of 14 December 1954; 1314 (XIII) of 12 December 1958; and 1515 (XV) of 15 December 1960.

⁶ See also the preceding resolutions of the UN General Assembly 2158 (XXI) of 25 November 1966; 2386 (XXIII) of 19 December 1968; 2692 (XXV) of 11 December 1970; 88 (XII) of 19 October 1973 adopted by the Trade and Development Board of the UNCTAD; 3016 (XXVII) of 18 December 1972; 3037 (XXVII) of 19 December 1972; 3082 (XXVIII) of 6 December 1973; 3171 (XXVIII) of 17 December 1973; 3021 (S-VI) of 1 May 1974 (Declaration on the Establishment of a New International Economic Order); and 3202 (S-VI) of 1 May 1974 (Programme of Action on the Establishment of a New International Economic Order).

⁷ See UN General Assembly Resolution 41/128 of 4 December 1986, Article 1(2).

Rights (ICCPR) of 1966.⁸ Furthermore, the principle has been incorporated in Article 13 of the *Vienna Convention on Succession of States in Respect of Treaties* of 1978. At the core of the concept of permanent sovereignty is the inherent and overriding right of a state to control and dispose of the natural wealth and resources in its territory for the benefit of its own people. The natural wealth and resources located within the territorial jurisdiction of a sovereign state belong to the community, i.e. the people themselves since the right of self-determination is a collective right of the people rather than an individual right.⁹

Accordingly, MNCs should not use their superior bargaining position to conclude concession-type arrangements or resource development agreements with host governments on a “take it or leave it” basis, which are unfair, inequitable and detrimental to the interests of the host country’s people themselves, who are the owners of those resources. In the performance of their moral obligation to co-operate for development, MNCs should refrain from taking unfair advantage of their superior bargaining strength.

To comply with the principle of permanent sovereignty any particular arrangement concerning the extraction of natural resources between a company and a host government, including petroleum agreements such as the “joint venture”¹⁰ and the “service contract”, must be (1) in the interest of national development and well-being of the people of the state concerned; (2) in accordance with the national legislation in force; and (3) freely entered into by the state concerned.¹¹

Even with regard to legal arrangements freely entered into by and between independent host governments and MNCs or their subsidiaries supervening circumstances may justify a demand for review or re-negotiation of a contractual arrangement by the host government, e.g. a change of regime involving basic changes in public policies, need for a radical review of fiscal policies, overwhelming financial constraints of a host government, and a fundamental change of the substratum caused by unforeseen circumstances, such as an energy crisis.¹²

3.3. Company involvement in legislative and political issues

PRINCIPLES:

(1) Companies should not become involved in the drafting of legislation for governments in which they have a vested interest.

(2) Companies should also take fully into account established general policy and development objectives of the countries in which they operate.

⁸ Rosas, “The Right of Self-Determination” in Eide/Krause/Rosas (eds), *Economic, Social and Cultural Rights – A Textbook* (Martinus Nijhoff Publishers, Dordrecht, 1995) p83.

⁹ *Ibid.* At p82.

¹⁰ See e.g. Kirchner/Schanze/v. Schlabrendorff/Stockmayer/Fritzsche/Patzina, *Rohstofferschließungsvorhaben in Entwicklungsländern* (Kluwer, Deventer, 1977) p18.

¹¹ Hossain, *Legal Aspects of the New International Economic Order* (Frances Pinter Publishers, London, 1980) pp33-43.

¹² Chowdhury, “Permanent Sovereignty over Natural Resources” in Hossain/Chowdhury (eds) *Permanent Sovereignty Over Natural Resources in International Law* (Frances Pinter Publishers, London, 1984) p21.

COMMENTARY:

To require from MNCs not to become involved in the drafting of domestic laws in which they have a vested interest follows from the right of self-determination as formulated in the common Article 1 of the *ICESCR* and the *ICCPR* which invokes the perceptions of independence and non-interference. These notions “[...] *may be referred to as the external (as distinct from the internal) aspect of self-determination, that is the right of a people to be free from outside interference and intervention.*”¹³ Direct or indirect involvement of MNCs in the drafting process of legislation for host-governments may constitute an invasion of the legislative sovereignty of the host state.¹⁴

Moreover, a common feature of MNCs is the profit-maximising motivation projected on a global scale, on the one side, and the location of the decision-making centre outside host countries, on the other. In light of this, it is understandable that one of the major causes of tension inherent in their operations stems from the frequent inconsistency between the MNCs’ economic goals and the governmental policy of the host countries. In other words, the activities of MNCs, although perfectly legal under the national laws of the country where they are carried out, nevertheless may hinder or even frustrate the country’s objective of economic development by the combined effect of the above-mentioned elements.¹⁵

Therefore, while respecting general policy objectives of countries in which they operate at any time, companies should in particular give due consideration to those countries’ aims and priorities with regard to economic and social progress, including industrial and regional development, the protection of the environment, the creation of employment opportunities.

Thereby, companies should carry out their operations in conformity with relevant inter-governmental co-operative arrangements concluded by those countries. This is confirmed by Paragraph 10 of the *ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy* and by Paragraph 2 of the General Policies of the *OECD Guidelines for Multinational Enterprises*.

It is obvious that through their sheer economic power companies do have considerable political and even legislative influence which will be felt, directly or indirectly. Together with civil society groups and governments, companies ought to work out rules and standards that bring this issue out of the realm of suspicions and rumours and provide transparency to it. The regular repetition of companies’ phrase that “they will not get involved in local or national politics” is neither credible nor sufficient. In this context it has to be emphasised that MNCs should not be excluded from openly and publicly advocating particular courses of action for Governments of those countries in

¹³ Rosas, “The Right of Self-Determination” in Eide/Krause/Rosas (eds), *Economic, Social and Cultural Rights – A Textbook* (Martinus Nijhoff Publishers, Dordrecht, 1995) pp79 and 83. See also UN Human Rights Committee, *General Comment 12 on peoples’ right of self-determination*, UN Doc A/39/40.

¹⁴ Abi-Saab, “The International Law of Multinational Corporations ” in Snyder/Sathirathai, *Third World Attitudes Toward International Law – An Introduction* (Martinus Nijhoff Publishers, Dordrecht, 1987) p551.

¹⁵ Francioni, “International Codes of Conduct for Multinational Enterprises: An Alternative Approach” (1977) 3 *The Italian Yearbook of International Law* 143 at 146 and 152.

which they conduct activities, but such involvement should be at any time transparent.

3.4. Abstention from corrupt practices

PRINCIPLES:

(1) *Companies should refrain from the offering, promising or giving payment, gift or other advantage to or for the benefit of a public official as consideration for performing or refraining from the performance of his duties in connection with a company's transactions.*

(2) *Companies should maintain accurate records of payments made by them, in connection with their transaction, to any public official or intermediary.¹⁶ They should make available these records to the competent authorities of the countries in which they operate, upon request, for investigations and proceedings concerning those payments.¹⁷*

COMMENTARY:

The issue of improper payments has been raised in the context of widespread corruption on the part of MNCs of public officials in a number of countries. The international relevance of this malpractice, beyond the immediate implications of criminal responsibility under domestic law of the state involved, has been evidenced by several early international agreements that have been concluded between the Government of the United States, as home country of the MNCs involved, and several host countries, where illegal payments have been made.¹⁸ More recently, the OECD countries have made it a violation of the law for MNCs to engage in corrupt practices and bribe. The *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* has been signed by all 29 OECD members and Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic. As of 10 June 1999, fifteen of the 34 signatories had completed their internal approval process and deposited instruments of ratification with the OECD secretariat.¹⁹

Obviously, corruption and bribery are serious threats to democracy, to the rule of law and to human rights. Unlawful activities of this nature may in the long run undermine the stability of international economic relations. Accordingly, companies should refrain from engaging in such practices.

¹⁶ As suggested by the United States Securities Exchange Commission in *SEC v United Brands Company*, CCH Federal Securities Law Report § 95,420 (DDC 1976). See also Securities Exchange Commission, *SEC Report on Questionable and Illegal Corporate Payments and Practices*, submitted to the Senate Banking, Housing and Urban Affairs Committee, May 12 1976, CCH Federal Securities Law Report No642, at 13-32.

¹⁷ See UN General Assembly Res. 3514 (XXX), Measures Against Corrupt Practices of Transnational and other Corporation, their Intermediaries and Others Involved, UN Chronicle Vol. XIII, January 1976, p99.

¹⁸ Francioni, "International Codes of Conduct for Multinational Enterprises: An Alternative Approach" (1977) 3 *The Italian Yearbook of International Law* 143 at 146 and 152.

¹⁹ Daley, "Addressing the Challenges of International Bribery and Fair Competition", *First Annual Report to Congress on the OECD Antibribery Convention*, July 1999.

3.5. Peoples' Participation

PRINCIPLE:

Companies should include effective community participation in all phases of planning, production and post-production as a fundamental principle. This implies the setting up of suitable instruments for the necessary processes for consultation and decision making.

Commentary

The principle of ensuring community participation in planning and production processes can be derived from the provisions of the *Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters*.²⁰ It is also based on principle 1 of the *Stockholm Declaration on the Human Environment*²¹ and principle 10 of the *Rio Declaration on Environment and Development*²². In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, the right of public participation in decision-making should be guaranteed.²³

Therefore, it is absolutely imperative for resource-based companies which are planning to set up extraction facilities to involve all affected persons and interest groups right from the beginning in the widest possible way. The principle of widest possible participation means, in particular, that well known “divide and rule” systems should not be continued, but ways and means should be found to bring in opposing groups as much as those who hope to benefit and therefore support whatever is proposed. As a matter of principle the public shall have the possibility to participate in decision-making without discrimination as to citizenship, nationality or domicile, or whatsoever. Special attention needs to be given to the individuals or groups most affected by and most vulnerable to the impacts of the companies’ operations. In particular the following groups should be included in the decision-making process:

- communities living in the immediate vicinity of the intended production area, and within these communities traditional structures (chiefs, elders....) and modern groupings (youth groups, NGOs, professionals, contractors...);
- landowners, both those who hold legal titles and those who have other reasons (traditional, cultural, ...) to consider themselves as owners of the land they use;
- tenants who are using the land on the basis of leases taken out from the owners;
- organisations - local, national or international - that have taken a legitimate interest in the effects of the intended production;

²⁰ Economic Commission for Europe, Committee on Environmental Policy, Fourth Ministerial Conference “Environment for Europe”, Aarhus, Denmark, 23-25 June 1998, ECE/CEP/43 21 April 1998 [hereinafter referred to as “Aarhus Convention”].

²¹ *Declaration of the United Nations Conference on the Human Environment*, Stockholm (1972).

²² *Declaration on Environment and Development*, Rio (1992).

²³ *Aarhus Convention*, Article 1.

- advisors, experts, lawyers etc. who may have been approached by affected groups in order to help them deal with the issue;
- nomadic groups;
- religious groups

The affected persons and interest groups concerned should be informed, either by public notice or individually, early in a decision-making procedure, before any planning is set in motion, and in an adequate, timely and effective manner, inter alia of:

- the proposed activity and the application on which decision will be taken;
- the nature of possible decisions or the draft decision;
- the public authority responsible for making the decision;
- the envisaged procedure, including
the commencement of the procedure
the opportunities for the public to participate
the time and the venue of any envisaged public hearing
an indication of the authority from which relevant information can be obtained and where the relevant information has been deposited for examination by the public
an indication of the relevant authority or any other body to which comments or questions can be submitted and of the time schedule for transmittal of comments or questions; and
- the fact that the activity is subject to a national or trans-boundary environmental impact assessment procedure.

Special attention needs to be given to the individuals or groups most affected by and most vulnerable to the impacts of the companies' operations. Since these groups are often the most difficult to engage with (for a variety of reasons) they are easily overlooked in favour of easy to reach, friendly, or proxy stakeholders. Hereby, it has to be ensured that the people speaking on behalf of wider stakeholder groups are the legitimate representatives of such groups.²⁴

Binding rules need to be formulated in order to guarantee the representation of all those groups. It is most important that these rules are acceptable to all and do not give any one the feeling of being left out. Only then can conclusions and agreements build a firm basis of confidence which is vital for the companies' operations. To quote the Catholic Bishop of Port Harcourt, Nigeria: "Confidence building measures are far more important than money."

For the purpose of effective participation, the necessary local and regional structures for meaningful participation must be set up before any planning is set in motion. They will be different from country to country. Factors such as language, understanding of time, religion and many other socio-cultural aspects have to be taken into consideration according to the varying local conditions. Appropriate gender sensitive mechanisms must be established. In addition, the people must be strengthened in such a way that they can hold their own vis-à-vis the other two "parties", i.e. the government and the company. Such strengthening might include

- training and information courses;
- provision of advisors, experts, lawyers, etc.;
- allowance of sufficient time;

²⁴ Aarhus Convention, Article 6 (3)

- technical support (e.g. communication equipment, means of transport, office space).

The expectations of all concerned must be taken seriously. These will include the companies' goal to make profits just as much as the expectation of the local population to participate in the progress of development and the right of the government to represent the needs of the national population. Equally, reasons for a rejection of the oil production must be taken seriously, whether they are based on religious, cultural, environmental or economic reasons.

3.6. Scope of Participation

PRINCIPLE:

Companies should accept the principle that in addition to government legislation in any given country, affected communities must through their participation be enabled to have genuine influence on the decision making process.

Commentary

It is unavoidable that national priorities will time and again collide with local and regional interests. If these conflicts are not addressed at a very early phase and dealt with in a fair and democratic manner, violent conflicts are bound to break out later. Even the abandonment of production plans should never be completely excluded from the negotiations. For instance, such abandonment could be considered where

- the government has removed fundamental democratic rights of participation from the affected population, or
- is responsible for other blatant human rights violations;
- religious taboos forbid entering a certain area, or
- cultural traditions stand against the exploitation

3.7. Transparency

PRINCIPLES:

1. Greatest possible transparency should be the guiding principle of all negotiations right from the beginning.

2. Companies should fully disclose all commissioned reports by governments, companies and other stakeholders relating to environmental, social, human rights as well as health and safety issues, and they should avoid binding parties to extensive confidentiality clauses.

3. All written information must be available in a language which can be understood by the affected people.

4. The local population should be given sufficient time for requesting and evaluating information while moratoria should be offered accordingly.

Commentary

The right of access to information is provided for by the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.²⁵ It is a basic requirement for public participation in decision-making as set forth by Principle 3.5.

Transparency should include the unimpeded access to Environmental and Social Impact Assessments and other relevant studies and reports. It is particularly important to offer detailed information and come to clear agreements on issues such as:

- planned measures (public access to planning documents)
- total area affected by the production
- consequences for land rights
- impact on the environment
- social and cultural changes
- foreseeable migration
- relevant human rights
- compensation systems,
- infrastructure (roads, pipelines)
- foreseeable results of the oil production
- positive and negative impact on development
- key for the distribution of the expected wealth created.

In response to a request, companies should make such information available to the public, including, where requested, copies of the actual documentation containing or comprising such information. This should occur without an interest having to be stated by the requesting party.

The information should be made available as soon as possible and at the latest within one month after the request has been submitted, unless the volume and the complexity of the information justify an extension of this period up to two months after the request. The applicant should be informed of any extension and of the reasons justifying it. Where a company does not hold the information requested, the company should, as promptly as possible, inform the applicant of the authority to which it believes it is possible to apply for the information requested or transfer the request to that authority and inform the applicant accordingly.²⁶

Any person who considers that his or her request for information has been ignored, wrongfully refused, whether in part or in full, inadequately answered, or otherwise not dealt with should have access to a review procedure before a court or another independent and impartial body other than a court of law.²⁷

Companies should update Social and Environmental Impact Assessments and other planning documents at regular intervals as they are valuable instruments for gauging the socio-economic effects of the oil production and, thus, serve as a basis for the ongoing dialogue between the population and the government as to the further development of the project.

²⁵ *Aarhus Convention*, Article 1.

²⁶ *Aarhus Convention*, Article 4.

²⁷ *Aarhus Convention*, Article 9.

3.8. Trust Fund

PRINCIPLE:

Companies should finance an independently controlled trust fund in order to ensure resources to enable adequate preparation for community and NGO participation.

Commentary

Transnational oil companies have unlimited access to legal, technical and business expertise, they have the means for moving freely across the globe or to the remotest corner of their operation area, and they own the most sophisticated equipment for communication. The communities affected by the oil or gas production have nothing of the sort. The companies should redress this imbalance by allocating substantial funds into a trust account. Governments, international agencies or sympathetic NGOs might also contribute finances.

The fund should be administered by an independent international agency and controlled by a board of trustees, in which all stakeholders are represented. Affected communities will have the right to apply for funds which enable them to hire the services of lawyers, environmental experts, research institutions, economic advisors or purchase means of transport and communication equipment, etc.

3.9. Distribution of state income from oil

PRINCIPLES:

The major part of oil and gas income goes to the relevant national governments in the form of royalties. Although the companies do not have – and should not have – any formal right to interfere in the ways governments deal with these funds, they have a legitimate interest in seeing that the distribution of the oil and gas money is subject to fair and transparent principles.

Notwithstanding the principle of national ownership of natural resources and the financial returns accruing thereof, special attention should be paid to the expectations and needs of the population living in the immediate vicinity of the production fields.

Commentary

The principle of state sovereignty over natural resources as provided for by *Principle 3.2* which is incorporated in the common Article 1 (2) of both *ICESCR* and *ICCPR* is a collective right. Accordingly a state has to control and dispose of the natural wealth and resources in its territory for the benefit of its own people since the natural wealth and resources located within the territory of a state belong to the state's community. According to Article 2 (3) of the *Declaration on the Right to Development*, states have the duty to adopt development policies seeking to promote the well-being of its people, to increase the quality of life of all individuals and to ensure a fair and just distri-

bution of the benefits of such policies.²⁸ Also Article 15 (2) of the *ILO Convention on Indigenous and Tribal People (No. 169)*²⁹ stipulates that the people concerned by any programme for the exploration or exploitation of natural resources shall wherever possible participate in the benefits of such activities.

Therefore, besides initiating community development programmes, companies in performance of their moral duty to co-operate for development, should help to set up systems which allow for the interests of the residents of the production areas, being the owners of a state's natural resources as part of the community, to be taken care of.

Under the chairmanship of the respective governments, it is suggested that representatives of affected communities and companies should participate in negotiations that aim at agreements dealing, for instance, with:

- regulations for compensation payments which are transparent and acceptable to the affected people;
- community oriented sustainable development plans that are worked out with the responsible participation of the communities;
- measures for the protection of the environmental living conditions in the production areas;
- long term structural changes that prevent the unsustainable dependence on oil or gas but consider the building up of other economic activities as well;
- employment systems which avoid hostile competition among local people but rather allow transparent and fair allocation of jobs;
- remuneration scales that prevent the creation of new splits between the haves and have-nots but possibly allow for community income in addition to individual payments.

3.10. Adherence to International treaties and codes

PRINCIPLE:

Companies should abide by all relevant international treaties and codes.

Commentary

The main international treaties, agreements and standards covering the core concerns regarding the activities of multinational oil and gas companies are

- the Universal Declaration of Human Rights and the Covenants related to it
- The ILO Conventions
- The various multilateral environmental agreements

²⁸ See UN General Assembly Resolution 41/128 of 4 December 1986, Article 2(3).

²⁹ ILO Convention concerning Indigenous and Tribal Groups in Independent Countries (No. 169) 1989.

3.11. *Respect for the right to development*

PRINCIPLE:

Oil and gas companies should accept their share of responsibility for development, taking into account the need for full respect of human rights and fundamental freedoms as well as their moral duty to the community, which alone can ensure the free and complete fulfilment of the human being, and they should therefore promote and protect an appropriate political, social and economic order for development.

Commentary

According to Article 1 (1) of the Declaration on the Right to Development “[t]he right to development is an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realised”.³⁰

Article 11 of the International Covenant on Economic, Social and Cultural Rights recognises “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions”.

Although states have the primary responsibility for the creation of national law and conditions favourable to the right of development,³¹ it is believed that companies have an important role to play in this respect.

3.12. *Sustainable Development*

PRINCIPLES:

(1) Oil and gas companies should accept their share of responsibility for sustainable development in those areas where they are extracting natural resources.

(2) Companies should effectively integrate ecological, social and economic considerations in their activities such that the needs of future generations are protected in the process of meeting the needs of the present generations.

Commentary

The notion of sustainable development arose in 1992 at the *United Nations Conference on Environment and Development (UNCED)*, which is also known as the *Earth Summit*. The *Agenda 21*,³² one of the key agreements concluded at this conference, specifies the actions necessary to achieve sustainable development across a variety of policy areas and through a wide range of players and stakeholders. An explicit theme is the recognition of the pivotal role of participation by citizens in the decision-making that leads to sustainable development.³³

³⁰ UN General Assembly Resolution 41/128 of 4 December 1986, Article 1 (1).

³¹ UN General Assembly Resolution 41/128 of 4 December 1986, Article 3 (1).

³² UN Doc A/Conf.151/26/Rev.1 (1992).

³³ See also the *Rio Declaration on Environment and Development*, Principles 3 and 4.

Companies should acknowledge the fundamental link between development co-operation and human rights and work out convincing concepts and transparent strategies on how they want to contribute towards a sustainable and people-centred development both in the immediate areas of their operations and globally. The scope of such concepts should include the companies' activities as a whole and the environmental, ecological, socio-cultural and economic impacts of those activities from product creation to its disposal.

These plans should be developed in closest co-operation with a wide selection of interested stakeholders, which should include representatives of affected communities as much as international NGOs, national development organisations and governments, UN agencies and research institutions.

In no case should companies deliver "community programmes" which they have developed in their own board rooms without full peoples' participation.

3.13. Community (local) employment

PRINCIPLE:

Companies should set up transparent procedures for the employment of local people.

Commentary

Big multinational companies are generally seen as very potential employers. In actual fact, employment opportunities in the oil-/gas production are limited and can never meet these expectations. It is therefore all the more important that companies set up very transparent procedures to guide their employment practices. These should be worked out with and continuously monitored by representatives of the affected communities. Aspects to be considered will vary from place to place but should include

- information on open places to be expected within the following year (numbers, qualifications needed, areas of work, duration of contract, etc);
- relation to local and regional development activities;
- publication of scales for salaries and wages;
- gender concerns;
- selection procedures;
- selection panels that include representatives of the communities;
- remunerations systems.

In those communities where modern monetary systems are still relatively new the definition of "*fair and adequate remuneration*" should not be a matter of the company and the employees only. In order to avoid divisive forces taking root in communities where a few lucky ones will enjoy relatively big benefits while many will remain empty handed, it may be advisable to include community representatives in the negotiations about working conditions and to allow the possibility of, for example, remuneration not being paid exclusively to the individual employees but a certain percentage of it going into a community fund.

4. LAND RIGHTS AND RELATED ISSUES

4.1. Land ownership and traditional rights

PRINCIPLES:

1. *Companies should take cognisance of the fact that land on which they are planning to operate may be claimed by people or communities whose rights are not necessarily based on title deeds or similar legal documents. Traditional or cultural links may have created equally strong bonds to the land, and these must be treated with highest sensitivity.*

2. *Modern national legislation may overrule local and traditional rights. It is not for foreign companies to take sides in such issues, yet they ought to make every effort to avoid the impression that they are using such national legislation for their own benefit and to the detriment of the local people.*

Commentary

With a view on their own operations, companies should use their influence to ensure the application of the relevant clauses of the Universal Declaration of Human Rights and the ensuing Covenants and Conventions.³⁴ In no circumstances should traditionally or culturally legitimated landowners, or indigenous peoples or groups be subjected to adverse discrimination with respect to their rights or claims to land, property or natural resources.³⁵

A particularly relevant clause is article 15 of the ILO Convention 169 which states in section 1 that “[t]he rights of the people concerned to the natural resources pertaining to their lands shall be specially safeguarded. These rights include the right of these peoples to participate in the use, management and conservation of these resources”.

Another relevant phrase is the General Comment on "Forced Eviction" which the Committee on Economic, Social and Cultural Rights of the UN has drafted as an interpretative note to Article 11 ICESCR concerning the right to an adequate standard of living. It offers a precise legal definition of "forced eviction" and defines issues like "adequate rehabilitation".

4.2. Resettlement

PRINCIPLES:

Companies should not be party to forced evictions of people from their land. No relocation shall take place without free and informed consent of the people concerned and after agreement on just and fair compensation.

Companies should not operate any project in areas where any forced evictions from land have occurred.

³⁴ UDHR, Article 17; ICESCR, Article 1; ICCPR, Article 1

³⁵ UN Doc E/CN.4/Sub.2/AC.4/1984/WP.1

Companies should ensure that if for the development of their operations people have to be moved, then the resettlement and rehabilitation of those people must be agreed to not only by the national authorities but also by the affected communities. Such resettlement should be carefully planned and implemented by all concerned, so that no affected person, group or community has their standard of living, economic, culture and social cohesion diminished as a result.

Commentary

Article 16 (2) of the *ILO Convention on Indigenous and Tribal Peoples (No. 169)* states that relocation should only take place as an exceptional measure and only with the free and informed consent of the affected peoples. Where their consent cannot be obtained, such relocation should take place only following appropriate procedures established by international laws and regulations, including public inquiries where appropriate, which provide the opportunity for effective representation of the peoples concerned.

In case of a resettlement the peoples concerned shall be provided in all possible cases with lands of quality and legal status at least equal to that of the lands previously occupied by them, suitable to provide for their present needs and future development.

The World Bank's *Operational Directive OD 4.30* can provide helpful guidelines in this context. It demands for instance:

- *All involuntary resettlement should be conceived and executed as development programs, with settlers provided sufficient investment resources and opportunities to share in project benefits.*
- *Community participation in planning and implementing resettlement should be encouraged.*
- *Resettlement plans should be built around a development strategy and package aimed at improving or at least restoring the economic base for those relocated.*
- *Preference should be given to land-based resettlement strategies for people dislocated from agricultural settings. If suitable land is unavailable, nonland-based strategies built around opportunities for employment or self-employment may be used.*
- *Particular attention must be given to ensure that vulnerable groups such as indigenous people, ethnic minorities, the landless, and women are represented adequately in such arrangements.*

4.3. Compensation agreements

PRINCIPLE:

Companies should ensure that all compensation agreements are based on international best practice.

Commentary

The principle of full compensation is provided for in Article 16 (5) of the ILO Convention on Indigenous and Tribal Peoples (No. 169).

Companies should clearly define how they have designed and calculated their offers. Compensation should be determined via a process of negotiation and consultation, using community involvement mechanisms.

Customary ownership of assets such as land, water, or grazing rights should be given the same status as legal ownership and compensated for in the same way. The absence of legal titles by indigenous groups should not be a bar to compensation. Individuals, groups or communities who have user rights under customary law, that is, the right to use the land for certain purposes or to collect certain goods from it, without legally owning it, should also be compensated if these rights are taken away.

Where land is communally owned, companies should negotiate with the community through their legitimised representatives, even though this may involve difficulties and delays.

Displaced persons who do not receive land should be compensated for their losses at replacement values that include full net present value and a stream of benefits into the future, and prior to the actual removal or loss. The compensation should enable them to purchase equivalent land or other income generating resources before being forced to move and suffering loss of any kind.

Common property resources including water, energy, fodder or grazing, should also be compensated for, as should religious and cultural sites. Likewise water resources which are polluted as a consequence of the oil activities should be compensated for.

An appeals mechanism should be put in place locally so that those who feel they have not been fairly compensated for assets lost can obtain a fair and impartial hearing.

4.4. Protocols for negotiations

PRINCIPLES:

- 1. Oil and gas companies should develop and publish procedures for negotiations on exploration and production with affected landowners and communities.*
- 2. As a matter of principle, such negotiations must not be prejudiced nor coercive.*

Commentary

This would include mechanisms for:

- identifying landowners (including legitimate users of land);

- hiring of appropriate independent consultants, environmental experts, legal advisors, etc.;
- the involvement of NGOs as accepted by the communities;
- the financing of the negotiation processes (e.g. from the Trust Fund);

Company staff involved in consultations with indigenous groups should have appropriate training in cross-cultural communication issues.

4.5. Right to negotiate and veto

PRINCIPLE:

Companies should recognise that every community has a right to negotiate over the use of its land and to impose a veto on development that it does not support.

Commentary

Article 17 of the Universal Declaration of Human Rights (UDHR) recognises that “[e]veryone has right to own property alone as well as in association with others” and that “(...) no one shall be arbitrarily deprived of his property”. In addition the Human Rights Committee has interpreted the right of everyone to freely participate in the cultural life of the community as guaranteed by Article 27 UDHR to include the protection of „a particular way of life associated with the use of land resources“ Similarly, ILO Convention No. 107 provides that “[t]he right of ownership, collective or individual, of the members of the populations concerned over the lands which these populations traditionally occupy shall be recognised”.³⁶

Article 1 of the Declaration on the Right to Development provides that the right to development implies the full realisation of the right of peoples to self-determination, which includes the exercise of their inalienable right to full sovereignty over all their natural resources as provided for in the common Article 1 of the ICESCR and the ICCPR.

Accordingly, companies should recognise that every community should be able to freely dispose over the use of its land.

4.6. Disjunctive versus conjunctive agreements

PRINCIPLE:

³⁶ ILO Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries 1957, Articles 11-13.

All agreements with indigenous people or other landowners should be based on the disjunctive agreement process whereby separate agreements are required at both exploration and production stages.

Commentary

Conjunctive processes are not acceptable because communities are being asked to agree to an oil or gas production proposal prior to being provided with the complete information on the size, nature and time frame. Therefore they would not be able to assess the full impact of the project.

4.7. Recognition of Indigenous Cultures and Traditions

PRINCIPLE:

The companies should recognise the cultures and traditions of indigenous peoples and respect their ways of decision making.

Commentary

This principle is based on the ILO Convention concerning the Protection and Integration of Indigenous and Other Tribal and Semi-Tribal Populations in Independent Countries (No. 107) and the ILO Convention on Indigenous and Tribal Peoples (No. 169). It can further be derived of Principle 22 of the Rio Declaration on the Environment and Development stipulating that:

“[I]ndigenous people and their communities, and other local communities, have a vital role to play in environmental management and development because of their knowledge and traditional practices. States should recognize and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development.”

Accordingly indigenous peoples shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development.

Companies should recognise the traditional authorities and organisations representing the interests of the indigenous peoples and pay due regard to their customs. In most cases national legislation will give guidance in these matters, but oil and gas companies must act with particular sensitivity since they will in many cases come into much closer contact with the affected indigenous people than the legislators in the capital cities might do.

Cultural land is central to indigenous peoples' self-definition and essential to their survival. Companies should therefore respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or

territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.³⁷

4.8. Uncontacted Peoples

PRINCIPLE

Areas where uncontacted or highly vulnerable peoples are identified should be excluded from oil or gas production in order not to jeopardise the survival of these peoples.

Commentary

The inalienable human right to life is recognised under Article 3 UDHR and Article 6 (1) ICCPR. If it appears to be possible that oil or gas producing activities, as planned by a company, have the potential to jeopardise the right to life of uncontacted or highly vulnerable peoples in that area, the company should refrain from oil or gas production.

Moreover, the Convention on the Prevention and Punishment of the Crime of Genocide provides in part that:

“[G]enocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such:

- *Killing members of the group;*
- *Causing serious bodily or mental harm to members of the group;*
- *Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.”³⁸*

Several other human rights declarations and conventions prohibit genocide. The ICCPR incorporates the Genocide Convention’s prohibitions.³⁹ The Draft UN Declaration on the Right of Indigenous Peoples includes “cultural genocide” in its protections:

“Indigenous Peoples have the collective and individual right not to be subjected to ethnocide and cultural genocide, including prevention of and redress for:

- *Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural or ethnic identities;*
- *Any action which has the aim or effect of dispossessing them of their lands, territories and resources;*
- *Any form of population transfer which has the aim or effect of violating or undermining any of their rights;*
- *Any form of assimilation or integration by other cultures or ways of life imposed on them by legislative, administrative or other measures;*
- *Any form of propaganda directed against them.”⁴⁰*

³⁷ *ILO Convention Concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), Article 13.*

³⁸ *Convention on the Prevention and Punishment of the Crime of Genocide 1948, Article II.*

³⁹ ICCPR, Article 6 (3).

5. ENVIRONMENTAL STANDARDS

5.1. *International best practice*

PRINCIPLE.

Oil and gas companies should follow environmental standards that aim towards ever increasing international best practice.

Commentary

There are no international environmental agreements specifically governing how oil and gas industry projects should be managed. There are, however, a variety of international agreements, which may be directly or indirectly relevant in a general sense, as well as various codes and standards promulgated by organisations such as the World Bank, NGOs, and by the industry itself.

At least three major non-binding multilateral instruments address the general international right to a safe and healthy environment:

- (1) the *Declaration of the United Nations Conference on the Human Environment*, Stockholm (1972);
- (2) the *Rio Declaration on Environment and Development*, Rio (1992); and
- (3) the *Agenda 21*, Rio (1992)

Other relevant multilateral agreements which address more specific environmental issues include:

- 1) the *International Convention on Civil Liability for Oil Pollution Damage*, 1975;
- 2) the *Convention on Civil Liability for Damages Resulting from Activities Dangerous to the Environment*, 1993;
- 3) the *Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter*, London (1972);
- 4) the *Convention for the Prevention of Marine Pollution from Land Based Sources*, Paris (1974);
- 5) the *Convention on Wetlands of International Importance*, Ramsar (1995)
- 6) the *Convention Concerning the Protection of the World Cultural and Natural Heritage*, Paris (1972);
- 7) the *Convention on Environmental Impact Assessment in a Trans-boundary Context*;
- 8) the *Helsinki Rules on the Uses of the Waters of International Rivers*, Helsinki (1966);
- 9) the *UN Convention on the Law of the Sea*, (1982); and
- 10) the *Convention for the Protection of the Biodiversity*, Rio (1992)

⁴⁰ *Draft United Nations Declaration on the Rights of Indigenous Peoples*, UN Human Rights Committee, Sub-Commission on Prevention of Discrimination and Protection of Minorities, Res. 1994/45, UN Doc. E/CN.4/1995/2, E/CN.4/Sub.2/1994/56, Article 7.

Amongst the relevant guidelines are:

- the *Oil Industry Operating Guidelines for Tropical Rainforests*, E&P Forum (1991);
- the *Oil Exploration in the Tropics: Guidelines for Environment Protection*, IUCN (1991);
- the *Mining and Environment Guidelines*, Berlin (1991);
- the *Business Charter for Sustainable Development*, ICC (1991);
- the *Environment Charter*, International Council on Metals (1993); and
- the *World Bank Guidelines for Mining*.

5.2. Baseline data establishment

PRINCIPLE:

Detailed baseline studies must be the undisputed starting point of any environmental impact assessment (EIA). Companies should establish baseline monitoring programs at a very early stage.

Commentary

Current practice of commencing operations prior to proper collection of baseline data is no longer acceptable. The status quo of all relevant social and environmental indicators must be carefully documented, and the correctness of these data ought to be officially acknowledged by all concerned. Only on such basis will it be possible to start meaningful discussions on project planning and implementation with both the authorities and the immediately affected population. And only on such basis will it be possible to deal responsibly and sensibly with issues emanating later from oil or gas production.

5.3. Waste management, treatment and disposal

PRINCIPLE:

Companies must follow highest standards of waste management and should take action to prevent any type of disposal that is not acceptable according to highest possible international best practice.

Commentary

They should agree that oil fields must not be developed unless plans for tailings containment are in place and acceptable, from safety and other perspectives. In particular, they must ensure that pollution of riverine, ground-water and marine environments does not occur from their operations.

5.4. Areas closed to exploration and production

PRINCIPLE:

Companies must make a firm commitment to putting various areas off limits to both exploration and production. These should include all world heritage listed areas, all national parks, conservation reserves, international sites (such as Ramsar sites) and most areas listed for indigenous cultural reasons. Where possible there should be buffer areas around such parks and reserves.

Commentary

The World Heritage Convention requires states to recognise the duty of ensuring the identification, protection, conservation, presentation and transmission to future generations of sites of cultural and natural heritage value.⁴¹ The Ramsar Convention requires states to promote the conservation of wetlands and waterfowl by establishing natural reserves on wetlands and to protect Ramsar listed wetlands.⁴²

Companies should at any time ensure that those areas are closed to exploration and production and that their operations do not hinder host states from fulfilling their obligations under the respective conventions.

5.5. Precautionary principle**PRINCIPLE:**

All companies should operate according to the precautionary principle, which provides that in the event of doubt about the potential impacts of an action or operation, the company should avoid taking that course of action.

Commentary

The Rio Declaration on Environment and Development provides a relevant definition in Principle 15 where it states:

“Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation.”

Exploration or oil/gas production should only occur where a company can demonstrate that such activity will not jeopardise the long-term viability of a species, ecosystem or the health of surrounding communities and their employees

A pro-active approach to minimising risks should be adopted.

5.6. Intergenerational Equity**PRINCIPLE:**

⁴¹ *Convention Concerning the Protection of the World Cultural and Natural Heritage*, Paris (1972), Article 4.

⁴² *Convention on Wetlands of International Importance especially as Waterfowl Habitat*, Ramsar (1971) as amended, Articles 2 and 4.

Companies should ensure that all oil and gas operations adhere to the principle of intergenerational equity.

Commentary

According to Article 4 (1) of the Declaration of the Right to Development, “(s)ustained action is required to promote more rapid development of developing countries”. The Rio Declaration on Environment and Development stipulates in Principle 3 that “(t)he *Right to development must be fulfilled so as to equitably meet the development and environmental needs of present and future generations*”.

Companies should include in their assessment of investment options the social usefulness of the resources to be extracted.

For example, the hydrocarbons which have major global impacts (e.g. global warming) should be subject to a full assessment of available alternatives prior to any consent being given for a project to proceed. Simply assessing these resources on the basis of immediate local impact and present market value is not acceptable.

5.7. Definitions of environmental best practice

PRINCIPLE:

Companies should agree to best practice targets being defined not by the companies themselves, but by independent committees comprising scientists, other experts (e.g. social scientists), NGOs, community representatives and company representatives.

5.8. Rehabilitation and rehabilitation bonds

PRINCIPLE:

Companies should be required to rehabilitate the land once their production ceases.

This will entail extensive baseline studies. Rehabilitation bonds should be sufficient to cover all rehabilitation costs and should also include an amount for accident remediation.

- Rehabilitation plans should be prepared in consultation with local communities.
- Rehabilitation should be sufficiently rigorous to restore pre-mining habitats and to support the return of native flora and fauna to pre-mining levels.
- Rehabilitation should restore the natural function of streams existing prior to oil/gas production taking place, including flood energy dissipation, bank building, sediment filtering, water storage and aquifer recharge.
- Bonds should cover the full costs of rehabilitation and ongoing monitoring and remediation.
- Prior to establishing rehabilitation goals, local NGOs should be resourced to conduct awareness programs.

5.9. Polluter pays

PRINCIPLES:

1. Companies should ensure that all environmental costs involved in production, transport, processing and trade of oil and gas should be borne by the company as polluter/generator and should include these costs as part of their feasibility assessment.

2. Companies should identify mechanisms by which all the environmental and social costs involved in production, transport and trade operations can be avoided or minimised.

Commentary

The production and transport of and trade in oil and gas involve high environmental and social costs. These arise from using energy, spilling oil, cutting corridors for roads and pipelines, digging canals with ensuing lowering of the surrounding water tables, enormous shipping movements at formerly quiet coastal areas with severely adverse consequences for the fishing trade, etc.

While it is in the companies' own interest to take every possible care to prevent acts of sabotage to their pipelines and installations, they cannot be entirely released from liability in cases of sabotage that happen in spite of their precautions. The very existence of the installations accounts for a substantial amount of co-responsibility of the companies.

Other external costs include impacts on recreational values or tourism, costs of remediating accidents and other associated social costs.

All this calls for very clear and transparent rules and regulations. Full costs of rehabilitation and ongoing monitoring must be borne by the polluter.

Advance compensation agreements should be negotiated, where appropriate.

5.10. Continuous environmental improvement

PRINCIPLE:

Companies should operate under the concept of continuous improvement of their environmental performance. This concept provides for annual reviews of environmental targets. Community groups should be involved in setting these targets at all levels.

Commentary

- The process of review and target setting must be transparent.
- The definition of targets must be done in close cooperation of the affected population, NGOs, local and national authorities, and the companies..
- Performance targets must be quantified.

5.11. Hazards and contingency planning

PRINCIPLE:

Companies should prepare a plan to deal with a range of potential accidents and environmental emergencies associated with oil and/or gas production. These should include off-site activities such as transport.

Commentary

- Contingency plans should be prepared and tested.
- Appropriate information on health and environmental hazards and relevant protective measures should be promptly reported to authorities, employees and the public.
- The population living in the production areas must be given relevant instructions on behaviour in case of accidents, and these must be provided in understandable language.

5.12. Environmental and social impact assessment

PRINCIPLES:

1. Companies are responsible for environmental and social impact assessments for both exploration and production activities to be carried out, and they will have to bear all costs accruing from the EIAs.

2. All EIAs should include the option for oil or gas production not to proceed at all if environmental and social impacts are found to be sufficiently severe.

3. Companies should as much as possible quantify all costs, such as environmental and social costs, associated with company operations, and these should be taken into account in actual pricing of resources and, where appropriate, lodged in trust funds for post production rehabilitation.

Commentary

EIAs should preferably be carried out by independent experts. The availability of exact and detailed baseline data (ref. 5.2) is an indispensable precondition for any EIA and the continuing process of monitoring.

The communities must participate in defining the terms of reference for the EIAs and in identifying and contracting the firms to be charged with carrying out the EIA. This is an issue in which it is particularly important to take the concerns of the affected people into consideration.

6. HUMAN RIGHTS ISSUES INCLUDING CIVIL, POLITICAL AND SOCIAL RIGHTS

6.1. General responsibility of companies

PRINCIPLE:

Oil and gas companies have a responsibility to contribute to the promotion and protection of all human rights as specified in both the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights.

Commentary

The legal obligation for the implementation, protection and promotion of human rights rests firmly with the states who have officially ratified and signed the documents and are the duty holders under international law.

However, the Preamble of the Universal Declaration of Human Rights (UDHR) calls on „...*every individual and every organ of society, keeping (the) Declaration constantly in mind, shall strive (...) to promote respect in these rights and freedoms and (...) secure their universal and effective recognition and observance*”.

Thereafter, the UDHR specifically states in Article 29 (1) that everyone has duties to the community. Similarly, the ICCPR and the ICESCR state in their preamble that individuals, having duties to other individuals and to the Community to which they belong, are under a responsibility to strive for the promotion and observance of the rights recognised in the two Covenants.

Oil and gas companies, like all business enterprises, are organs of society. As their operations come under scrutiny around the world, human rights promotion and protection is increasingly demanded by consumers, shareholders and the communities with whom they interact.

In an increasingly globalised world economy, the decisions and actions of oil and gas companies impact directly on governmental policies and on the enjoyment of human rights. Therefore the companies have the obligation to play their part in contributing to the promotion and realisation of human rights. A number of transnational oil and gas companies have already formally expressed their acceptance of this obligation and written relevant clauses into their business codes of conduct.

6.2. Human rights in the companies' operations

PRINCIPLE:

All oil and gas companies have the responsibility to respect and promote human rights in their own operations.

Commentary

Again, the overriding responsibility lies with the states: International law obliges national state governments to respect, protect and fulfil all human rights, firstly by enacting necessary legislation which transfers human rights into national law that is binding for every natural or legal person, and secondly by guaranteeing access for all citizens to effective legal remedies. An important part of the state obligations is the protection of all citizens against threats to their rights coming from third parties.

The fact that governments do not always fulfil their human rights obligations makes it all the more important for the oil and gas companies to present their operations as exemplary models. They have the responsibility to respect human rights in their op-

erations, first vis a vis their own employees and second vis a vis other groups of citizens who are affected by their operations. Their employees and other people with whom they work are entitled to all human rights including the right to life, the right to an adequate standard of living including food and housing, freedom from discrimination, freedom from slavery and all forms of bonded and forced labour, freedom of association. Other citizens who are affected by the activities of the companies are equally entitled to the companies' respecting their rights. In the planning and running of projects the companies should make sure that their activities do not violate existing access to productive resources through forced evictions or resettlement without adequate compensation and/or rehabilitation. The companies should make every effort to uphold these rights even if national governments may not strictly demand this. Particular care needs to be taken by oil and gas companies to ensure that their contracts and arrangements with corporate security guards, and relationships with state security and police forces do not lead to human rights abuses.

6.3. Promotion of respect for human rights

PRINCIPLE:

The oil and gas industry, as a business community, also has a wider moral responsibility to exert its influence to promote respect for human rights.

A company's reputation will be increasingly affected by its response - in word and deed - to the violation of human rights and the defence of such rights. Violations of human rights may contribute to civil instability and to uncertainty in the investment climate, but even where this is not the case, oil and gas companies should not be silent witnesses. Companies should use their influence to attempt to stop violations of human rights by governments or armed political groups in the countries in which they operate and where such human rights violations are clearly connected to their activities in that country.

In particular, where human rights violations are connected with their activities, companies should not use the principle of self-determination and the prohibition of interference in a host state's internal affairs to shield themselves from responsibility and hide behind the respective governments. This appears all the more important since large companies regularly try to influence governments' tax, trade and other policies, their labour laws or their social and environmental regulations. There is a great danger that such influences lead to the effect of the concerned states disregarding their obligations vis-à-vis the human rights of all their citizens.

Companies should not argue that to take up the issue of human rights violations would be to interfere in domestic politics or to offend the values of other cultures. The international community has decided, through a variety of covenants and agreements, that the promotion and protection of inherent human rights transcends national and cultural boundaries. The silence of powerful companies in the face of human rights violations is not neutral, and is often interpreted by governments and other non-state organisations as implicit support.

6.4. Environmental impacts on human rights

PRINCIPLE:

Oil and gas companies should acknowledge the potential for human rights abuse through the long term social and environmental impacts of their operations. They should make special efforts to minimise environmental impact which is likely to lead to human rights violations.

Commentary

Natural resources provide the basis for the economic, cultural and social fabric of a community. Oil and gas companies have a responsibility from a human rights point of view to minimise harm to natural resources such as rivers and estuaries, fishing grounds, animal breeding areas, agricultural land, forests, landscape features, and air. Impact through oil and gas operations to these and other natural resources may result in serious violations of human rights of the communities affected.

This claim is based on the general international right to a safe and healthy environment. Principle 1 of the Stockholm Declaration⁴³ provides that “[m]an has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well being”. The Stockholm Declaration further states in Principle 2 that “[t]he natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of the present and future generations”.

Members of communities who seek to defend these resources against the impact of oil or gas operations are further at risk of having their human rights violated by private security guards, the state, and other agents with vested commercial interests. In such cases the companies must be expected to refuse such kind of "protection" instead of gratefully accepting or even requesting it.

Regardless of the nature of local environmental regulations which are relevant to their operations, oil and gas companies have a responsibility, on human rights grounds, to minimise environmental harm.

6.5. Best practice in human rights promotion

PRINCIPLE:

Oil and gas companies should develop a company policy for human rights.

All oil and gas companies should adopt an explicit company policy on human rights which includes public support for the Universal Declaration of Human Rights and the ensuing Covenants. They should establish procedures to ensure that all operations are examined for their potential impact on human rights, and safeguards to ensure that company staff are never complicit in human rights abuses. The company policy should enable discussion with the authorities at local, provincial and national levels of specific cases of human rights violations and the need for safeguards to protect human rights. It should enable the establishment of programs for the effective human rights education and training of all employees within the company and encourage collective action in business associations to promote respect for international human rights standards. In addition, the companies should establish effective complaints

⁴³ Declaration of the United Nations Conference on the Human Environment, Stockholm (1972).

mechanisms which offer employees and other individuals or groups affected by the companies' activities the possibility to lodge their complaints without risking to be sacked or prosecuted. Companies must guarantee all employees the access to legal recourse without threatening pressure. The policy should include provision for independent monitoring and an open and candid reporting system, undertaken in consultation with independent experts, such as NGO's with expertise and consultants and lawyers with relevant background.

Elements for best practice should be collected by the companies in an operational checklist and ought to include:

- **Appropriate Security Arrangements.**

All oil and gas companies should ensure that all security arrangements protect human rights and are consistent with international standards for law enforcement. Any security personnel employed or contracted should be adequately trained. Procedures should be reviewed for their consistency with the United Nations (UN) Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials⁴⁴. They should include measures to prevent excessive force, as well as torture or cruel, inhuman or degrading treatment. Companies should develop clear rules for calling in or contracting state security forces and for not hiring security personnel who are known to have been responsible for human rights violations. Any complaint about security procedures or personnel should be promptly and independently investigated. Companies should review all policies and practices in areas of conflict to ensure that their relations and contacts both formal and informal with both the military and armed opposition groups do not play a part (however unwittingly) in contributing to human rights violations.

Oil and gas companies should have appropriate relationships with the military and law enforcement agencies. They should publicly urge a full and impartial investigation into all reported human rights violations in and around their areas of operation and urge that perpetrators be brought to justice. In this way they can show that they condemn human rights violations in and around their areas of operations.

If serious human rights violations continue to occur, the company should re-examine its presence in that country and whether its investment is appropriate and justifiable.

- **Effective Community Engagement.**

All oil and gas companies should take reasonable steps to ensure that their operations do not have a negative impact on the enjoyment of human rights by the communities living in the areas in which they operate. This should include a willingness to meet with community leaders and non-governmental organisations to discuss the role of the company within the broader community. Companies should seek to support activities and organisations which promote human rights, for example by supporting education, training or citizenship programs which incorporate human rights issues and organisations which defend human rights.

⁴⁴ General Assembly Res. 34/169, annex, 34 U.N. GAOR Supp. (No.46) at 186, UN Doc. A/34/46 (1979).

- **No forced evictions and prevention of access to productive resources.**
Oil and gas companies often require access to land which is owned or used by local people who support their livelihood there from. These may be farmers or pastoralists, settlers or indigenous people. Companies must take care that their activities do not violate the existing access of such groups to their productive resources such as land, forest, fishing waters, etc. This refers to the respect of land rights as much as to the prevention of destruction of soil and fishing grounds through the dumping of tailings and other waste.
- **No resettlement without adequate rehabilitation.**
It is a company's moral obligation to make sure that adequate rehabilitation is provided to all concerned if it requires land for its operations and asks for the resettlement of the people living on this land, whether they are occupying this land under customary laws or holding legal land titles. The adequacy of the rehabilitation measures must be the result of negotiations with the affected population. These negotiations need to consider not only the purely economic effects of the removals but also the social and cultural losses sustained by the people. (Ref. Chapter 4.2 on Land Rights)
- **Ensure Freedom From Discrimination.**
All oil and gas companies should ensure that their policies and practices prevent discrimination, in conformity with Articles 1,2 and 7 UDHR, Articles 2 (1), 24 (1), 25, 26 and 27 ICCPR and Article 3 ICESCR, based on distinction of any kind, such as ethnic origin, sex, colour, language, national or social origin, economic status, religion, political or other conscientiously held beliefs, birth or other status. This should include recruitment, promotion, remuneration, working conditions, customer relations and the practices of contractors, suppliers and partners. It should include measures to deal with sexual or racial harassment, and to prohibit ethnic, racial, national or religious hatred.
- **Ensure Freedom From Slavery.**
All companies should ensure in conformity with Article 4 UDHR, Article 8 ICCPR and Article 10 (3) ICESCR, that their policies and practices prohibit the use of chattel slaves, forced labour, bonded child labourers or coerced prison labour. This should include ensuring that suppliers, partners or contractors do not use such labour.
- **Monitoring Human Rights.**
All oil and gas companies should establish mechanisms to effectively monitor all their operations' compliance with codes of conduct and international human rights standards. Such mechanisms must be credible and all reports must periodically be independently verified in a similar way to the auditing of accounts or the quality of products and services. Other stakeholders such as members of local communities in which the company operates and NGOs should have an opportunity to contribute in order to ensure transparency and credibility.

6.6. Director for Human Rights

PRINCIPLE:

Each company should appoint a director for human rights. This director will have a direct line of mutual communication with local management and the board of directors. The director shall have staff support in the form of human rights experts.

Commentary

This director will implement all internal human rights reviews and training programs. This will include a review for all managers and staff to focus on any shortcomings and how improvements could be made. The outcomes will be made public through the annual report.

6.7. Armed Conflict

PRINCIPLE:

Oil and gas companies should do all that is reasonably within their power to avoid exacerbating a social, political and cultural climate, which might lead to armed conflict.

Commentary

Article 7 of the Declaration on the Right to Development⁴⁵ provides that “[a] State should promote the establishment, maintenance and strengthening of international peace and security [...]”.

In this context companies could play their role in trying to mitigate the conflicts that may arise out of their operations wherever possible. By doing so they will be as much the beneficiaries of peace as the communities in which they operate. Armed conflict is devastating for a country, its people, culture and economy. It is also devastating for oil and gas companies attempting to run profitable operations.

Whenever companies get caught in armed conflicts they should refer to treaties based on the international humanitarian law (IHL). The IHL is that body of law which regulates the conduct of armed conflict toward the minimisation of harm to civilians and those placed outside the combat for whatever reason, such as the Geneva Conventions of 1949 and the Additional Protocols to those Conventions of 1977.

6.8. Legitimate security concerns

PRINCIPLES:

1. While it is recognised that oil and gas companies have legitimate concerns to protect themselves and their employees companies must not hire mercenaries to protect their business interests.

2. Companies should not operate in areas where such operations require the use of military forces or excessive security in order to maintain the operation.

⁴⁵ UN General Assembly Res. 41/128 (1986).

Commentary

Companies should suspend operations where these require military force to operate until agreement on the operations can be reached with local communities and/or their representatives.

Companies should publicly speak out against militarisation of areas in which they operate.

The means with which companies protect themselves and their employees must be consistent with human rights principles.

7. LABOUR STANDARDS AND WORKERS RIGHTS

7.1. Labour laws

PRINCIPLE:

Oil and gas companies have the duty to respect internationally accepted labour rights.

Commentary

All labour laws need to take into account the basic instruments of the United Nations conventions, which include:

- UDHR Universal Declaration on Human Rights;
- ICCPR International Covenant on Civil and Political Rights;
- ICESCR International Covenant on Economic, Social and Cultural Rights;
- CEAFCDAW Convention on the Elimination of all Forms of Discrimination Against Women; and
- CRC Convention on the Rights of the Child;

Of particular importance are moreover the standards set forth in the core conventions of the International Labour Organisation (ILO), which are more strongly worded and pro-active with regard to workers' rights. Particularly four core rights which, the organisation stated, have become so widely accepted as to constitute a part of customary international law. The OECD has confirmed this position.⁴⁶

Those core rights are:

⁴⁶ OECD, *Trade, Employment and Labour Standards, A Study of Core Workers' Rights and International Trade* (1996).

- the prohibition of forced labour and slavery (ILO Conventions No.29 and No.105);
- the elimination of exploitative forms of child labour (ILO Convention No. 182);
- the rights to freedom of association and collective bargaining (ILO Conventions No. 87 and No. 98); and
- non-discrimination in employment (ILO Conventions No. 111 and No. 100).

7.2. The Responsibilities of Companies

PRINCIPLES:

1. Companies should recognise that basic workers' rights are of fundamental importance and in the legitimate interests of their employees as well as the employees of their contractors, subcontractors, and suppliers.

2. Companies should observe not only the labour laws applicable in the countries in which they operate but also international human rights standards and the International Labour Organisation conventions, regardless of whether they have been ratified by the states within which the companies operate.

Commentary

This principle is all the more relevant since the ILO members (i.e. nearly all the states world wide) have reaffirmed the fundamental labour laws in the ILO Declaration on Fundamental Principles and Rights at Work which was adopted on June, 18, 1998.

The companies are therefore urged specifically to adhere to the following Standards:

7.3. Right to work

7.3.1. The Right and Freedom to Work Principle

PRINCIPLE:

Companies should recognise that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment as stipulated by Article 23 (1)UDHR and Article 6 (1) ICESCR.

7.3.2. Non Discrimination

PRINCIPLE:

Companies should recognise that all people have the right to work "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, nationality or social origin, property, birth or other status" (ICESCR 2 (2), 6 (1), ILO Conventions 100 and 111 and Paragraphs 21ff of the ILO Tripartite Declaration).

7.3.3. No slave or forced labour

PRINCIPLE:

Companies must recognise that forced labour is unacceptable, and therefore, "no one shall be required to perform forced or compulsory labour" and "no one shall be held in slavery; slavery and the slave trade in all their forms shall be prohibited".

(ICCPR 8(1) 8(3), ILO Conventions No. 29 and No.105, UDHR 4)

7.3.4. Standard of living

PRINCIPLE:

Companies should recognise that "everyone has the right to a standard of living adequate for health and well-being of him/herself and his/her family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond his/her control". (UDHR 25 (1), ICESCR 11 (1))

7.3.5. Trade Union Rights

PRINCIPLES:

1. Companies should recognise the right of everyone to form trade unions and join the trade union of his/her choice, subject only to the rules of the organisation concerned, for the promotion and protection of his/her economic and social interests. No restrictions may be placed on the exercise of this right other than those which are necessary in a democratic society and are prescribed by law as stipulated by Article 23 (4) UDHR, Article 8 (1)(a) ICESCR and Paragraphs 41ff of the ILO Tripartite-Declaration.

2. Companies should recognise the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organisations (ICESCR, 8 (1)(b)).

3. Companies should recognise the right of trade unions to freely operate subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of public order or for the protection of the rights and freedoms of others (ICESCR 8 (1) (c)).

4. Companies should recognise the right to strike provided that it is exercised in conformity with the laws of the particular country. (ICESCR 8 (1)(d)).

5. Companies should promote collective bargaining as the most fair way for the employer-employee relationship as stipulated by the ILO Conventions No. 87 and No. 98, Paragraphs 48ff of the Tripartite Declaration and the provisions OECD guidelines in relation to employment and industrial relations.

7.4. Rights at work

7.4.1. Conditions of employment

PRINCIPLE:

Companies should recognise the right of everyone to the enjoyment of just and favourable conditions of work as stipulated by Article 7 ICESCR and Paragraphs 29ff of the ILO Tripartite Declaration.

These provisions ensure in particular:

- transparent, regular and reliable conditions of employment;
- fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those offered to men, with equal pay for equal work;
- a decent living for themselves and their families in accordance with the provisions of the present Covenant;
- equal opportunity for everyone to be promoted in his/her employment to an appropriate higher level. Subject to no considerations other than those of seniority and competence;
- rest, leisure and reasonable limitations of working hours and periodic holidays with pay, as well as remuneration for public holidays.

7.4.2. Equal pay for equal work

PRINCIPLE:

Companies should recognise that "everyone without discrimination has the right to equal pay for equal work" and "fair wages and equal remuneration for work of equal value without distinction of any kind" (UDHR 23 (2), ICESCR 7 (a)(i))

7.4.3. Just reward

PRINCIPLE:

Companies should recognise that "everyone who works has a right to just and favourable remuneration ensuring for him/herself and his/her family an existence worthy of human dignity supplemented, if necessary, by other means of social protection" (UDHR 23 (3))

7.4.4. Right to holidays and leisure

PRINCIPLE:

Companies should recognise that "everyone has the right to rest and leisure, including reasonable limitations of working hours and periodic holidays" (UDHR 24, ICESCR 7 (d)).

7.4.5. Vocational training

PRINCIPLE:

Companies should recognise that all people have the right to "technical and vocational guidance and training programs, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under

conditions safeguarding fundamental political and economic freedoms” (ICESCR 7(2))

7.5. Special regulations

7.5.1. Health and safety

PRINCIPLE:

Companies should take particular care in protecting the health and safety of their workers.

Commentary

Article 7 (b) ICESCR provides for the right of everyone to safe and healthy working conditions. ILO Conventions 174 and 176 are relevant in this context.

Workers' rights for health and safety regulations are also defined in the *Charter on Industrial Hazards and Human Rights* published in 1996 by the *Permanent Peoples' Tribunal*. Its most important points are:

- All workers have the right to safe systems of work. All employers have the duty to devise, provide, maintain and regularly update safe systems of work based on the best available information at all times.
- All workers have the right to be given reasonable notice of any proposed changes to their working environments which may pose a threat to worker health and safety.
- All workers have the right to participate effectively in management decision making affecting health and safety.
- All workers have the right to establish and associate with community hazard centres and information networks. Governments and employers have a responsibility to support such organisations and programmes.
- Notwithstanding the duty of employers to monitor working environments, the right of workers to seek independent or worker-based monitoring shall not be infringed. This right includes the right to regular monitoring for possible adverse, long-term effects which may result from contact with the substances, materials or processes used in the working environment.
- All workers in contact with hazardous or potentially hazardous substances, materials or processes have the right to ongoing instruction and practical training regarding management of the hazard. The right to instruction and practical training based on the best available information, drawn from both national and international sources, is affirmed.

- All workers have the right to have their work environments adequately and frequently inspected by a trained health and safety inspector who will rigorously enforce the law and take punitive legal action when serious breaches have occurred.

7.5.2. The elimination of discrimination against women

The following principles are designed to ensure the elimination of discrimination against women in the field of employment in order to ensure equality of men and women, and in particular the same rights for both sexes:

PRINCIPLE:

1. Companies should not discriminate against women and therefore should recognise the principles stipulated by Article 12 (1) CEAFDAW⁴⁷:

- the right of all people to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- the right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advance vocational training and recurrent training;
- the right to equal remuneration including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- the right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- the right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction.

2. Companies should recognise the special needs of women with regard to marriage and maternity and thus, in conformity with Article 12(2) CEAFDAW:

- insure against "dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissal on the basis of marital status";
- introduce "maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances";
- support clauses which "encourage provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities (...) in particular through promoting the establishment and development of a network of child-care facilities";
- recognise the need "to provide special protection to women during pregnancy in types of work proved to be harmful to them."

7.5.3. Children and Work

PRINCIPLES:

⁴⁷ Convention on the elimination of all Forms of Discrimination Against Women

1. *Companies should recognise "the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous to or to interfere with the child's education, or be harmful to the child's health or physical, mental, spiritual, moral or social development."*

(Convention on the Rights of the Child (CRC) 32(1), ICESCR 10 (3) and ILO Convention 182 concerning the Worst Forms of Child Labour))

2. *Companies should "respect the minimum age for admission to employment".* (CRC 32.(2)(a))

Commentary

A child means every human being below the age of eighteen years unless under the law applicable to the child, maturity is attained earlier. (CRC 1)

8. INDEPENDENT MONITORING, AUDITING and VERIFICATION

8.1. Codes of Conduct

PRINCIPLES:

1. *Oil and gas companies should publish and adhere to codes of conduct that are acceptable to communities as well as to the civil society and, of course, the national governments in the host countries.*

2. *Codes of conduct may in the first instance be created on a voluntary basis, but once accepted and published the codes must be binding and reliable.*

Commentary

The term "code of conduct" used here is meant to contain a condensed expression of the overall business philosophy that governs the affairs of a company.

In order for such codes of conduct to become understandable by and acceptable to the general public they must be accompanied and supported by best practice schedules or principles as defined in this paper that provide transparency to

- the concrete application of the codes in the day to day activities of the company;
- the company's position in relation to issues, its philosophy and rationale;
- the mechanisms by which the company will fulfil its obligations;
- the nature and format of a regular, open and candid reporting system;
- the rules and regulations for independent monitoring, auditing and verification.

8.2. Independent Monitoring

PRINCIPLE:

Companies should allow for an ongoing process of independent transparent monitoring of their operations.

Commentary

Internal monitoring of companies as presently widely practised might be a first step but it can no longer be accepted as the only method of inspection. It is vital to create a dependable system of external monitoring and verification.

Broad participation, as described in 3.4 and 3.5 of this paper, will doubtlessly help to bring about more consideration of and justice to the underprivileged than is generally the case today. Nevertheless, it is absolutely essential to create confidence building instruments for the monitoring and inspection of the rules and regulations agreed in the code of conduct.

Independent monitoring should involve a variety of different stakeholders, both national and international.

The process of monitoring should be an open and candid process which has outcomes that are both measurable and explained by qualifying statements.

Redress procedures for non-compliance with the company's code should be put in place.

8.3. Independent auditing

PRINCIPLE:

Companies should have regular and independent audits of the effects the codes of conduct have on their operations. These audits must be carried out by independent auditors, and their results must be included in the companies' annual reports.

Commentary

Programs for auditing should include verifiable and monitorable targets agreed by the companies and representatives of affected communities and other stakeholders.

The audit report should detail areas in which a company has failed to meet agreed targets, has been involved in accidents or incidents of any the areas audited, or has infringed laws governing its operations and in particular the regulations resulting out of the codes of conduct. Where there are disagreements between independent parties and the company these should be reported.

8.4. Independent verification

PRINCIPLE:

Oil and gas companies should allow periodic independent inspections of their operations as reliable instruments of verification.

Commentary

Such inspections should be done by internationally composed groups which contain elements of both civil society (NGOs) and multinational institutions (UN).

It is suggested that one of the UN agencies (e.g. UNDP) takes on the responsibility for setting up and controlling relevant inspection and verification panels.

8.5. Complaints mechanism

PRINCIPLE:

Companies should support the establishment of an independent and accessible complaints mechanism, to which communities who feel that the company's standards have been breached at any specific site can bring complaints.

Commentary

This complaints body could operate similarly to the World Bank's Inspection Panel, which was established by the Bank in 1993 in response to increasing opposition and complaints from local communities to a number of its large development infrastructure projects.

The complaints body should be lodged in the UN agency responsible for verification and must retain complete independence. It should be staffed by people from outside the industry who bring expertise and experience in development issues, ecological matters, legal affairs, conflict settlement, etc. It must have access to information from companies about their operations, and it will have to be able to conduct its own on the spot investigations at production sites.

8.6. Review of the principles

PRINCIPLE:

A complaints body should review the above principles within a period of not more than two years with a view to improving their effectiveness.

To prevent instability and ineffectiveness, adequate and effective means to change the Principles when they become outdated or are shown to be defective is an absolute necessity. Thus, the complaints body should review the principles at regular intervals. Reviews should be guided by the desire to maintain the stability of the Principles, to preserve sufficient flexibility in the instrument, to allow it to meet new developments and concerns, to ensure the continuing relevance of the Principles, and to monitor and promote their implementation.