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**Human Rights and Security Monitoring Assessment
and Peer Review of the Tangguh LNG Project**

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ABBREVIATIONS AND DEFINITIONS

AMDAL	The Environmental Impact Assessment for the Tangguh Project.
ATCA	Alien Tort Claims Act.
BTC Project	Baku-Tbilisi-Ceyhan Project
BP-MIGAS	The Indonesian oil and gas regulatory body.
Brimob	Police Mobile Brigade.
HRIA	Human Rights Impact Assessment. An independent, broad-based assessment of human rights issues raised by the Tangguh Project.
ICBS	Integrated Community Based Security.
ICITAP	International Criminal Investigative Training Assistance Program. ICITAP is run by the U.S. Department of Justice.
ICRC	International Committee of the Red Cross.
ILO	International Labor Organization.
Joint Decree	The Joint Decree of the Chief of Regional Police of Papua and Vice President of BP Berau.
NGO	Non-Governmental Organization.
OGP Guidelines	OGP Guidelines on Firearms and the Use of Force. Proposed industry guidelines drafted by the International Association of Oil and Gas Producers.
OSCE	Organization for Security and Cooperation in Europe.
Private Security Provider	The private security firm providing internal security for the Tangguh Project.
SCP Project	South Caucasus Pipeline Project.
SRI	Socially Responsible Investing.
UNDP	United Nations Development Program.
TNI	Indonesian National Army.
TSE	Tangguh Security Enterprises.
Voluntary Principles	The Voluntary Principles on Security and Human Rights.

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I. EXECUTIVE SUMMARY

1.1. Overview

This assessment was undertaken to determine whether the Tangguh LNG Project is meeting its commitments under the Voluntary Principles on Security and Human Rights (“Voluntary Principles.”)

The Monitors find that the Project is taking appropriate steps to comply with its commitments. Moreover, it has set several new benchmarks by which to operationalize the Voluntary Principles. These include commissioning the Human Rights Impact Assessment (“HRIA”) to identify potential human rights risks; establishing the Integrated Community Based Security system (“ICBS”) to manage Project security, minimize the external threat of human rights abuses, and maximize ties between the Project and local communities; negotiating the Joint Decree¹ to embed the Voluntary Principles in the conduct of public security forces; and adopting the Code of Conduct for Security Contractors to embed the Voluntary Principles in the conduct of private security forces.

Despite these leadership initiatives, the Project faces a number of significant legal and reputational risks related to security and human rights issues -- many of which stem from lack of capacity by the public security forces that may be called upon to provide protection. Although the National Police have made a political commitment to the Voluntary Principles, without practical training that commitment will soon ring hollow. BP Berau also faces myriad challenges with respect to implementing the ICBS and resolving an array of competing demands from sometimes-volatile local communities -- particularly on the North Shore. Villagers’ concerns will need to be addressed in a manner that minimizes tensions that could lead to security incidents.

The profile of these risks, and the tension associated with them, is certain to rise dramatically once the Project receives sanctions and proceeds to ramp up. Expectations will need to be managed carefully through a combination of striving for excellence while candidly acknowledging imperfection. Improving communications outreach will be important, as will recognition that “compliance” is a continuous process, and not a fully achievable end in itself. External stakeholders should credit the Project for setting the right standards, but will maintain pressure to see that the outstanding issues noted below are appropriately addressed. By beginning on the right foot, the Project has provided itself with a window of opportunity by which to do so.

Given the thirty-plus year anticipated lifespan of the Tangguh Project, and the fact that implementing the Voluntary Principles throughout the course of this period will necessarily change to address changing conditions, it is evident that the implementation process will be evolutionary. The Monitors encourage management to begin this process by empowering the Security Team to implement the recommendations from this assessment.

¹ “Joint Decree of the Chief of the Regional Police of Papua and VP BP Berau” (2004), which was accompanied by the “Field Guidelines for the Implementation of the Joint Security Measures within the Work Area of the Tangguh LNG Project.”

1.2. Summary of Compliance Findings and Recommendations

1.2.1. High Priority -- Potential Breach of Voluntary Principles Commitments

None

1.2.2. Priority -- Risk of Project Disruption or Reputational/Legal Damage

(a) Risk Assessment: Identification of Security Risks (See 5.1.1)

- The Project Security Manager should “own” the top strategic risks to the Project. These should be agreed upon by BP Berau and provide a focus for risk management.
- Provide regularized reporting on the web of non-confidential, noncommercial information regarding security and human rights issues impacting the Project.

(b) Risk Assessment: Rule of Law (See 5.1.4)

- Research and consider what action, if any, is needed to ensure that prosecuting authorities and the judiciary are capable of holding accountable individuals believed responsible for human rights violations in a manner that respects the rights of the accused. If the judicial system lacks the political will or the capacity to do so, approach the U.S. and U.K. embassies, as well as appropriate international organizations, regarding the feasibility of establishing rule of law and training initiatives.

(c) Public Security: Security Arrangements/Consultation (See 5.2.1(a))

- Address the concerns of the North Shore communities before they lead to serious security incidents. Consider taking steps to provide North Shore residents with vocational training, health care facilities, schools, loans for micro-enterprise business efforts, and contracts for the provision of services -- such as ferrying individuals to the Project area.
- Encourage the Government of Indonesia to be transparent with respect to the flow of revenues stemming from the Project. Urge authorities in Jakarta to clarify the implementation of the revenue-sharing provisions of the Special Autonomy Law.

(d) Public Security: Deployment & Conduct/Competency (See 5.2.2 (a))

- The provision of room, board, and money to on-site public security forces must not be allowed to blur the distinction between from whom these individuals take their orders and owe their allegiance. The system of payments should be put into a document reflecting an agreement between the Project and the National Police regarding the reason for these payments, and emphasizing that the officers are working solely under instruction from their superiors.

- (e) Public Security: Deployment and Conduct/Mitigation of Negative Consequences (See 5.2.2 (b))
- Consideration should be given to providing the police with some form of non-lethal equipment. There are an increasing number of non-lethal security containment or dispersal aids available. The Security Team should research these and test their acceptability to non-governmental organizations (“NGOs”) as equipment that could be transferred to the police. If any equipment is provided to the police, (1) it should be fully documented, (2) its provision should be publicly justified, and (3) its use should be monitored.
- (f) Public Security: Deployment and Conduct/Reporting Use of Force (See 5.2.2 (d))
- Ensure that police officers providing services for the Project are aware of their obligation to provide, and have the capacity to provide, medical aid for persons injured by the use of force. Renew the offer to provide First Aid training to the police.
- (g) Public Security: Consultation and Advice/Meetings (See 5.2.3 (a))
- Take steps to more broadly publicize the Project’s initiatives to promote respect for human rights in discussions with stakeholders and on the web. In addition to describing best practices, recognize and be candid about the challenges and issues the Project is facing.
 - The Security Team, particularly the Tangguh Security Manager, should play a central role in meetings with local leaders, representatives of civil society/NGOs, and the socially responsible investing (“SRI”) community. Consider hosting regular meetings with representatives of these groups in Jayapura and Jakarta, and occasional meetings in London and Washington with international NGOs and lenders.
 - Seek to establish confidence-building measures, build bridges, cross-pollinate ideas, and create improved lines of communication between the National Police and the Indonesian National Army (“TNI”). Urge the creation of ombudsman positions for the police and the military as the institutions develop a working relationship.
- (h) Public Security: Consultation and Advice/Training (See 5.2.3 (b))
- Ensure that training regarding operationalization of the Voluntary Principles is provided to security forces that might be assigned to protect the Project. Consider partnering with appropriate private and public organizations to establish a sustainable training program. Urge the security forces to follow-up with independent monitoring, combined with remedial steps to address shortcomings.

- Encourage the police mobile brigade (“Brimob”), and TNI forces to be trained regarding operationalization of the Voluntary Principles.
- (i) Public Security: Response to Abuses/Recording and Reporting (See 5.2.4 (a))
- Complete work with the National Police to establish a credible and transparent system through which allegations of human rights abuses can be investigated and addressed.
- (j) Public Security: Response to Abuses/Monitoring Investigations (See 5.2.4 (b))
- The Project needs to be prepared to respond immediately to allegations of misconduct or complicity in alleged human rights abuses. The Security Team should complete its draft response process for managing human rights and disseminate it so that all personnel are aware of their responsibilities and accountabilities with respect to the investigation and reporting of alleged human rights abuses. Tabletop exercises should be held, possibly with support from representatives of civil society.
- (k) Private Security: Capacity and Professional Standards (See 5.3.1)
- Steps should be taken immediately to address and improve communications between Project security and the local communities in implementing the ICBS. Outreach might be made to some of the institutions of civil society most supportive of the ICBS for advice in resolving these issues. The ICBS cannot be allowed to fail.
- (l) Private Security: Responsibilities of Contracting Company/Monitoring (See 5.3.2 (c))
- Consideration should be given to providing the guard force with some form of non-lethal equipment. There are an increasing number of non-lethal security containment or dispersal aids available. The Security Team should research these and test their acceptability to NGOs as equipment that could be transferred to the guards. If equipment is provided to the guards, (1) it should be fully documented, (2) its provision should be publicly justified, and (3) its use should be monitored.
 - Any decision by BP Berau to issue pepper spray or similar controversial non-lethal equipment should be influenced by U.S., U.K., and E.U. law, which is evolving, as well as the opinions of external stakeholder groups.

1.2.3. Recommended Action -- Low Risk of Breach, Disruption, or Reputational/Legal Damage

- (a) Risk Assessment: Identification of Potential for Violence (See 5.1.2)
- Document the dates of and topics discussed at all information-gathering meetings regarding the potential for violence.

- Meet with village leaders and institutions of Papuan civil society as part of the continuing assessment of the potential for violence.
- (b) Risk Assessment: Equipment Transfers (See 5.1.6)
- In considering whether to provide equipment to security forces, take direction from the guidelines established by BP for doing so with respect to the South Caucasus Pipeline (“SCP”) and Baku-Tbilisi-Ceyhan (“BTC”) Projects.
- (c) Risk Assessment: Security Organization (See 5.1.7)
- The Project Security Manager should report to the Performance Unit Leader. Consideration should also be given to appointing back-to-back expatriate field security supervisors working at the Project Security Manager’s discretion.
- (d) Public Security: Security Arrangements/Consultation (See 5.2.1 (a))
- Ensure that members of the Security Team play a central role in the dialogue with local communities.
 - Establish a “Security Committee” with local community leaders and representatives of the BP Berau Security Team, the Private Security Provider, and the police. The committee could provide oversight for the community and local “eyes and ears” for the Project. It could also serve as a forum for emergency consultation and coordination, early warning, and crisis response -- to minimize the development of a situation under which the Private Security Provider would need to call upon the police or the police would need to call upon the TNI.
 - Establish a security and human rights “hotline” through which the Security Committee could meet on an emergency basis and individuals could report incidents allegedly involving human rights abuses.
 - The Project website should address the nexus of human rights and security, and identify the steps the Security Team has taken to operationalize the Voluntary Principles.
- (e) Public Security: Security Arrangements/Communicating Human Rights Policies (See 5.2.1 (b))
- Continue to build relations with the TNI and encourage respect for human rights.
 - Move forward with the concept of establishing a search and rescue agreement with the Air Force and seek to insert the Voluntary Principles into the agreement as a precedent for expanding the military’s commitment to the Voluntary Principles.

- (f) Public Security: Security Arrangements/Transparency (See 5.2.1 (c))
- Press the National Police to publicly release the Joint Decree in its entirety.
 - Consider inviting, through BP, a senior National Police officer to a plenary meeting of the Voluntary Principles.
- (g) Public Security: Deployment and Conduct/Use of Force (See 5.2.2 (c))
- Continue to work with the police to ensure that they take adequate steps to prevent any individual who has been credibly linked to human rights abuses from providing security service for the Project.
 - Encourage the training of police officers by external instructors with respect to technical proficiency in the handling and use of their firearms.
- (h) Public Security: Consultation and Advice/Training (See 5.2.3 (b))
- Urge the U.S. and U.K. governments to provide positive feedback to the Government of Indonesia for the commitment of the National Police to adhere to the Voluntary Principles.
 - Request that the U.S./U.K. embassies host a conference regarding challenges associated with operationalizing the Voluntary Principles and responding to security threats and the coordination of different law enforcement agencies.
 - Seek to leverage and expand current U.S. and U.K. police training programs, such as that offered by International Criminal Investigative Training Assistance Program (“ICITAP.”)
 - Investigate partnerships with international institutions, such as UNDP and UNHRC, in police training programs.
- (i) Public Security: Response to Abuses/Recording and Reporting (See 5.2.4 (a))
- Urge the Government of Indonesia to lift its ban prohibiting international human rights monitors from visiting certain Indonesian provinces, including Papua.
- (j) Private Security: Capacity and Professional Standards (See 5.3.1)
- Resurrect the Tangguh Security Enterprises (“TSE”) concept, establishing a community-led security company and contracting it to guard the facilities, and give the Private Security Provider the incentive to make it work.

- The all-black uniform worn by the Private Security Provider could be construed as intimidating. Recommend altering at least one component, such as the shirt, to another color.
- (k) Responsibilities of Contracting Company: Investigation of Alleged Abuses (See 5.3.2 (d))
- Villagers and members of civil society should be informed regarding how to report perceived misbehavior of private security guards.

1.2.4. No Action Necessary

- (a) Risk Assessment: Human Rights Records (See 5.1.3)
- (b) Risk Assessment: Conflict Analysis (See 5.1.5)
- (c) Public Security: Response to Abuses/Equipment Monitoring (See 5.2.4 (c))
- (d) Private Security: Responsibilities of Contracting Company/Principles in Contractual Provisions (See 5.3.2 (a))
- (e) Private Security: Responsibilities of Contracting Company/Exclusion of Rights Abusers (See 5.3.2 (b))

II. INTRODUCTION

2.1. The Tangguh Project

The Tangguh Liquefied Natural gas (“LNG”) Project is a multinational collaborative business plan to develop the natural gas fields in the Bintuni Bay area of Papua, Indonesia. The gas fields were discovered in the mid-1990s, by Atlantic Richfield Co. (“ARCO”), and contain more than 14 trillion cubic feet of reserves. BP plc acquired rights to exploit the gas fields through the purchase of ARCO in 2000.

The Tangguh Project is regulated through Production Sharing Contracts from the Indonesian Oil and Gas Regulating Body (“BP-MIGAS”). The Project will involve tapping the Tangguh gas fields, processing the gas into LNG, and loading the LNG for shipment to various markets. BP Berau Ltd. is a U.S.-incorporated company that is wholly owned by the BP plc group. The Project is operated by BP Berau on behalf of BP-MIGAS and multinational members BP, Mitsubishi, Inpex, Nippon, KG, LNG Japan, and the Chinese National Overseas Oil Corporation. The Project life is expected to exceed 30 years.

A final internal decision regarding whether the Project receives “sanction” to proceed is anticipated in early 2005. If the decision is made to move forward, construction will begin in 2005. The first LNG would be shipped by 2008 from Train One, while Train Two is still under construction. Revenues would likely begin to flow into Papua in 2012-2014, after a cost-recovery period. The Project will provide a major revenue inflow to the province.

2.2. Potential Legal and Reputational Risks

Energy infrastructure projects in the developing world, such as the proposed Tangguh Project, inevitably subject investor companies to legal and reputational risks. Human rights-related liabilities, ranging from lawsuits under the Alien Tort Claims Act (“ATCA”) to campaigns by external stakeholders, are becoming increasingly prevalent and problematic for multinational investors involved in such projects. In today's globalized world, proactive management of the human rights-related risks associated with such business ventures is an important commercial strategy, not a conscience-driven add-on. This is particularly the case with respect to human rights issues related to project security, which have provided the basis for a disproportionately large number of legal actions and reputational challenges to members of the extractive industry.

Initiatives have been established to manage and mitigate human rights-related risks presented by the Tangguh Project to its investors. Such initiatives include the commission of a seminal Human Rights Impact Assessment of the Project; commitments to lenders regarding social and environmental issues; the adoption of provisions referencing international human and labor rights standards in key Project documents; and the implementation of the ICBS plan.

For the purposes of this document, the central such risk management effort is the multifaceted commitment to the Voluntary Principles. This commitment is manifested by BP Berau, its business partners, and the Government of Indonesia in the AMDAL, the agreement

between BP Berau and the National Police, and the Tangguh Project's Code of Conduct for Security Contractors. These, and the aforementioned documents, which together comprise the Tangguh Project's legal regime and the circumstances in which this regime may be applied, commit BP Berau to respecting the highest of internationally recognized human rights standards.

If internationally respected standards such as the Voluntary Principles are properly implemented, the initiatives embedded in the Project's legal regime will help to manage legal human rights-related risks to the Tangguh Project and enhance the Project's reputation -- as well as the reputations of its investors. Conversely, failure to assure that these obligations are properly discharged will exacerbate the very risks that the commitments were designed to mitigate.

2.3. Sources of Legal and Reputational Risk

Human rights-related legal and reputational risks to the Tangguh Project are real and significant. The Project and its investor companies already have been targeted on several fronts: some international and local NGOs have publicly expressed deep-seated concerns regarding the potential for human rights and environmental abuse, political repression, and corruption associated with the Project.

Although compliance with lender auditing and monitoring requirements is necessary, it is not sufficient to insulate the Project from the reputational and legal risks associated with its human rights obligations. Indeed, the full range of human rights standards and obligations to which the Project is subject are not *per se* the subject of lender monitoring. Consequently, the Tangguh Project and its investor companies must manage these additional risks through a combination of internal and external assurance.

Foreign direct liability, such as lawsuits in the United States under the ATCA, 28 U.S.C. Section 135, could expose investors in Tangguh Project to claims of civil liability for complicity with the Government of Indonesia (through its instrumentalities, such as the military and the National Police) in carrying out alleged human rights abuses linked to the Project. Such lawsuits may be filed in the United States federal courts on individual or class action bases even when the alleged abuses did not occur in the United States, and when neither plaintiffs(s) nor defendant(s) are residents of the United States.²

The operating and implementing structure of the Tangguh Project leaves its investor corporations and their parent groups vulnerable to potential legal action and significant reputational damage arising from any alleged human rights abuses related to the Project.

² Some examples of recent ATCA cases include *Bowoto v. Chevron Texaco* (alleged corporate complicity in murders committed by the Nigerian military); *Doe v. Unocal* (alleged use of forced labor during creation of oil pipeline in Burma); *Presbyterian Church of Sudan v. Talisman Energy* (alleged corporate abetting of genocide and gross human rights abuses including slavery, by the Government of Sudan); and, perhaps most significantly for the Tangguh Project, *Doe v. ExxonMobil* (alleged corporate complicity in human rights abuses by Indonesian security forces). In December 2004, the federal district judge in *Khulumani v. Barclays National Bank* dismissed an ATCA case against BP and 83 other corporate defendants for alleged complicity in human rights abuses by virtue of operating in South Africa during the apartheid era.

2.4. The Human Rights and Security Monitoring Assessment & Peer Review

This assessment (the "Human Rights and Security Monitoring Assessment" or the "Assessment") and Peer Review of the Tangguh Project was commissioned by BP Berau to evaluate the degree to which the Project is successfully implementing its commitments under the Voluntary Principles.

The Assessment follows-up upon the HRIA of the Tangguh Project, provided to BP Berau in April 2002, by Gare Smith, of Foley Hoag, and Bennett Freeman, an independent consultant, which identified at an early juncture human rights issues and risks raised by the Project, including those related to the nexus of security and human rights. The HRIA also offered recommendations regarding how BP Berau, as the Project operator, could protect the rights of individuals and communities impacted by the Project. The Assessment draws from the risks highlighted and the recommendations offered in the HRIA, and comments upon the extent to which BP Berau has addressed them.

2.5. Scope of Monitoring Visit and Assessment

SCP/BTC Security Advisor Tony Ling, the Peer Reviewer, and Foley Hoag attorney Gare Smith (collectively, the "Monitors") visited Indonesia from November 24 – December 4, 2004. During this time they traveled to Jakarta, Timika, Jayapura, Babo, the new Tanah Merah Township, and Base Camp.

In Jakarta, they met with members of the National Commission on Human Rights ("Komnas-HAM"); diplomats at the U.S. Embassy; and BP Berau personnel. In Papua, they met with the leadership of the BP Berau Business Unit and management with responsibility for security; the leadership of the TNI and the National Police; the local chief of police and his staff in Babo; the management and staff of the Private Security Provider used for internal security at Babo and Base Camp; representatives of the International Committee for the Red Cross ("ICRC"), faith-based organizations, and local Indonesian NGOs (including the Indonesia Legal Aid Society, Kontras-Indonesia, and ELS-HAM); and villagers from Babo and Tanah Merah.

The Monitors' mandate was to provide a "snapshot" of the Tangguh Project's compliance with the Voluntary Principles, with a focus on some of the thematic areas that have been the source of legal and reputational concern, to contextualize this compliance in light of the HRIA recommendations 2002, and to share best practices established by other BP operations with respect to the Voluntary Principles -- particularly with respect to the SCP and BTC Projects.

In preparation for the Monitoring Visit, Gare Smith met in Washington with international NGOs participating in the Voluntary Principles process, reviewed the Voluntary Principles to distill applicable human rights commitments, and incorporated these commitments into a Human Rights and Security Assessment Regime for use during the Monitoring Visit. The Monitors also studied a wide variety of internal Tangguh Project documents regarding security and human rights, as well as best practices by other companies participating in the Voluntary Principles.

III. IMPLEMENTATION OF THE VOLUNTARY PRINCIPLES AT TANGGUH

3.1. The Voluntary Principles

In an effort to guide members of the extractive industry in maintaining the safety and security of their operations within a framework that ensures respect for human rights, the U.S. and U.K. governments announced the establishment of the Voluntary Principles in December 2000. BP was among the seven companies and nine NGOs that participated in their creation. As noted in the HRIA, the Voluntary Principles have since gained recognition as the emerging international standard articulating the human rights responsibilities faced by extractive companies in their security operations around the world.

The Preamble to the Voluntary Principles acknowledges the preeminence of the Universal Declaration of Human Rights and urges companies to "act in a manner consistent with the laws of the countries within which they are present, to be mindful of the highest applicable international standards, and to promote the observance of applicable international law enforcement principles." To this end, the Voluntary Principles cite the importance of the U.N. Code of Conduct for Law Enforcement Officials and the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The Voluntary Principles then address three preeminent sets of issues for multinationals: (1) Risk Assessment; (2) Interactions between Companies and Public Security; and (3) Interactions between Companies and Private Security.

3.2. The Challenge of Operationalization

The Voluntary Principles are the central human rights template guiding security planning for the Tangguh Project. Tangguh uses the Risk Assessment section of the Voluntary Principles as a roadmap to identify key human rights factors to consider when planning security arrangements. These include the identification of security risks; potential for violence; the human rights records of public and private security forces; the strength of the rule of law; conflict analysis; and equipment transfers. These risk factors feature in the planning for Tangguh Project security and will remain key considerations throughout the construction and operation of Project.

As BP Berau management recognizes, though, adhering to these standards will not necessarily be sufficient to protect human rights in all circumstances. That challenge is defined not only by these external standards, but also by a range of risks, expectations, and constraints that it can influence, but not control. These factors include the troubled and often violent history of Indonesia.

During the past decade, the U.S. State Department's annual Country Reports on Human Rights Practices have consistently criticized Indonesia's military and police for failing to respect human rights. In the most recent report, the State Department observed that "Members of the security forces continued to commit numerous serious human rights violations. ... Security force members murdered, tortured, raped, beat, and arbitrarily detained civilians and members of separatist movements, especially in Aceh and to a lesser extent in Papua. ... Retired and active duty military officers known to have committed serious human rights violations occupied or were promoted to senior positions in the Government and the TNI. ... The judicial system was

corrupt, which contributed to the failure to provide redress to the victims of human rights violations or hold perpetrators accountable.”³

Past behavior is not necessarily indicative of future behavior, and President Yudhoyono has made clear his intention to promote respect for human rights through all branches of the Indonesian government. The legacy of human rights abuses by Indonesia’s security forces and the impunity with which the State Department has indicated those violations have been committed in the past,⁴ however, heightens the risk faced by BP Berau in relying upon a government security apparatus for Project security.

3.3. Stakeholder Expectations

As observed in the HRIA, as challenging as these risks are, there are nonetheless significant expectations both locally and globally regarding BP Berau’s commitment and ability to balance security arrangements with respect for human rights. Several common sets of perceptions and expectations emerged from the Monitors’ stakeholder dialogues.

There is a keen sensitivity to the lessons to be learned from mistakes made by multinationals working with security forces to protect Project assets in other countries, and an equally strong hope among those consulted that the Tangguh Project represents a fresh start and an opportunity to effectively implement global standards -- some of which BP has itself set elsewhere in the course of other operations, such as the SCP/BTC Projects. To this effect, there is a striking degree of consensus among key stakeholders in Papua (including the senior management of BP Berau, the leadership of the TNI, the National Police, Indonesian and international NGOs, and local villagers), that the individuals providing security should be carefully trained to respect the rights of individuals working and living near the Tangguh Project. Since the HRIA was released, a consensus has emerged among these same groups that the first line of project security should rest with the local peoples themselves, through a form of community-based security, and that government forces should become involved only if this is insufficient to manage a security incident.

International NGOs watching the Project are familiar with the human rights-related reputational attack that BP experienced in Colombia in the mid-1990s; the recent dismissal of the ATCA lawsuit against BP with respect to its operations in South Africa during the apartheid era; the challenges encountered and standards set by the SCP/BTC Projects; and the steps that have taken to address these challenges. They are interested in the lessons that BP Berau and other Tangguh investor companies learned from these experiences and acknowledge the leadership that BP has taken in developing the Voluntary Principles and the commitment to human rights and corporate responsibility that its leadership reflects. Notably, Indonesian NGOs consulted with for this Assessment, while still dubious that the Tangguh Project will be able to proceed in a manner that fully respects the interests of all affected peoples, seemed less adversarial to the

³ Country Reports on Human Rights Practices -- 2004, U.S. Department of State, Introduction to report on Indonesia (2005). The section of the report regarding Indonesia can be viewed on-line at <http://www.state.gov/g/drl/rls/hrrpt/2004/41643.htm>.

⁴ See e.g., *ibid.*, Section I (d), paragraph 3 (“Impunity and corruption remained significant issues.”)

Project than two years ago and more interested in providing guidance regarding how to help the Project meet this objective.

These expectations will be accompanied by continuing scrutiny to determine whether BP Berau will deliver on its commitments. Although the Tangguh Project will never meet the expectations of all external stakeholders, over the course of its operational lifetime it may nonetheless be able to set and sustain a pattern for global leadership, and build a climate of trust premised upon a broad-based perception that it is taking all reasonable steps within the sphere of its influence to protect and promote human rights.

IV. BASIS OF PEER REVIEW: CONTEMPORARY HOLISTIC SECURITY

4.1. The Concept of Contemporary Holistic Security

BP businesses operating in the developing world are committed to ensuring a peaceful and secure environment aligned to the BP ethical conduct policy. This can only be achieved by proactive security action reaching out beyond the camp or facility perimeters and focusing on managing the causes of security failure. This is particularly important in Papua, where eight of the sixteen identified security risks are community-based.⁵

BP's established holistic principles of security in the developing world are based on the following four pillars.

4.1.1. Working with the Community

The cooperation of local communities, as stakeholders in projects, is critical to security. This can be achieved by working with social impact specialists, NGOs, local community leaders, and local people to understand community issues that minimize impacts and maximize community benefits. The security of the community, the most basic of human rights, should be recognized as being of equal importance to the security of those working on a project.

Increasingly the "interested community" has extended to include international and local NGOs and other concerned groups. It is for "security," as the company's responsible function, to inform all interested parties that their security plans safeguard their neighbor's human rights.

4.1.2. Working with the Governments and their Agencies

The support of the police and, in extremis, the TNI may be vital in the event of a serious incident beyond the capabilities of local guards. Close personal relationships with key commanders should be formed early and maintained. Close engagement not only facilitates quick reaction in times of trouble but also helps influence police or troop human rights compliance.

4.1.3. Protection

Holistic security does not preclude protection around facilities. Local communities that see a project as their own will discourage potential troublemakers or thieves, but there will still be those who wish to enter a site illegally. Protection should include walls or fences as a deterrent and electronic surveillance to facilitate quick reaction. Unarmed local guards should patrol facilities.

As part of the protection process, threat assessments should routinely be carried out to ensure that risks are identified and managed. These include the Project's impact on the community's security as well as the risk to BP reputation of public force human rights abuse.

⁵ Tangguh Security Risk Assessment, 12 Nov. 2004.

A risk assessment should be made publicly available on the Project web site. Public information must not put people or the Project in harms way. NGOs will understand this.

4.1.4. Security Ownership

Security professionals should provide advice to line management who “own” security. Like safety, security will be the responsibility of all. The best security comes from local communities who see an operation as functioning in their interest.

4.2. The Tangguh Project’s Response to Holistic Security Principles

In many of the areas outlined above the Tangguh Project has an exemplary record. Particularly mold-breaking is the ICBS initiative.

BP Berau has taken a laudable policy decision to bring security out from behind the perimeter fence. This fits with international human rights monitoring demands and BP leadership’s requirement that projects show a large measure of corporate responsibility. Ultimately, BP is defending its commercial interests in a more appropriate way.

The Peer Review aspect of the Assessment concentrates on areas to enhance the Tangguh Project’s human rights based security policy.

V. MONITORING: FINDINGS AND RECOMMENDATIONS

5.1. Risk Assessment

The first section of the Voluntary Principles addresses the commitment of participating members to assess risks present in the companies' operating environments that affect the security of personnel, local communities, and assets as well as the companies' ability to promote and protect respect for human rights. Areas highlighted for consideration include the identification of security risks, potential for violence, human rights records, and rule of law, conflict analysis, and equipment transfers.

Inasmuch as compliance with the Voluntary Principles is an ongoing process that continues throughout the course of a project's life, the Monitors' findings regarding the Tangguh Project reflect whether the Project has taken steps *toward* compliance, rather than a definitive conclusion regarding Project compliance.

5.1.1. Identification of Security Risks

The Voluntary Principles urge participating companies to identify security risks, take measures to minimize risk, and assess whether company actions may heighten risk.

The Tangguh Performance Unit Security Manager is the primary risk analyst for the Tangguh Project. He oversees the collection, analysis, and dissemination of information regarding the political and security risks with respect to the Project's proposed construction and operation.

Under his guidance, BP Berau's Security Team researches and drafts the broad-based Tangguh Security Risk Assessments and provides monthly reporting regarding security issues. The Tangguh Security Risk Assessments rank major threats by criteria governing impact and likelihood, and identify the top 15 potential risks to the Project. These risks include work force disputes, civil disturbances, in-migration reputational risks, and ethnic and political conflict. The Risk Assessments include mitigation measures for each of the five "high value risks" determined to be both of significant likelihood and impact. The Private Security Provider also performs its own risk assessments.

The primary customer for risk assessments is the Tangguh Performance Unit. Reporting is provided through a variety of means, including oral briefings, advisory notes, the Tangguh Security Risk Assessment, and the more detailed "Indonesia and Papua Country Risk Assessment" ("Country Risk Assessment"). Pursuant to the Tangguh Security Plan, BP Berau seeks to assure the quality of the information in its risk assessments through the assembling of regular updated reports.

The Indonesia Business Unit corporate security department, together with the Business Unit Government and Public Affairs team, also help to BP Berau identify security risks, including those related to possible human rights abuse and, particularly, those coming from outside Papua. Collective efforts are made to manage and mitigate these risks.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: Risk identification is the first step in the security process. The Security Manager should also “own” the dozen top strategic security risks to the Project. These should be agreed upon by BP Berau and provide a focus for risk management. Two such possible issues are human rights abuse by public forces and security-related reputational attack, which have been identified in the Risk Assessments. A simple presentation on one page, using the traffic light system, is recommended. Red lights stand out, and should be discussed at core management meetings.

Background information for reporting and risk management should be obtained from a variety of sources, including representatives of the police and the military, other multinationals in the extractive industry operating in Papua and elsewhere in Indonesia, NGOs, and indigenous leaders knowledgeable about local conditions.

Recommendation: The Voluntary Principles encourage the sharing of information relevant to a project's risk assessment (barring information that could subject people or a project to risk) among companies, civil society, and governments as a means of ensuring its accuracy and promoting security policies that protect human rights.

BP has an excellent global record with respect to the transparency with which it shares information regarding projects -- particularly information regarding issues impacting individuals living near a project. BP Berau seems fully committed to the concept of transparency, as evidenced by its efforts to share security concerns with government entities and best practices with other participating companies in the region, but could take additional steps to extend the scope of its communications. To this end, BP Berau might consider providing regularized reporting, on the web, of risk assessments and other non-confidential, noncommercial information regarding security and human rights issues impacting the Tangguh Project.

5.1.2. Potential for Violence

The Voluntary Principles urge participating companies to identify risks presented by the potential for violence and patterns of violence in areas of company operations for educational, predictive, and preventative purposes.

As required by the Tangguh Security Plan, the Security Team consults on an informal and ongoing basis with representatives of the National Police, the TNI, and the private sector regarding the potential for violence. A Senior Advisor to BP Berau also consults with international NGOs to gather additional information and views regarding country and provincial security, which is shared with the Security Team for incorporation into risk assessments.

BP Berau’s highly detailed Country Risk Assessment examines the patterns and causes of regional violence so that steps can be considered to diminish the possibility of violence related to the Project. Analyses review the potential for violence in the context of both broad issues, such as respect for human rights, and specific issues, such as local tensions related to uncertainties regarding the central government’s willingness to implement the Special Autonomy Law.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: Consideration might be given to formalizing and documenting the dates of and topics discussed at all information-gathering meetings -- even if such meetings are informal in nature. Such strict record keeping could prove useful in mitigating liability in the event of a security incident.

Recommendation: Although not specifically recognized as “security resources” in the Tangguh Security Plan, village leaders and institutions of Papuan civil society, such as local NGOs, are also valuable sources of information in assessing potential for violence. Accordingly, it would be worthwhile for the Security Team to meet with these entities as part of its continuing assessment of the potential for violence. If such meetings and discussions are already occurring with other representatives of the Project, it is important that relevant information gathered be shared on a timely and continuous basis with the Security Team.

5.1.3. Human Rights Records

The Voluntary Principles urge participating companies to consider the human rights records of public and private security forces and the capacity of those entities to respond to violent situations in a manner consistent with applicable international standards.

The Tangguh Project has given great consideration to the human rights records of public and private security forces. The HRIA highlighted the human rights records of the TNI and the National Police (particularly with regard to Brimob), noted the strong aversion of local villagers and their leaders to the deployment of TNI and Brimob forces in or around the Project, and recommended that the Project adopt a community-based security approach as a first line of protection for the Project’s human and material assets.

During the ensuing two years, the Security Team has made very impressive strides to address the concerns of villagers regarding violence by public security forces. Specifically, BP Berau has established three seminal initiatives for members of the extractive industry operating in Papua.

First, it has established an ICBS plan as a first line of protection for the Project, premised upon the employment of indigenous Papuans as internal security guards with the Private Security Provider. As stipulated in the Field Guidelines accompanying the Joint Decree, the ICBS system reflects principles in the Indonesia Constitution, national and provincial laws, the adat (traditional) system, and international standards governing security and human rights. As such, one of the fundamental components of the ICBS is “the mutual respect of all parties to peacefully discuss and solve all issues without resorting to violence or intimidation.” Field Guidelines, Chapter II, Part 2(b)(4). Ensuring the success of the ICBS is a key objective of the Tangguh Security Plan.

Second, as also embodied in the Joint Decree, BP Berau entered into an agreement with the National Police under which the second line of protection, should the local security guards be unable to control a particular security threat, would be the local division of the National Police. Only if the police were unable to control the security threat, and so notified the TNI, would the TNI seek to intervene. As a practical matter, such intervention would likely only occur in the event of a significant attack by an armed insurgency group, terrorists, or a foreign military force.

The Monitors' discussions with the executive leadership of BP Berau, the National Police, the TNI, and the Private Security Provider indicated that all parties have a common understanding of this agreement and their respective roles regarding the provision of security services to the Project.

Third, both the National Police and local guards providing protection through the Private Security Provider are committed to abiding by the Voluntary Principles -- the former through the Joint Decree, and the latter through their contract with the Project.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle and is setting new standards for the industry with respect to operationalization of the Voluntary Principles.

Recommendation: None.

5.1.4. Rule of Law

The Voluntary Principles urge participating companies to consider the local prosecuting authority and the judiciary's capacity to hold those responsible for human rights abuses/violations of international humanitarian law.

The capacity of local authorities to effectively and transparently enforce the rule of law with respect to alleged violations of internationally recognized human rights is not addressed in recent security risk assessments.

At the local, village level, the Tangguh Project is somewhat unusual inasmuch as there is no written law or established judiciary. Instead, social judgments regarding wrongdoing are addressed through the adat system of village customs and mores, as dictated by village leaders. The HRIA recommended, and BP Berau subsequently committed to, respecting the indigenous adat system (as long as it is consistent with the protection of internationally recognized human rights) rather than seeking to impose an unfamiliar Western legal system.

As a practical matter, although the adat system may be effective in dealing with issues among local villagers, including alleged misdeeds by local security guards and police, the village authorities are less likely to be allowed to render a judgment against a non-local member of the National Police, and almost surely would not be deemed to have authority over a member of the Brimob or TNI. If a non-local member of the police were arrested on the grounds of an alleged human rights abuse, that individual would likely be transported to Manokwari to face charges before a local court. If a member of the TNI were alleged to have committed a human rights abuse, the individual might be sent to Manokwari or might face a military proceeding.

Finding: The Tangguh Project appears to be taking appropriate steps to comply with this principle.

Recommendation: BP Berau has devoted considerable attention to rule of law in the context of the local adat systems and with respect to the security forces' history of relative impunity. It seems to have given less attention, however, to traditional rule of law issues in Manokwari.

The Security Team should research and consider what action, if any, is needed to ensure that prosecuting authorities and the judiciary in Manokwari are capable of holding accountable individuals believed responsible for human rights violations in a manner that respects the rights of the accused. If the judicial system lacks the political will or the capacity to do so, BP Berau should approach the U.S. and U.K. embassies, as well as appropriate international organizations such as the United Nations Development Program (“UNDP”), regarding the feasibility of establishing rule of law and training initiatives.

5.1.5. Conflict Analysis

The Voluntary Principles urge participating companies to identify and understand the root causes and nature of local conflicts and the potential for future conflicts.

Members of the Security Team regularly consult with local communities; security forces; multilateral institutions such as the ICRC; and other companies to better understand local conflicts. To this effect, the Tangguh Project is also supporting an ongoing study by a local Indonesian group regarding conflicts in the Bintuni Bay area. The Tangguh Security Risk Assessment includes matrices of the overlapping concerns and issues responsible for existing and potential conflicts in the Bintuni Bay area.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: None.

5.1.6. Equipment Transfers

The Voluntary Principles urge participating companies to consider the risks attendant to the provision of equipment to public or private security forces.

The HRIA highlighted the legal and reputational risks associated with providing equipment to public and private security forces, and BP Berau has adopted a ban on the provision of lethal aid to public security forces. Indeed, the Project is not providing lethal equipment to any public or private security forces in Indonesia.

The Security Team has given serious consideration to the legal and reputational impact of past incidents with investor companies and other industry members in which transferred equipment has been misappropriated and misused.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: In considering whether to offer public or private security forces non-lethal equipment, BP Berau should be guided by past BP experience in providing equipment pursuant to the Voluntary Principles. In previous projects, including the SCP/BTC Projects, BP has not limited the provision of security equipment to public forces as long as:

- No lethal aid is provided to the host governments;
- The assistance is fully documented, transparent, and duly witnessed;

- Whenever possible, support is provided in the form of equipment, rather than money;
- The reasons governing the decision to provide assistance are made public;
- Whenever possible, the use of assistance is monitored and publicly documented;
- Security equipment for public forces is procured using the standard company procurement process; and
- The equipment provided contributes directly or indirectly to the Project's operational security.

Pursuant to these standards, it is clear that, within the appropriate parameters, BP Berau could provide the public security forces with non-lethal assistance.

5.1.7. Additional Peer Review Commentary regarding Risk Management

Security Organization

Recommendation: The Project Security Manager does not currently report directly to the Performance Unit Leader. The Tangguh Project's high security profile, and the need for international exposure of the holistic and human rights compliant security policy, would make this desirable.

As the Project advances there will be a need for external security policy management, coordination, and liaison with other Project political and social policy issues as well as international liaison and communications. This will require the Security Manager to continue to be based in Jakarta.

There is a need for higher-level BP security support at the site. Consideration should be given to appointing back-to-back expatriate field security supervisors working at the Project Security Manager's policy direction. Their skills will differ to those needed, and currently possessed, by the Security Manager.

5.2. Interactions Between BP Berau and Public Security

Although governments have primary responsibility for maintaining law and order, security, and respect for human rights, multinationals have an interest in seeking to ensure that the actions taken by governments -- particularly the actions of public forces providing security for company projects -- are consistent with the protection and promotion of human rights. In an effort to reduce the risk of human rights abuses, the Voluntary Principles identify specific principles to guide relationships between companies and public security forces regarding security provided for those companies.

These principles include guidelines concerning security arrangements, deployment and conduct, consultation and advice, and responses to human rights abuses. BP Berau has sought to address these in the following manner.

5.2.1. Security Arrangements

(a) Consultation with Host Governments and Local Communities

The Voluntary Principles encourage participating companies to consult regularly with Host Governments and local communities regarding the impact of their security arrangements on those communities.

Pursuant to the mandates of the Tangguh Security Plan and the ICBS, BP Berau's Security Team is often in daily contact with representatives of the government of Indonesia's National Police, and is in informal contact with representatives of local communities regarding the impact of Project-related security arrangements on those communities.

In addition to committing both parties to the Voluntary Principles, the Joint Decree between BP Berau and the National Police specifically commits the police and BP Security to "take part in dialogues on security with civil institutions, religious leaders, youth leaders, and local community leaders/prominent figures." Joint Decree, Chapter II, Part (3)(a). It also requires the parties to "solicit community involvement" with respect to "preserving security ... and upholding human rights." *Id.*, Chapter II, Part (3)(b).

External stakeholders, ranging from human rights NGOs to multilateral institutions like the ICRC, uniformly applaud the Project's commitment to the ICBS strategy as a means of establishing effective security through a sense of "community ownership" of the Project. These groups stress that the Bay Area communities will increasingly perceive an ownership stake in the Project as they are able to recognize benefits from it.

The extent to which BP Berau's community relations initiatives have been paralleled by analogous efforts by the National Police is unclear. Some members of local communities remain unclear -- and dubious -- of the role that public security forces will play with respect to the Project. Fear of the TNI and Brimob, which are deeply distrusted by the indigenous citizenry, is entrenched. Indeed, some local organizations that fully understand and applaud the ICBS nonetheless predict that the TNI may seek to capitalize upon tensions between the community and the Project as a means of inserting itself into the Project.⁶

Under the Megawati Administration, the government effectively delayed implementation of the Papuan Autonomy Law, which could adversely impact upon the Project. Special autonomy could bring significant benefits to Papuans, but such benefits cannot be realized until the central government creates implementing regulations. Although BP Berau has indicated its support for Special Autonomy, it plays no role in the political decision-making and the lack of implementing regulation has placed additional pressure on the Project to demonstrate direct

⁶ The positions expressed in this paragraph were provided to the Monitors during the course of meetings with local community members and NGOs.

benefits to local communities. In the long run, the absence of a transparent and visible revenue stream to the province could create security risks for Project.

This is particularly the case with respect to individuals living on the North Shore, who complain that although the natural gas lies beneath their land the villagers from Tanah Merah and Saengga have received new housing and a greater number of benefits from the Project. Although, as a legal matter, all subsurface resources in Indonesia are owned by the national government, and the North Shore villagers have no greater right to receive benefits for the gas than other local residents, from a political and security standpoint this is a serious matter. If North Shore jealousies and perceptions of unfairness are left unaddressed they will fester, and North Shore residents will be all but certain to create security challenges for the Project as a means of expressing their frustration. Indeed, some local NGOs predict that the TNI might facilitate or provoke a security disturbance on the North Shore as an excuse for military intervention.⁷

Finding: The Tangguh Project is taking appropriate steps to comply with this principle, but will need to expand its dialogue and overall communications with local communities regarding Project security, ideally in conjunction with members of the National Police. This will be particularly important with respect to the communities on the North Shore.

Recommendation: The risks of human rights abuses associated with Project security can be minimized by including local communities as participants and contributors to that security -- as the Tangguh Project has done by consulting with local communities regarding security concerns during the course of the past several years, and hiring villagers to provide Project security pursuant to the ICBS. Meeting this goal on a sustainable basis will depend on continuing, constant, transparent communication between BP Berau and the local communities throughout the life of the Project. To this end, BP Berau should ensure that members of the Security Team, and not just Community Affairs Managers, play a central role in the dialogue with local communities. This could be achieved through the convening of periodic briefings on security plans, contingencies, and emergency mechanisms. Community Affairs Managers should also be briefed regarding security issues so that their discussions with villagers reinforce the message delivered by the Security Team.

Recommendation: BP Berau must address the concerns of the North Shore communities before they lead to serious security incidents. Although an analysis of North Shore issues is beyond the scope of this Assessment, it is clear that steps need to be taken to provide the residents of these communities with a sense of ownership of the Project -- as well as participation in the flow of benefits stemming from it. Short of building these residents new houses (which this Assessment does not recommend), BP Berau could take steps to provide North Shore residents with vocational training, health care facilities, schools, loans for micro-enterprise business efforts, and contracts for the provision of services -- such as ferrying individuals to the Project area.

⁷ The positions expressed in this paragraph were provided to the Monitors during the course of meetings with local community members and NGOs.

Recommendation: Local community leaders could be included on a designated “Security Committee” with representatives of the BP Berau Security Team, the Private Security Provider, and the police. Such a grassroots committee could provide oversight for the community and local “eyes and ears” for the Project regarding security issues of common concern. The committee could also serve as a forum for emergency consultation and coordination, early warning, and crisis response -- which would further minimize the development of a situation under which the Private Security Provider would need to call upon the police for help or the police would need to call upon the TNI. Such an initiative would be a natural outgrowth of the Tangguh Security Plan’s “Community Oriented Policing Program.”

Recommendation: BP Berau could establish a security and human rights “hotline” through which (1) the Security Committee could meet on an emergency basis, and (2) individuals could report incidents allegedly involving human rights abuses. Such a mechanism could convene a meeting immediately, whether at the initiative of the Security Team, the police, the Private Security Provider, or the local community.

Recommendation: The Tangguh Project website does not address the nexus of human rights and security or identify the steps the Security Team has taken to operationalize the Voluntary Principles. This is a lost opportunity and should be rectified as soon as possible -- both for the sake of transparency and to showcase the progress the Project has made.

Recommendation: Although beyond the scope of its immediate responsibilities under the Voluntary Principles, BP Berau should encourage the Government of Indonesia to be transparent with respect to the flow of revenues stemming from the Project. Such transparency would both help to prevent corruption and increase the likelihood that local communities will receive long-term benefits from the Project -- and, consequently, recognize a reason to assist in its protection. Likewise, representatives of the Project should urge authorities in Jakarta to clarify the implementation of the revenue-sharing provisions of the Special Autonomy Law.

(b) Communicating Ethical Conduct and Human Rights Policies to Security Providers

The Voluntary Principles encourage participating companies to communicate their policies regarding ethical conduct and human rights to public security providers and indicate their desire that security be provided in a manner consistent with those policies by personnel with adequate and effective training.

The Security Team is doing an excellent job of operationalizing this aspect of the Voluntary Principles. BP Berau not only communicated its policies regarding ethical conduct and human rights to public security providers at an early stage, but also incorporated those policies, including the Voluntary Principles, as commitments under the Joint Decree with the National Police.

The Security Team has also shared the Voluntary Principles with the TNI.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: The reaction of the TNI to human rights issues in Papua was much more progressive than it had been during the Monitors' meetings two years ago with respect to the HRIA. Although their involvement with the Tangguh Project is no longer front line, the TNI could still become involved if a separatist or terrorist group threatened the Project or there were a major security breakdown in the area.

Recommendation: The Security Team is considering pursuing the creation of a search and rescue agreement with the Indonesian Air Force. Such an agreement would clearly be in each party's interest. It would also be a symbolic step with the military and could provide an opportunity for BP Berau to include the Voluntary Principles in the Annex. Establishing this precedent with the Air Force would provide a basis upon which BP Berau could subsequently petition the Ministry of Defense to expand the military's commitment to the Voluntary Principles. Either of these initiatives could be undertaken in conjunction with ExxonMobil, which is also a participant in the Voluntary Principles, and Unocal, which is an investor in the BTC Project and has supported operationalization of the Voluntary Principles in that undertaking

(c) Transparency and Accessibility of Security Arrangements

The Voluntary Principles encourage participating companies to urge Host Governments to make security arrangements transparent and accessible to the public, subject to any overriding safety and security concerns.

Pursuant to the Tangguh Security Plan's Community Oriented Policing Plan, the Security Team actively encourages the National Police to promote the concept and practice of transparency with respect to security arrangements.

The Joint Decree between BP Berau and the National Police specifically commits the police and the Security Team to engaging in a dialogue with members of local communities and institutions of civil society regarding "maintaining security and order." Joint Decree, Chapter II, Part 3(a). This dialogue is to include the roles played by both public security forces and members of the public, and an explanation of "procedures for expressing any complaints or dissatisfaction including those regarding security officer conduct in the community. *Id.* at Chapter II, Part 3(a)(3).

The Security Team is currently in discussions with the National Police regarding the public release of the Joint Decree, or a summary of it, on the Project website. In addition, the Security Team intends to include the same information in "Tabura," a quarterly periodical regarding the Project that is published in Bahasa and English for the external community.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: BP Berau should urge the National Police to publicly release the Joint Decree in its entirety. This is a good opportunity for the police to establish their commitment under the Voluntary Principles to transparency, and there do not appear to be any overriding safety or security concerns that would militate for withholding the document from the public.

Recommendation: BP Berau might consider, through BP, inviting a senior National Police official to a future plenary meeting of the Voluntary Principles participants as part of its

ongoing effort to promote the concept of transparency and institutionalize respect for human rights within the security forces.

5.2.2. Deployment and Conduct

(a) Competency and Appropriateness of Public Security Forces

The Voluntary Principles note that the type and number of public security forces should be competent, appropriate, and proportional to the threat.

The HRIA stated that there is no single factor that has more potential to threaten the human rights of the individuals who live in the Bintuni Bay communities than the deployment of government security forces in connection with the Tangguh Project. At the time the HRIA was written, the local villagers' greatest concern regarding the Project was that TNI forces would be deployed in the Bay area to protect it. The HRIA recommended that Project managers work with the communities, police, and the TNI to localize the provision of security.

During the ensuing two years, BP Berau, working closely with the Government of Indonesia, made very significant strides to address this issue. The culmination of their efforts, incorporated into the Joint Decree between BP Berau and the National Police, was the decision to provide three distinct rings of security for the Project. The first ring, articulated in the ICBS plan, provides for community-based security. The second ring of security is provided by the local branches of the National Police. The final ring, which would only come into play if the police were unable to resolve a security threat, would be provided by the TNI.

Since the TNI will only provide security for the Tangguh Project in the most extreme scenario, it will not be deploying troops around the Project. This was confirmed to the Monitors during their meetings with the TNI leadership.

Although the Government of Indonesia, through the National Police (and, in the most extreme scenario, the TNI), will determine the number of police or military personnel needed to respond to security challenges, BP Berau will consult with the government to help ensure that that number is rational and reasonable in light of perceived threats.

Currently, BP Berau has requested the National Police to deploy four policemen (two at the proposed Tangguh site and two at the Saengga construction site), to serve as a deterrent to criminal activity. If the Project receives sanctions, the number of police stationed with the Project would likely increase to eight. Although the salaries of these police officers are paid by the government, and the delivery of their services is regarded as part of their normal course of duty, BP Berau also provides these police with food, lodging, and a small per diem to cover travel expenses associated with transport to the Project sites.

With regard to competency, BP Berau and the government agree that the primary role of public security is maintaining the rule of law -- which includes deterring acts that threaten Tangguh personnel and facilities and safeguarding human rights. This was conveyed explicitly to the Monitors by government officials. It is implicit in the Joint Decree between BP Berau and the National Police, which also stipulates that police officers providing security services for the Project should serve as "a role model for the community in proper conduct." Joint Decree,

Chapter II, Part 3 (a)(2). As noted immediately above, the Security Team is currently in discussions with the National Police regarding the public release of the Joint Decree.

Finding: The Tangguh Project is taking appropriate steps to work with the Government of Indonesia to comply with this principle and has made great progress.

Recommendation: Inasmuch as the few police officers working on-site are required to incur travel expenses not incurred by other police officers, it is not unreasonable for the Project to cover these minimal expenses and to provide for meals and lodging during the course of their time on-site. It is important to note, however, that from a legal risk management standpoint, the provision of room, board, and money to these public security forces could be viewed as blurring the distinction between whom these individuals take their orders and owe their allegiance.

This is significant to BP Berau inasmuch as if one of these individuals were to allegedly commit a human rights abuse, and an ATCA lawsuit were to be brought on the basis of that alleged abuse, these economic ties could be cited to suggest that BP Berau, rather than the National Police, governed the behavior of the on-site police and, accordingly, the Project should bear responsibility for the actions of the police. Although such a position would be erroneous, if accepted by the court it could have significant legal and reputational consequences for the Project and its investors. To reduce the possibility of such a risk, it would be wise for BP Berau to take steps to make very clear that the behavior of the police is dictated by their superiors in the government and not by the Project.

BP Berau could do this in at least two ways. First, it could put the current system of minor payments into a document reflecting an agreement between the Project and the National Police regarding the reason for these payments (i.e., unusual expenses that would not normally be incurred by the individual police officers), and emphasizing that the officers are at all times working solely under instruction from their superiors.

Alternatively, BP Berau could simply indicate to the National Police that, inasmuch as the officers are performing duties in the course of their regular business, any additional expense they incur related to their work should be paid for by the government. (Although theoretically sound, the process of reimbursement from the government is lengthy and cumbersome so, as a practical matter this would likely result in the individual police officers bearing the expense for significant periods -- the very problem the payments are seeking to avoid.)

In any event, if BP Berau continues making payments directly or indirectly to the police it should make the nature and amount of these payments public so that there can be no question about the reason for the payments or their intended influence on the police officers. This information could be spread both verbally, during meetings with local villagers, and on the Project website.

(b) Mitigation of Foreseeable Negative Consequences Regarding Human Rights

The Voluntary Principles encourage participating companies that provide equipment to public security to take appropriate measures to mitigate any foreseeable negative consequences with respect to human rights.

The HRIA highlighted the importance of establishing procedures by which to ensure that any equipment provided to public security forces not be misused, and BP Berau has assessed the legal and reputational risks associated with the provision of such equipment. As noted in 5.1.6, above, pursuant to this assessment, BP Berau has established a strict guideline banning the provision of lethal aid.

As acknowledged by local police officials, the majority of police officers serving in the National Police, particularly at the local level, are not trained to respond to a security incident progressively. Their understanding seldom includes crowd dispersal skills between shouting and shooting. Police officers are typically issued handguns (38-revolver pistols); they are not provided alternative non-lethal equipment. This combination of inexperience and limited equipment increases the risk of possible human rights violations. It also underscores the importance of providing adequate training for police officers and equipment that can be used to address a variety of security threats -- ranging from belligerent drunks to unruly crowds.

The concerns raised by insufficient equipment and training were illustrated in practice in early 2004 when a police officer responding to a hostile group drew his gun and fired into the air -- a practice permitted under the standard operating procedure, but only as part of an appropriately graduated escalation of responses. Although no one was injured by this action, it is not difficult to imagine a similar situation in which someone in the crowd, or a bystander, could be hurt and could seek to hold the Project accountable for the injury. The fact that police officers responding to a security crisis at the Project are provided with no equipment short of handguns increases the likelihood that they could revert to the use of those guns in a show of force that is disproportional to the security threat.⁸

Finding: The Tangguh Project is taking appropriate steps to comply with this principle, but there are outstanding risks that should be addressed.

Recommendation: Given the increased risk of a human rights incident stemming from the fact that police have no equipment alternative short of lethal force, consideration should be given to providing the police with some form of non-lethal equipment. As noted in “Equipment Transfers,” 5.1.6, above, BP guidelines permit the transfer of non-lethal equipment to public forces within certain parameters.

There are an increasing number of non-lethal security containment or dispersal aids available on the market. The Security Team should research these and test their acceptability to NGOs as equipment that could be transferred to the police. There are several options other than Tazers and pepper spray, including “tangle twine” and removable “slippery surface.” The former BP Hides Project in Papua New Guinea, which had very similar security risks as Tangguh, researched non-lethal response options in detail and could provide some guidance.

In the spirit of transparency with which the Tangguh Project is being considered, and in keeping with BP policy, it would be advisable to ensure that: (1) the provision of any material

⁸ This concern was raised with the Monitors during the course of meetings with local police.

assistance to the National Police through the Government of Indonesia be fully documented; (2) the reasons justifying the provision of assistance be made public; and (3) wherever possible, the use of such equipment be monitored and publicly documented. Adopting an approach that encompasses transparency, training, and monitoring with respect to the use of any such equipment would significantly reduce any reputational issues associated with the transfer of such equipment.

(c) Use of Force/Refraining from Human Rights Violations

The Voluntary Principles encourage participating companies to use their influence to urge public security to: (1) prohibit individuals credibly linked to human rights abuses from providing security services for the company; (2) use force only when strictly necessary and to an extent proportional to the threat; and (3) refrain from violating the rights of individuals exercising their rights under the Universal Declaration of Human Rights and the International Labor Organization Declaration on Fundamental Principles and Rights at Work.

The selection process for individuals serving in the National Police includes a government background check of each applicant's work history and criminal record. Individuals who have been convicted of serious crimes are not permitted to serve in the police force. The background check does not currently include specific research into whether an individual has been credibly implicated in human rights abuses, absent a conviction for such an abuse. Nor has a policy been established by the National Police that would prohibit an experienced officer credibly implicated in human rights abuses from providing security services for the Tangguh Project.

Pursuant to the Joint Decree, however, the National Police are now committed to adopting the Voluntary Principles screening standards. The Security Team has discussed this matter with the National Police as part of an overall effort to educate the police force with respect to their obligations under the Voluntary Principles and the police have indicated their intention to give greater consideration to human rights concerns.

The Joint Decree specifically notes that “all security activities” of the police will be designed to prevent “injuries or fatalities through the minimum use of force necessary to protect property, material, and trustworthiness” in accordance with the Voluntary Principles. Joint Decree, Chapter II, Part 2 (b)(2). To this effect, “[t]he police shall use persuasive measures as their first priority when carrying out security task. Any acts that can cause injury or death will only be authorized as a last resort to protect the lives of others.” *Id.*, at Chapter III, Part 2 (c)(3)(e). The Security Team has discussed with the police the Voluntary Principles guidelines regarding the use of force, as well as the importance of demonstrating respect for human and worker rights.

The Security Team is aware of the funding, capacity, and training issues faced by the police force. Although, as a theoretical matter, the leadership of the National Police recognize that the use of force should be proportional to the threat, as a practical matter the police themselves recognize that few officers on the ground are trained regarding the implementation of this principle.⁹ On the other hand, local police have been present at Tangguh facilities on several

⁹ This concern was raised with the Monitors during the course of meetings with local police.

occasions when workers (ranging from the private security guards to kitchen and laundry staff) went on strike, and took no steps to interfere or challenge these activities -- a clear demonstration of their respect for worker rights.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle. Significant issues remain, however, with respect to police capacity and performance in a manner that is consistent with international standards. Left unaddressed, the existing gap between the commitments of the National Police under the Joint Decree and the capacity of responding officers to implement those commitments could lead to legal and reputational risks for Project.

Recommendation: BP Berau needs to continue to work with the police to ensure that they take adequate steps to prevent any individual who has been credibly linked to human rights abuses from providing security services for the Project.

Recommendation: BP Berau should encourage the training of police officers with respect to technical proficiency in the handling and use of their firearms. The OGP Guidelines provide useful guidance to this effect, and could be incorporated into a human rights training program and/or other police training programs.

Recommendation: BP Berau should work with the National Police to ensure that any officers who might be called upon to provide security for the Project receive appropriate training with respect to the guidelines articulated in the Voluntary Principles. See “Training and Observance of International Law Enforcement Principles,” 5.2.3 (b), below, for proposals regarding possible training programs.

(d) Reporting the Use of Force

The Voluntary Principles note that when force is used by public security, the incident should be reported to appropriate governmental authorities and medical aid should be provided to injured persons.

Under current security guidelines, if a police officer employs the use of force, a report regarding the events preceding the use of force and the manner in which force was employed is to be provided to governmental authorities through that individual’s chain of command in the National Police. In addition, with respect to the Tangguh Project, “[a]ny incident of use of any weaponry and/or any act that causes any injury or death shall be immediately reported to the police commanding officer ... and to Tangguh LNG Project Security Manager....” Joint Decree, Chapter III, Part 2 (c)(3)(f). Reports have been provided up the chain of command, and BP Berau has been notified in a timely manner, with respect to arrests that have been made by the police in conjunction with activities at Tangguh facilities.

The Joint Decree also commits the National Police to provide medical aid to injured persons pursuant to both Voluntary Principles guidelines and the Basic Principles on the Use of Force and Treatment of Offenders, which are referenced and appended to the agreement.

BP Berau has raised with the National Police their duty to provide medical aid to persons, including offenders, injured by the use of force by public security providers and has offered to

provide First Aid training to police officers. The police have not expressed an interest in taking the Project up on this offer.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle, although it seems more directed at the police than Project management.

Recommendation: BP Berau should seek to ensure that, as part of Voluntary Principles training, police officers that may provide security services for the Project are made aware of their obligation to provide, and have the capacity to provide or secure, medical aid for persons injured by the use of force. The Security Team should renew its offer to provide First Aid training for the police.

5.2.3. Consultation and Advice

(a) Meetings Regarding Security and Human Rights

The Voluntary Principles encourage participating companies to meet with public security, companies, Host and Home governments, and civil society to discuss security and human rights.

Pursuant to the requirements of the Tangguh Security Plan and the ICBS, members of the Tangguh Security Team hold both structured meetings and informal meetings with public security (the National Police and, less frequently, the TNI), on a regular basis to discuss a wide array of security and human rights issues. If the Project receives sanctions, BP Berau and the police will establish a Working Group that will include in its ambit security and human rights issues. In addition to the public security forces, the Security Team has occasional meetings with Komnas-HAM, and the National Resiliency Institute (“LEMHANNAS” -- the approximate equivalent of the U.S. National War College).

The Security Team actively seeks out and consults with representatives of other multinationals operating in Papua and elsewhere in Indonesia regarding security and human rights issues. As part of this effort, the Security Team helped restart the Voluntary Principles Working Group in Indonesia. This group includes participants from a number of companies from the oil, gas, and mining industries in addition to representatives of the U.S. and U.K. embassies.

Security and human rights issues are also discussed in a variety of contexts with the governments of the United States (including the State Department’s Bureau of Democracy, Human Rights & Labor and Bureau of East Asia and Pacific Affairs, and diplomats at the U.S. Embassy in Jakarta), and with the United Kingdom (particularly the Foreign and Commonwealth Office). In addition, they are discussed on an irregular basis with representatives of civil society, including local NGOs, such the Indonesian Legal Aid Foundation and ELS-HAM.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: The Tangguh Project could benefit significantly from efforts to more broadly publicize and explain BP Berau’s initiatives to promote respect for human rights within the context of the security operations governing the Project.

The Project has an excellent story to tell with respect to the establishment of international standards and best practices, but many local and international stakeholders are unfamiliar with the Project's commitments and unaware of efforts to operationalize them. It was particularly disappointing, for example, to discover that Komnas-HAM, whose exclusive mandate is human rights issues in Indonesia, was unaware of both the Voluntary Principles and the steps that BP Berau is taking to protect and promote human rights.

At a minimum, BP Berau should highlight the HRIA, the Joint Decree, the ICBS, the AMDAL, the Code of Conduct for Security Contractors, and this Assessment in discussions with stakeholders and on its web page. In addition to describing these best practices, the Project should recognize the challenges and issues it is facing with respect to security and human rights. Such transparency would enhance the Project's credibility, and could lead to greater assistance in resolving problems.

Pursuant to both contemporary holistic security and Project directives, security is the responsibility of all employees. Accordingly, individuals working in Community Relations, Communications, Government Affairs, and other functional areas should recognize that publicizing these initiatives is also a shared responsibility.

Recommendation: As recognized in the HRIA, BP Berau committed significant time, energy, and resources to the Project's consultation process with local leaders and representatives of civil society during early stages of Project planning. Although some representatives of BP Berau have continued and built upon these relationships, the Security Team has not generally been a part of these consultations. If meetings with local NGOs are to meaningfully address security issues, members of the Security Team, particularly the Security Manager, should play an role in such meetings -- either in conjunction with Community Affairs Managers or independently. Direct NGO briefings by the Security Manager would, of course, be more effective than having a non-security Project representative field questions and pass on information second hand.

The Security Manager engaged in a constructive dialogue with the head of ELS-HAM, for example, during the course of the monitoring visit. Both the Project and ELS-HAM would benefit from a continuation of this dialogue. Likewise, the Security Team could seek the advice of the Indonesian Legal Aid Foundation with respect to the reporting procedures being created for the Project with respect to allegations of human rights abuse.

Recommendation: BP Berau should consider hosting regularized human rights meetings with interested institutions of civil society and documenting the dates and topics of discussion in these meetings -- as was done during early consultations with affected external stakeholders. This should certainly take place in Jakarta and Jayapura, but should also, when possible, take place with international NGOs and members of the SRI community in London and Washington. In his role as security advisor to the SCP/BTC Projects, Tony Ling holds such meetings on a regular basis. His meetings have demonstrated the Projects' commitments to transparency, showcased their leadership stances with respect to human rights and security, and provided a forum by which to address concerns and dispel misinformation.

Recommendation: As the State Department has recognized, there is “considerable friction between the police and the TNI.”¹⁰ Any steps the Security Team can take to establish confidence-building measures, build bridges, cross-pollinate ideas, and create improved lines of communication between these institutions would be in the best interest of all parties. BP Berau might consider encouraging the Government of Indonesia to create ombudsman positions for the police and the military as they develop a working relationship.

(b) Training and Observance of International Law Enforcement Principles

The Voluntary Principles encourage participating companies to promote, with Host Governments, the observance of international law enforcement principles. The Voluntary Principles also encourage participating companies to support efforts by governments, civil society, and multilateral institutions to provide human rights training for public security, as well as to strengthen state institutions to ensure accountability and respect for human rights.

The Tangguh Project has consistently promoted the observance of international law enforcement principles with the Government of Indonesia. This effort has been made over the course of several years in both Jakarta and Papua in meetings with senior government officials; the leadership of the National Police, the TNI, and Komnas-HAM; and other agencies and government representatives. The Joint Decree between BP Berau and the National Police reflects the understanding between the Project and the government with respect to the importance of observing international law enforcement principles.

BP Berau has also supported initiatives by the U.S. and U.K. Embassies to strengthen rule of law in Indonesia. The Project has already sponsored four local police chiefs for training in Jayapura as part of an ICITAP effort designed to improve police supervisory skills. The Security Team is currently in discussions with the U.S. Embassy regarding the possibility of the U.S. government helping to provide training regarding the Voluntary Principles and rule of law through ICITAP. The Security Team has also approached the ICRC, Komnas-HAM, and the Indonesian Legal Aid Foundation regarding the possibility of playing roles in such a training initiative.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle, but the current state of affairs presents significant legal and reputational risks for the Project.

Recommendation: To further promote the application of international standards governing respect for human rights, BP Berau, ideally in partnership with professional security trainers and international organizations with appropriate expertise, should urge that human rights training be provided to members of the police forces that might be assigned to protect the Project.

The SCP/BTC Projects have had remarkable success in providing such human rights training through partnership with Equity International, an NGO dedicated to the provision of theoretical and practical security and human rights training; the ICRC; and the Organization for

¹⁰ Country Reports on Human Rights Practices -- 2004, U.S. Department of State, Introduction to report on Indonesia.

Security and Cooperation in Europe (“OSCE”). These organizations, under the leadership of Equity International, established a sustainable “train the trainers” regime pursuant to which instruction and teaching guidance is provided to members of the security force who continue the program by teaching it to others. Follow-up independent monitoring of the security force’s implementation of the training, combined with remedial steps to address shortcomings, is key to securing compliance.

As the Security Team has already recognized, an analogous initiative could be launched in Indonesia with Equity International, or a similar private organization, in tandem with organizations such as the ICRC, Komnas-HAM, and the Indonesian Legal Aid Foundation. The Security Team might also approach LEMHANNAS regarding participation in such a training program.

If the police properly implement the internationally respected human rights standards articulated in the Voluntary Principles, they will help to manage legal human rights-related risks to the Tangguh Project and enhance the reputations of the National Police, the Government of Indonesia, and the Project’s investors. Conversely, if training is not received, and the Voluntary Principles are not operationalized, the Joint Decree -- as well as related human rights leadership initiatives undertaken by BP Berau -- will be dismissed by external stakeholders and the media as lip service.

Recommendation: Once individuals in the National Police providing standard security services for the Project have received human rights training, BP Berau should encourage Brimob and forces from the TNI that could theoretically be called upon to provide security for the Project to receive similar training. Although the association of these security forces with the Tangguh security process is remote, Komnas-HAM, the National Human Rights Commission created and funded by the Government, has submitted a report to the Attorney General’s Office which finds that both soldiers and police committed gross human rights violations, including murder and torture, against indigenous peoples in Papua,¹¹ and these security forces are feared by the local communities. Sustainable training programs for these forces could, in the long run, have a significant impact both on the promotion of respect for human rights and the professionalism of these institutions.

Recommendation: BP Berau should seek to ensure that the U.S. and U.K. governments, through the State Department, the Foreign and Commonwealth Office, and embassies in Jakarta provide positive feedback to the Government of Indonesia for the commitment of the National Police to adhere to the Voluntary Principles and should continue to urge these governments to help ensure that the police receive appropriate training so that they can adhere to this commitment.

Recommendation: BP Berau might request the U.S. and/or U.K. governments, through their respective embassies in Jakarta, to host a conference regarding (1) challenges and leadership initiatives associated with operationalizing the Voluntary Principles, and/or (2) how to best respond to security threats to major infrastructure projects like Tangguh in a manner that

¹¹ Komnas-HAM categorized these violations as crimes against humanity and, on September 2, 2004, submitted its report to the Attorney General for possible prosecution.

demonstrates respect for internationally-recognized rights. (Such an initiative could also serve as a first step for bringing the TNI on-board to with government’s human rights commitments.)

Recommendation: BP Berau should continue its efforts to establish a partnership initiative with ICITAP that would provide training for the National Police and promote respect for rule of law. ICITAP has provided bilateral training for the police for the past five years, during which time it has established a close working relationship with the institution.

Recommendation: As part of the Diversified Growth Strategy, BP Berau is working with the UNDP on the “Partnership for Sustainable Development in Papua” initiative in the Bird’s Head region. Thought might be given to expanding that partnership to include training for the police. The U.N. Human Rights Commission also has a presence in the Bird’s Head region, and BP Berau could determine whether there are opportunities to partner with it regarding human rights training.

5.2.4. Responses to Human Rights Abuses

(a) Recording and Reporting Human Rights Abuses

The Voluntary Principles encourage participating companies to record and report credible allegations of human rights abuses by public security to Host Government authorities and, where appropriate, urge investigation and that action be taken to prevent reoccurrence.

BP staff has already had occasion to privately raise with Indonesian government authorities credible allegations of human rights abuses by public security forces. Two examples of such abuses are the murder of Theys Eluay by members of the security forces who have since been convicted of that crime, and the killing of Papuan civilians at Wasior, which has been documented by Komnas-HAM.¹² Although BP would prefer to keep the specifics of these conversations confidential, in each case Project representatives urged the security forces to assist in the government’s investigation and support efforts to hold the perpetrators accountable for their actions.

Although the aforementioned human rights abuses were not tied to the Tangguh Project, BP Berau presumably would be at least as responsive in reporting credible human rights abuses related to the Project and urging the government to investigate and take steps to ensure that any such abuses were not repeated. To this effect, the Security Team is currently working with the police under the ambit of the Community Policing Program to establish a process by which allegations of human rights abuses will be shared, investigated, and addressed.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: The BP Berau should put a high priority on completing its work with the National Police to ensure that there is a credible system by which allegations of human rights abuses can be appropriately investigated and addressed. To the greatest extent possible, such a

¹² Komnas-HAM’s report documenting the Wasior killings was submitted to the Attorney General’s Office on September 2, 2004.

system should be open and transparent to external stakeholders. Public security forces should be encouraged to release such information to the public themselves -- a premature release of this information by BP Berau could put the government on the defensive and have negative consequences.

Recommendation: The government has banned international human rights monitors, such as Amnesty International and Human Rights Watch, from several Indonesia provinces, including Papua. As part of its commitment to encourage investigations into allegations of human rights abuses, BP Berau should consider urging the government to lift this restriction.

(b) Monitoring Status of Investigations and Resolutions

The Voluntary Principles encourage participating companies to monitor the status of investigations and press for their proper resolution. Efforts should be made to ascertain whether the basis of allegations is credible; additional information should be made available, as appropriate, to concerned parties.

The Tangguh Security Team is in the process of establishing a policy and procedures by which to fulfill this principle through the creation of a response process to be followed by Tangguh personnel in the event that an alleged human rights abuse is brought to the Project's attention.

The objective of this effort, which is based upon the SCP/BTC Project Procedure for Managing Human Rights Issues, is to provide a process to mitigate human rights-related legal and reputational liabilities, create internal consistency in responding to human rights challenges, develop clear documentation, and demonstrate BP Berau's commitment to promoting respect for human rights. To this end, the document will establish general principles to guide Project responses in the event of an alleged human rights abuse. These principles include internal due diligence and, when appropriate, an independent investigation of the allegations; the maintenance of records and documentation of all human rights related incidents; the establishment of a chain of command for managing an incident internally and a process for responding externally; the confidential engagement of the Government of Indonesia prior to any external engagement; and the efficient distribution of information. The security and safety of sources are to be protected.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle, but needs to move swiftly to establish an internal system by which to respond to a human rights crisis.

Recommendation: The Project needs to be prepared to respond immediately to allegations of misconduct or complicity with alleged human rights abuses by members of a public security force. To this end, BP Berau should complete its response process and disseminate it so that all personnel are aware of their responsibilities and accountabilities with respect to the investigation and reporting of alleged human rights abuses. Subsequently, tabletop exercises should be held, possibly with support from representatives of civil society.

(c) Equipment Monitoring

The Voluntary Principles encourage participating companies to monitor the use of equipment provided to security forces.

BP Berau has assessed the legal and reputational risks associated with providing equipment to public security forces and established a strict guideline prohibiting the provision of lethal equipment. With respect to non-lethal equipment, the Project has provided the police with two-way radios, as a means of improving communications at Babo and the Project site, but has not offered them other equipment. Use of these radios has been monitored.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: Should BP Berau decide to provide the police with non-lethal security equipment, the Project should take steps to monitor the use of such equipment as specified in “Equipment Transfers,” 5.1.6., above.

5.2.5. Overall Recommendation regarding BP Berau Interaction with Public Security

The Tangguh Project is taking appropriate steps to comply with Voluntary Principles commitments regarding the use of public security forces and, in many respects is following or establishing best practices. From a reputational, if not legal, perspective, however, the Project’s compliance should be viewed as only a portion of the overall equation with respect to the nexus of security and human rights.

The U.S. State Department cites impunity with respect to human rights abuses as a significant issue in Indonesia.¹³ Since the fall of President Suharto, however, hopes have grown that accountability could be established as part of a broader transition to democracy and civilian authority over the military. Indeed, the election of President Yudhoyono, who is widely regarded as an honest leader capable of implementing military reforms, and the enactment of new laws that would impose additional limitations on the military, has increased those hopes. The commitment by the National Police to adhere to the Voluntary Principles with respect to security activities at Tangguh, combined with the TNI’s recognition of the police as the primary public security force for the Project, indicates that the security forces are embracing some reforms, and suggests that the National Police may be willing to hold their forces accountable for their actions.

To minimize the likelihood of legal and reputational challenges to the activities of the public security forces protecting the Tangguh Project, BP Berau will want to urge that (1) police officers who may be called upon to protect the Project receive practical training with respect to the Voluntary Principles, and (2) the National Police agree to independent monitoring of their effort to operationalize the Voluntary Principles and take appropriate remedial steps to address any shortcomings noted in such monitoring.

¹³ Country Reports on Human Rights Practices -- 2004, U.S. Department of State, Section I (d), paragraph 3 (2005).

5.3. Interactions Between BP Berau and Private Security

Sometimes company participants in the Voluntary Principles engage private security providers to protect personnel and assets as a compliment to public security. As part of its commitment to the ICBS plan, BP Berau is, through the Private Security Provider, employing local villagers to provide the immediate first line of protection for the Project.

In this context, private security will need to coordinate with both Project management and state security forces, such as the National Police, and possibly the TNI, with respect to security threats and the defensive use of force. Given the risks associated with such activities, the Voluntary Principles offer independent guidelines governing private security conduct. Although the role and mandate of private security actors differs from that of public security actors inasmuch as private security should provide only preventative and defensive services, and not engage in activities exclusively the responsibility of state law enforcement authorities, the suggested principles overlap with many of the guidelines articulated for public security forces.

5.3.1. Capacity and Professional Standards of Private Security Providers

Principles for private security forces include observing international humanitarian law and emerging best industry practices, maintaining high levels of technical and professional proficiency with regard to the use of force and firearms, abiding by the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials and the United Nations Code of Conduct for Law Enforcement Officials, and respecting the rights of individuals under the Universal Declaration on Human Rights and ILO Conventions.

The Private Security Provider is dedicated, through a variety of commitments, to observing the highest of international standards with respect to human rights, labor rights, and the provision of security.

The Private Security Provider's Code of Conduct, which was established in conjunction with BP Indonesia for the Tangguh Project, is incorporated into the company's contract with the Project. The Code commits the company and its workforce to demonstrating respect for the Voluntary Principles; Indonesia's Constitution, laws, and professional standards; BP's corporate and ethical policies; and the highest levels of technical and professional efficiency. The Code also prohibits employees from carrying firearms. The Voluntary Principles are appended to the Code, as are "Conduct Cards" for private security forces, which provide specific guidance regarding issues such as the use of (minimum) force, discipline, honesty, public relations, and record keeping.

All of the Private Security Provider employees receive practical instruction from the Private Security Provider management regarding operationalization of the Voluntary Principles and respect for the rights of employees and members of the local communities. The training emphasizes that actions by security personnel must be assessed in terms of their legality, necessity, and proportionality. Afterwards, employees are required to sign an "Employee Statement Letter" affirming that they have "read, understand, and [will] fully follow" the Code of Conduct, Voluntary Principles, and Conduct Card.

Management of the Private Security Provider receives information regarding global and regional security trends from AGI and daily security briefings from Jakarta. Management consults regularly with other multinationals in Papua regarding security issues and best practices and has independent relationships with members of the Government of Indonesia. The Private Security Provider's personnel are in close contact with police at the national, regional, and local levels.

The company issues a confidential "Managers' Monthly Report" for the Tangguh Project that reviews security activities and identifies trends and patterns affecting the security situation. The reporting includes summaries of security incidents, deployments and operations, training and guard force development activity, and HSE performance. It also includes a project-specific threat assessment and suggestions for improving the Project security.

Management of the Private Security Provider plays an important role with respect to the success of the ICBS plan inasmuch as the company hires local Papuans and interfaces with community members on a daily basis. Over 90% of the private guard workforce is composed of individuals from local communities.

On several occasions, employees at the Babo Camp have gone on strike. In each case, the Private Security Provider employees have demonstrated respect for the rights of striking workers, and the labor situation was resolved peacefully. (On one occasion, the private security guards themselves participated in a walkout strike -- clearly demonstrating both their respect for worker rights under ILO Conventions, and their willingness to personally take advantage of those rights.)

Finding: The Private Security Provider is taking appropriate steps to comply with this principle.

Recommendation: The Private Security Provider has experienced some challenges working with the local Papuans. The company is trying very hard to professionalize its security providers and to train them to abide by the highest international standards. It has done an excellent job of educating the guards with respect to objective criteria, and has clearly instilled a sense of pride in the security providers with respect to their work. Management has experienced nagging problems, however, with respect to misunderstandings with the Papuans, and believes that most of the tensions between the Project and villagers stem from local collusion, rumors, and misinformation, as well overall poor communication between the Project and the villagers. Due to these and related concerns, some employees of the Private Security Provider indicated to BP Berau and the Monitors that there will be ongoing challenges in making ICBS work.

Given the significant role that the Private Security Provider plays with respect to the ICBS, and the importance of the ICBS to the Tangguh Security Plan, the communications frustrations that the company is experiencing with local Papuans is worthy of attention -- both in its own right, and because it may be reflective of broader problems the Project is having with local villagers. Whether the differences stem from cultural distinctions, language barriers, context, or other issues, BP Berau needs to address this challenge if the ICBS strategy is to succeed. Local representatives of civil society might be able to play a helpful role. Resolving this should be a priority for BP Berau.

Recommendation: The dormant TSE concept, establishing a community-led Security Company and contracting it to guard the facilities, should be resurrected. The Private Security Provider should be given the incentive to make it work. This will take financial backing, training, and initially, management support, but the long-term benefit to the Project and the community will be considerable. This concept could also be extended to embrace boat transport and other administrative tasks. The TSE model was successfully employed in the BP Hides Project, in Papua New Guinea.

The TSE initiative will have external impact if it is given publicity. The proposed local multimedia campaign should be repeated, in a suitable style, internationally.

Recommendation: The all-black uniform worn by the Private Security Provider's guards could be considered intimidating, particularly to external observers. The Security Manager has asked the contracting security provider to provide the guards with blue, rather than black, shirts. Making this relatively simple change could help reduce some reputational, if not legal, risks.

5.3.2. Responsibilities of Contracting Company

(a) Inclusion of Principles in Contractual Provisions

The Voluntary Principles urge participating companies using private security providers to include the aforementioned principles in contractual provisions.

The Private Security Provider/BP Indonesia Code of Conduct requires security contractors to abide by all aspects of the Voluntary Principles, and is embedded in the contractual agreement between the Project and the Private Security Provider.

To this end, the Code of Conduct notes: “[r]ecognizing the imperative of exemplary ethical behavior and respect for human rights as a precondition for a successful and sustainable security regime, [the Private Security Provider] adopts this Code of Conduct for all its operations under the contract with BP Indonesia... and also adopts and adheres to the provisions of the Voluntary Principles on Security and Human Rights...” Code of Conduct, at 1. In addition, the Code requires security contractors to fully comply with the Indonesian Constitution and laws, maintain high levels of technical and professional efficiency, and “act in total accordance” with BP Indonesia corporate and ethical policies.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: None.

(b) Exclusion of Human Rights Abusers

The Voluntary Principles urge participating companies using private security providers to ban the employment of individuals credibly linked to human rights abuses.

BP Indonesia requires a background check on all applicants seeking to provide private security services to the Tangguh Project to ensure that, among other requirements, no individuals are hired who have been credibly linked to human rights abuses. This requirement is referenced

in Article 2, Clause 6, and Article 3 of the Code of Conduct, and is incorporated into the contract between the Private Security Provider and BP Indonesia.

The Private Security Provider has in adopted policies that prohibit the hiring of individuals credibly linked to human rights abuses and the hiring of individuals from organizations that have been credibly linked to human rights abuses.

No individuals providing private security for the Project are alleged to have participated in human rights abuses.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: None

(c) Monitoring of Activities

The Voluntary Principles urge participating companies using private security providers to monitor private security providers to ensure they fulfill their obligations under the principles.

Article 5, Clause 4 of the Code of Conduct stipulates that private security providers to the Project must “accept periodic audits” to ensure that their conduct is consistent with the Code, including the requirements of the Voluntary Principles. An independent third-party may also participate in such audits.

In fact, the Private Security Provider is periodically audited by the Tangguh Security Team and by BP Indonesia’s Ethics and Assurance Department.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: At present, the ability of the private guards to disperse a hostile crowd or an amok individual is limited to dialogue and persuasion. If this fails, then the police are called. This exposes the Project to two major risks: individuals could be seriously injured before the police arrive, or after the police arrive there could be an overreaction. The likely police reinforcing force, Brimob from Bintuni, are under trained and, according to local Papuans, particularly noted for human rights abuses.¹⁴ In addition, travel from Bintuni is likely to be slow and problematic, via a small outboard-powered boat, unless BP Berau provides air transportation.

Accordingly, the gap needs to be filled between the local guards’ use of dialogue and batons, the only weapons available to them, and the police, who may take time to arrive and may have to open fire with guns, the only weapons at their disposal.

¹⁴ This perspective was shared with the Monitors during the course of meetings with local community members and NGOs.

As noted in 5.2.2(b), above, there are an increasing number of non-lethal security containment or dispersal aids available to private security. The Security Team should research these and test their acceptability to NGOs as alternatives for the private guards to early police deployment.¹⁵

(d) Investigation of Alleged Abuses

The Voluntary Principles urge participating companies using private security providers to investigate any allegations of human rights abuses by private security and forward them to proper law enforcement authorities for resolution and consult with other companies, government officials, and civil society regarding experience with private security and unlawful activities committed by private security providers.

Article 3, Clause 3 of the Code of Conduct stipulates that “[a]ll allegations of human rights abuse against any of [the Private Security Provider’s] employee[s] working for BP Indonesia must be immediately notified to BP management, and those having a credible basis shall be fully investigated.”

¹⁵ To help frame BP Berau’s consideration of the advisability of providing the guards with pepper spray, Foley Hoag researched the legal parameters of exporting pepper spray to Indonesia.

Pursuant to U.S. export regulations, the export of pepper spray to Indonesia is permissible, but would require securing a license from the U.S. Department of Commerce except under certain limited circumstances. Any "liquid pepper" except when "packaged in individual containers with a net weight of three ounces or less" is deemed a controlled item for export to Indonesia (as well as many other countries). Other types of chemical agents and tear gases are also controlled for export to Indonesia. Licenses for the export of these products may be required from either the Department of Commerce or the Department of State. Export requirements governing the export of these products would be determined on the basis of the specific chemical agent at issue, its concentration, and packaging.

Notably, an "export" within the meaning of the Department of Commerce regulations is a broad term. "Export," means the actual shipment or transmission of items subject to the regulations out of the United States. Items subject to these regulations include all U.S.-origin items, and all items in the United States or moving in transit through the United States from one foreign nation to another. Re-exports of U.S. origin items (i.e., exports from the E.U. to another country) that would be in violation of the regulations if shipped directly from the U.S., are also covered by the regulations. Finally, an entity which ships items subject to the regulations to another country knowing that the recipient will send them to a nation that is a prohibited destination for the item under U.S. export controls, would be in violation of the regulations.

According to the British Embassy in Washington, the export of pepper spray from the U.K. is not currently controlled under either U.K. or E.U. export regulations. Several types of chemical riot control and tear gas substances are controlled, however, so any decision to export a similar substance should be examined on a case-by-case basis. A draft European Union Council trade regulation is pending that would require authorization for the export of pepper spray and other similar chemical sprays from the European Union, regardless of the origin of the product. The draft regulation (which also covers other equipment) was proposed in January 2003 and amended in October 2004. The amended proposal was transmitted to the Council for consideration at that time, and no further action has been taken. Obviously, if BP Berau were interested in providing pepper spray to the Government of Indonesia it would want to follow this legislation closely to ensure that it complied with any new E.U. export regulations.

The Security Team is currently working with the National Police regarding the establishment of a process by which allegations of human rights abuses will be shared, investigated, and addressed. The Security Team consults with representatives of other companies and the police regarding experience -- lawful and unlawful -- with private security on an ongoing basis.

Finding: The Tangguh Project is taking appropriate steps to comply with this principle.

Recommendation: Any concerns among villagers or members of civil society regarding the behavior of private security guards, or how to report perceived misbehavior of security guards, should be addressed as part of the ICBS process. The Community-Oriented Policing Program would provide an ideal forum through which to share such information.

About the Monitors

Tony Ling joined BP in February 1992 after a distinguished career in the British Army in which he reached the rank of Brigadier General. He was raised to CBE, a British order of merit, in 1992 for work on the reconciliation and integration into the new Namibian Army of SWAPO fighters and the remaining South African soldiers. He had previously been recognised for similar work in the new Zimbabwe.

For four years, until February 1996, Mr. Ling was Security Manager in Colombia for BP. His subsequent BP service included security responsibility for South Asia, the Caspian, and the Middle and Near East. He has also advised BP in Russia and Central Europe, West Africa, and the Far East.

Mr. Ling has particular specialist security knowledge of “high risk” countries, where he has developed concepts of security “outside the wire.” These aim to build a collective ethical security for the benefit of all by engaging a wide range of stakeholders including local communities, international NGOs, host government security forces, and interested foreign governments.

After retiring from BP in 2001, Mr. Ling worked as an independent security consultant with BP in Angola, and with Rio Tinto on diamond security. Since 2003 he has been security adviser for the BP led Azerbaijan, Georgia, and Turkey pipelines projects.

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Gare A. Smith chairs the corporate social responsibility and risk management practice at the law firm Foley Hoag, in Washington, D.C. Prior to joining Foley Hoag he was Vice President of Levi Strauss & Co., where he supervised global implementation of the company’s code of conduct. Mr. Smith previously served as Principal Deputy Assistant Secretary in the U.S. Department of State’s Bureau of Democracy, Human Rights & Labor and was a U.S. representative to the U.N. Human Rights Commission, the International Labor Organization, and the U.N. Working Group on the Rights of Indigenous Peoples. He recently authored two books on codes of conduct and international standards, which were published by the World Bank and the International Finance Corporation. Mr. Smith sits on the boards of a number of human rights organizations.