

**TANGGUH INDEPENDENT ADVISORY PANEL**

**SECOND REPORT  
ON  
TANGGUH LNG PROJECT**

**NOVEMBER 2003**

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## **I. Summary and Principal Recommendations**

The Tangguh Independent Advisory Panel (“TIAP”) was established by BP to provide external advice to senior decisionmakers regarding non-commercial aspects of the Tangguh LNG Project. The Panel is chaired by U.S. Senator George Mitchell and includes Lord David Hannay of Chiswick from the UK, Ambassador Sabam Siagian from Jakarta and the Reverend Herman Saud from Jayapura. The Panel is charged with advising BP on how Tangguh can achieve its potential as a world-class model for development, taking into account specifically: the Project’s effects on the local community; its impact on political, economic and social conditions in Indonesia generally and Papua in particular; and its evaluation of Indonesia and Papua “country risk.”

This is the Panel’s second report to the BP Group Chief Executive. The first report, submitted in October 2002, is available, together with BP’s response, from the Panel or on BP’s website.<sup>1</sup> This year, the Panel engaged in detailed background briefings by the Tangguh Project team and took an extensive visit to Indonesia, including Jakarta, Jayapura, Manokwari, Babo, Tanah Merah and the site of the new Tanah Merah Baru. For the second year, the Panel met with a wide variety of Indonesian, U.S. and UK government officials; leaders in Jakarta, Jayapura, Manokwari, Babo and in Tanah Merah; NGOs in London, Washington, Jakarta and Jayapura; the Regents of Cenderawasih University in Jayapura and the University of Papua in Manokwari (“UNIPA”); representatives of donor agencies, including the U.S. Agency for International Development (“USAID”), the UK Department for International Development (“DFID”), the Australian Agency for International Development (“AusAID”), the United Nations Development Programme (“UNDP”), and the World Bank; BP’s Engineering,

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<sup>1</sup> Communications directly with the Panel can be made by e-mail to [TIAP@Tangguh.net](mailto:TIAP@Tangguh.net).

Procurement and Construction (“EPC”) contractor; and many directly affected Papuans.<sup>2</sup> The Panel utilized independent legal counsel, and was again given complete access to all information it requested and total independence in its inquiries and its findings. The conclusions and recommendations in this report are those of the Panel alone.

The Tangguh Project remains of enormous significance to Indonesia and to Papua. While uncertainties exist regarding the future division of revenues between the Government of Indonesia (“GOI”) and the provincial and local authorities, Tangguh, even if implemented at the outset with only two LNG trains, would represent the largest investment and revenue stream generated in Papua since the Freeport McMoRan Grasberg Mine in 1987.

The Project is particularly significant to the Bintuni Bay region of the Bird’s Head area of Papua, where economic benefits could be substantial, but where expectations could be unrealistically high. Some significant development already has taken place, including the construction of a 1300 meter airstrip at Babo; new piers at Babo; other beneficial projects at several of the directly affected villages (“DAVs”); the ongoing construction of the new village of Tanah Merah Baru; and the employment of significant numbers of Papuans.

This development is taking place in a region that has no substantial population centers within a hundred kilometers of the Tangguh site. There are no roads connecting the towns and villages around Bintuni Bay. The bay in the area of the Project is lined with mangroves and is approximately 80 kilometers from perhaps the world’s largest mangrove forest. The Bay area is considered by environmentalists to be one of the world’s most diverse marine ecosystems. However, it is not untouched by development. There are shrimp processing facilities, logging

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<sup>2</sup> A list of all individuals and entities consulted by the Panel is included at Appendix 1.

operations (legal and illegal), oil palm plantations and sago tree nurseries in the surrounding areas.

The region is described more fully in the Panel's First Report. With the exceptions of the extensive clearing and construction for Tanah Merah Baru, and the construction of the new airstrip, which has opened the area to regular commercial flights, the region so far has changed little. The villagers have limited health and education facilities, very modest job opportunities, and virtually no infrastructure for drinking water or wastewater.

The Panel considered BP's activities and proposals in relation to the most respected current global norms that establish best practices for projects in developing countries. These include the United Nations Universal Declaration of Human Rights, the International Labor Organization Convention Concerning Indigenous and Tribal Peoples in Independent Countries, the World Bank Operational Directive with respect to indigenous peoples, the U.S.-UK Voluntary Principles on Security and Human Rights (the "Voluntary Principles on Security"), and other World Bank and IFC policies regarding environmental operations and protection of natural habitats.<sup>3</sup> BP has committed to abide by these standards, and the Panel concludes that, thus far, it has met this commitment.

BP's compliance with Indonesian law was outside the scope of the Panel's inquiry, but the Panel was assured by all government officials that BP was abiding by all national and local legal standards.

The Panel has been briefed on commercial contracts and prospects and the Project's status and timeframe. Many of the officials with whom the Panel met expressed a desire that the Project move forward as quickly as possible. The Panel understands that BP and its partners are

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<sup>3</sup> Key provisions of these instruments are included at Appendix 2 to the Panel's First Report.

proceeding on a schedule that contemplates making a final investment decision in the second half of 2004.

The Panel makes the following principal recommendations, in addition to those in its First Report, each of which is described more fully in the sections below.

### **The Need for Substantial and Tangible Benefits in the Near Term**

- **As the construction phase of the Project approaches, BP's community development activities will need to move more from planning and dialogue to provision of benefits in the areas of health, education and infrastructure.**
- **Continue to work in partnership with USAID, UNDP, and DFID toward long term sustainable growth and local government capacity building in the Bird's Head region.**
- **Encourage and support measures to promote sustainable and diverse economic development in the Bird's Head region, and focus particularly on the potential benefits of a micro-finance program.**
- **Provide increased tangible benefits to the north shore communities in order to rectify perceived imbalances regarding allocation of benefits between the north and south shore communities of Bintuni Bay.**
- **Develop a sound working relationship with the Regent and other government officials at the new district capital of Bintuni.**
- **Utilize BP's skills in finance to work with the GOI and multinational lenders to determine the viability of possible financing mechanisms to smooth out and bring forward the flow of revenues to Papua.**

### **Security**

- **Continue the dialogue with the TNI and the regional military commander as well as the regional and local police authorities to implement community based security and seek an understanding of the specific responses to handling any security problems that may arise during construction or production.**
- **Explore promptly with BPMIGAS and the regional police authorities the form and scope of support BP should provide for community based security pursuant to the Memorandum of Understanding between BPMIGAS and the national police.**
- **Provide support only through BPMIGAS, and only for facilities or equipment that are consistent with the standards set out in the Voluntary Principles on Security, the United Nations Universal Declaration of Human Rights, and other international standards relevant to human rights and the provision of security.**

- **Specify in writing the precise services that BP will provide for security and identify standards of performance to which the police are expected to adhere.**
- **Closely supervise and monitor BP's security contractor to ensure that the private security force is properly trained, complies with BP's Code of Conduct and the standards of the Voluntary Principles on Security.**

#### **Mitigation of Construction Activities**

- **Develop a specific plan to respond to any violations of BP's policies and standards by its contractors.**
- **Ensure that all contractors and subcontractors are monitored effectively by the EPC contractor and BP.**
- **Ensure that all subcontractors under the EPC are fully aware of BP's Code of Conduct and its policies applicable to community relations and workforce hiring and management, and encourage EPC contractors to include in all subcontracts provisions for rewarding outstanding performance and imposing sanctions for violations of these requirements.**

#### **Training and Employment of Papuans**

- **Monitor and enforce the contractual commitments of BP's contractors and subcontractors to recruit, train and employ Bintuni Bay villagers and other Papuans.**
- **Ensure that contractors and subcontractors institute procedures to protect employees' rights and follow international labor standards for any employee dismissals.**
- **Review pursuant to ILO standards all proposed dismissals of Papuan workers.**
- **Undertake measures to safeguard and enhance the fishing livelihoods of local villagers, such as modernization of the fishing fleet for those DAVs whose fishing will be affected by the construction of Tangguh facilities.**
- **Encourage and support the establishment of a Bintuni Bay fisheries management plan aimed at the long term protection of the livelihoods of local villagers, the fish stocks and the environment.**

#### **Public Information**

- **Strengthen BP's public information effort and underlying structure.**
- **Seek a broader audience for BP's communications regarding its goals, programs and benefits, and to the extent possible, engage directly with the people of the region.**

- **Undertake measures to improve the effectiveness of BP’s local communications regarding Tangguh, such as dissemination of information in Indonesian and the use of plain language and bullet points for ease of understanding.**
- **Invite journalists and other opinion makers to see first hand the tangible benefits of Tangguh.**

### **Environment**

- **Continue to support partnerships with environmental organizations and AID agencies to protect the environment of Bintuni Bay, particularly preservation of critical mangrove forests.**
- **Support the development of a fisheries management plan for Bintuni Bay, including a current baseline of existing stocks.**

### **Transparency**

- **Work with BPMIGAS and other Indonesian and Papuan authorities to encourage full and clear publication of all revenue flows relating to Tangguh to clarify the implementation of the revenue sharing provisions of Special Autonomy.**

### **Relocation of Tanah Merah**

- **Address promptly any problems that arise in connection with the relocation and resettlement of Tanah Merah villagers or the renovations of Saengga village.**

## **II. Current Political Developments**

In the First Report, the Panel described the Special Autonomy Law that was enacted in 2001 as a response to pressures in Papua and the need to provide fairness and justice to Papuans. Although it found that “timely implementation of Special Autonomy would make it possible to accomplish a structure that materially reduces ‘country risk’ from instability in Papua,” the Panel nevertheless concluded that Special Autonomy “At best . . . will take time; at worst, it may not be fully implemented and could fail.”

On December 26, 2002, President Megawati traveled to Jayapura and “officially inaugurated” Tangguh<sup>4</sup>, calling it a “national project.” Shortly thereafter, on January 27, 2003, she signed Presidential Instruction Number 1/2003, which implemented and accelerated a 1999 law that would divide Papua into three separate provinces<sup>5</sup>. The Special Autonomy Law specifically provides for the establishment of a Papuan Representative Assembly (“MRP”) that, among other things, would have the authority to approve any division of the province. At this point, no MRP has been created. Consequently, the issuance of the Presidential Instruction has diminished materially the credibility of those who supported Special Autonomy as a political solution for Papua.

Although every government official in Jakarta and Papua with whom the Panel met affirmed the Government’s commitment to Special Autonomy, it is apparent that there are substantial differences of opinion in Jakarta regarding Special Autonomy. Many in the GOI support its revenue sharing aspects but reject many of its political components. The Coordinating Minister for Security and Political Affairs, Susilo Bambang Yudhoyono, however, assured the Panel that Special Autonomy would be fully implemented, both politically and economically. He described the Presidential Instruction as a directive that must be “synchronized” with Special Autonomy. However, at this stage it is not at all clear which view will prevail.

In fact, on August 27, 2003, Coordinating Minister Yudhoyono announced President Megawati’s decision to postpone the division of Papua.<sup>6</sup> This decision followed serious fighting in Timika, which erupted after local leaders declared the establishment of the province of Central

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<sup>4</sup> See *Megawati does it “her way”, inaugurates Tangguh gas project with song*, Agence France Presse (Dec. 26, 2002). President Megawati did not, at this time, declare Tangguh a “vital national asset,” which would trigger specific security requirements.

<sup>5</sup> Law No. 45/1999, enacted under President Wahid.

<sup>6</sup> See *Government postpones plan to divide Papua*, The Jakarta Post (Aug. 28, 2003).

Irian Jaya.<sup>7</sup> Minister of Home Affairs Hari Sabarno affirmed that the GOI will proceed with its plan to split Papua, noting that a team responsible for synchronizing GOI legislation on Papua has proposed certain adjustments to the Special Autonomy Law, particularly with respect to the powers of the yet to be established Papua People's Assembly ("MRP").<sup>8</sup> Proposed modifications to the Special Autonomy Law's provisions on the MRP would eliminate much of its decision-making authority<sup>9</sup>, including its power to approve the division of the province.

If the province is divided, Tangguh will be located in West Irian Jaya province, with its capital at Manokwari; this will have both economic and political consequences. Economically, any revenues that flow back to the province through the implementation of Special Autonomy would go only to West Irian Jaya and be distributed entirely to districts and subdistricts within that area, which represents approximately 30 percent of the population of Papua. This would provide greater funds to the Bird's Head region but it would also create economic imbalances with the other Papuan provinces. Politically, the division of Papua, and the imbalances in incomes, services and infrastructure among the three Papuan provinces that would result, could well increase political instability, inevitably affecting the Tangguh Project.

Although the proposed division of Papua may complicate the situation, particularly in the short term, the Panel believes these uncertainties will not materially affect the overall viability of the Project. The Panel recalls the conclusion in its First Report that "it would be unwise for BP to rely too heavily on [the delivery of Special Autonomy] for all the needs of the Papuan people." The Panel reiterates this caution, which now appears to be even more compelling.

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<sup>7</sup> See *Indonesia: TNI to send four more battalions to Papua, especially PNG border area*, World News Connection (Sept. 4, 2003). At least five people were killed as a result of the fighting.

<sup>8</sup> See *Govt to proceed with Papua split, warned of dire result*, The Jakarta Post (Sept. 9, 2003).

<sup>9</sup> *Id.*

A separate but important jurisdictional change has taken place already. Fourteen new districts, including ten new Kabupatens, have been established in Papua. A new district of Teluk Bintuni has been carved out in the Bintuni Bay region. As a result, the Regency, or district capital in which Tangguh is located has been consolidated within Bintuni, a new district with its capital on the north shore of Bintuni Bay. It is important for BP to develop and sustain good working relationships with the officials of this new Regency.

### **III. Military/Security Developments**

In the past year, there have been several developments affecting the security situation in Papua. First, there was an ambush of a convoy of teachers working for Freeport near Timika on August 31, 2002. Two Americans and one Indonesian were killed. The unresolved investigation of these killings has put a significant strain on U.S./Indonesia relations. Following repeated requests by the United States that the Federal Bureau of Investigation (“FBI”) be allowed full and private access to witnesses and independent analysis of any evidence, the FBI has returned for further investigation. The U.S. Department of State has concluded, however, based on its participation in the investigation by the Indonesian police, that “members of the Indonesian army were responsible for the murders in Papua.”<sup>10</sup> A TNI official has denied this charge, and suggested that the attackers were related to the separatist movement, the Organisasi Papua Merdeka (“OPM”), but there has been no convincing proof of this conclusion. If the ambush is established to have been the work of the TNI, this has wide ranging implications for the security arrangements of Tangguh.

Second, on April 4, 2003, there was an attack on a TNI outpost at Wamena, in the central highlands of Papua, resulting in three deaths. The TNI claims that this attack was led by the

OPM in an effort to steal weapons and ammunition. However, there are claims that the TNI instigated this attack. Although details are still sketchy, there have been allegations of human rights abuses and burning of villages near Wamena.<sup>11</sup>

Third, the trial of seven Kopassus (TNI special forces) soldiers for the murder of Theys Eluay, the leader of the Papuan Presidium Council, a peaceful pro-independence Congress, ended in the conviction of five officers and two enlisted men. However, the sentences, which ranged from two to three and one-half years, were viewed by many Papuans as inadequate, and the head of the TNI, General Ryamizard, hailed the convicted officers as heroes.

Fourth, the activities of a radical Islamic group, known as Laskar Jihad, apparently have diminished in the Bird's Head region. This reduces one destabilizing factor with potential for violence in the Tangguh area.

Fifth, of major importance to Indonesia, and indirect relevance to Tangguh, are the activities of the radical Islamic group Jemmah Islamiyah ("JI") and the response of the GOI. On October 12, 2002, massive bombs were detonated at Bali nightclubs killing 202 people, including 88 Australians. The successful investigation, led by I Made Pastika, the former Chief of Police in Papua, concluded that JI was responsible for the attack. To date, more than 30 arrests have been made, and two of the men suspected of planning and executing the attack have been convicted and sentenced to death.<sup>12</sup> However, Abu Bakar Bashir, the alleged leader of JI, was acquitted of terrorism charges.<sup>13</sup> Instead, Bashir was sentenced to jail for four years on a

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<sup>10</sup> See *A Nightmare, and a Mystery, in the Jungle; Ambush of School Outing Left 3 Dead, 8 Wounded And Suspicion of Involvement by Indonesian Army*, The Washington Post (June 22, 2003).

<sup>11</sup> See *Amnesty investigates reports that Indonesian military tortured Papuans*, The Jakarta Post (Apr. 15, 2003).

<sup>12</sup> See *Amrozi guilty verdict welcomed*, CNN.com (Aug. 7, 2003) (discussing the conviction and sentencing of Amrozi bin Nurhasyim); *Bali militant sentenced to death; Nightclub bombing killed 202 people*, San Francisco Chronicle (Sept. 11, 2003).

<sup>13</sup> See *Bashir verdict will hit ties with US*, The Straits Times Interactive (Sept. 12, 2003).

less serious charge.<sup>14</sup> On August 5, 2003, immediately prior to the first sentencing of a Bali bomber, another bomb ripped through the J.W. Marriott in Jakarta, an American owned and operated hotel frequented by Americans and other expatriates in the business community. Authorities believe this attack was also the work of JI. Although there is no evidence of JI activity in Papua, these terrorist attacks must be considered in relation to security at Tangguh.

#### **IV. Overview**

The Panel found that reactions to the project remain generally positive in Jakarta, Jayapura, Manokwari and the Bintuni Bay Region. Government officials at all levels were supportive. Some NGOs expressed concerns but there was little outright opposition. Many of their concerns may result from a lack of information or from a reluctance thus far to rely on the commitments BP has made.

Environmental groups were particularly supportive of the Tangguh Project and of the environmental conservation activities that BP has entered into regarding preservation of the mangrove forest surrounding the Bay, the development of a biodiversity action plan, community education programs and the publication of an environmental atlas of the Bintuni Bay region.

Many of the issues raised by government officials and NGOs related to the pace of development and the expectation of near term benefits. There have thus far been only modest tangible benefits to the Bird's Head region and the province of Papua, other than assistance BP has provided to the DAVs and the development at Babo. The impatience of local leaders is likely to increase with construction and then operation of the Project if tangible benefits are not seen to be proceeding in parallel.

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<sup>14</sup> *Id.*

The construction of Tanah Merah Baru and the relocation of the Tanah Merah villagers has the support of village leaders, although there were a few minor complaints. Situations will certainly arise during and after the relocation, now scheduled for early 2004, that create tension and dissatisfaction. It is important that BP focus on any problems that arise, and resolve them fairly and promptly. It would be unfortunate if all the good work done this far were impaired by ill feeling created by the move. Further, there is continuing tension between communities on the north shore of Bintuni Bay and the communities on the south shore resulting from a perception on the north shore that they are not getting a fair share of the benefits.

On a broader level, there is substantial tension between much of the Papuan “political elite” in Jayapura and certain political forces in Jakarta and Manokwari regarding the division of the province and the consequent allocation of revenues from Tangguh. Although the Panel continues to see Special Autonomy for a unified Papua as the most stable and beneficial solution, BP cannot control the implementation of Special Autonomy. The Panel, in its First Report, concluded: “[I]t is critical that BP establish a structure that is sustainable through political change that benefits all of the major political elements and thereby reduces incentives for any group to interfere with the Project.” While certain specifics have changed, this conclusion remains valid.

The respective roles of the police and TNI in Tangguh’s community based security program remain one of the most sensitive issues for the Project. The major stakeholders are in agreement on the concept for community based security but the details of implementation have yet to be worked out. This concept will need to be implemented and there are pressures to do so quickly. Although President Megawati has announced that Tangguh is a “national project,” she has not declared it a “vital national asset.” If Tangguh is declared to be a “vital national asset,” it

would trigger specific security obligations by the TNI. However, whether or not the GOI declares Tangguh a “vital national asset,” issues regarding deployment and support of police and TNI must be addressed urgently.

The activities of BP’s contractors, both currently and during the construction phase, will need meticulous monitoring. Most of the workers on the Project will be employed by contractors and subcontractors over which BP will not have direct control. Yet BP may bear full responsibility for any problems that occur. It is essential, therefore, that BP exercise effective oversight of its contractors.

Finally, should market developments delay the construction phase of the Project, it will be important that BP explain its decision clearly to all stakeholders and continue its programs in the Bird’s Head region in community development, capacity building and environmental preservation.

**V. The Need for Substantial and Tangible Benefits in the Near Term**

As Tangguh approaches the construction phase there is a greater need for visible benefits for the Project’s Papuan constituencies. There has been an abundance of consultation and dialogue, which has created expectations that, if unfulfilled, will soon lead to impatience. BP’s Integrated Social Strategy (“ISS”) has made a good start at providing much needed near term benefits in advance of construction.

Already, BP has implemented several community development assistance programs, including a \$30,000 per year contribution to self-administered funds for each of the nine DAVs; a program to educate the local populations regarding HIV/AIDS; and another to facilitate a malaria survey and community treatment in the Project area.

The Panel commends BP's participation, with USAID and DFID, in the Bird's Head Alliance. Rather than near term benefits, these programs look more toward long term sustainable growth and local government capacity building, which are essential to the region's future. BP should continue to work in partnership with USAID, UNDP and DFID toward these goals. One of the most promising components of the Diversified Growth Strategy ("DGS") is exploring the potential for micro-enterprise and micro-finance to foster sustainable and diverse economic development. The Panel recommends that BP focus attention in this area and make specific recommendations regarding the potential benefits and costs of a micro-finance program for the Bird's Head region.

When construction begins, it will be necessary to show greater results in health, education and infrastructure. To date, there has been no material benefit to Papuans in the important areas of education and clean water.<sup>15</sup>

Further, because of the geography of Tangguh, most of the development and its attendant benefits to housing, health and infrastructure will flow to communities on the south shore of Bintuni Bay, while much of the gas is located in a reservoir under the north shore. In order to diminish tensions between north and south shore communities, and to balance the benefits, additional steps will need to be taken to provide more benefits to north shore communities.

One mechanism BP should consider is establishing a separate development fund to provide additional support for health care and infrastructure, including clean water programs, in north shore communities. Development of such facilities with BP support would be responsive

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<sup>15</sup> Specific suggestions regarding health care and education are included in the Panel's First Report.

to complaints of imbalance and unfairness and would assist these communities in a way that materially benefits their standard of living.<sup>16</sup>

Additionally, BP needs to develop a sound relationship with the new Regent of Teluk Bintuni, the chief governmental official of the new district in which Tangguh is located, and consult with the new Regent regarding appropriate support for the district capital at Bintuni.

Separately, but equally important, is the reality that even if the revenue split of Special Autonomy is implemented fully, returning seventy percent of post-tax revenue to the province, it will be a decade or more before any of these revenues begin to flow.<sup>17</sup> Moreover, when revenues finally begin, there will be a sudden very substantial increase that could create problems for district governments in their appropriate uses.

For these reasons, the Panel's First Report recommended that BP explore with multinational lenders, the GOI and Papua whether an external line of credit or a fund could be established from which the region could borrow against future Project revenues. Although there are significant complexities in the establishment of such a fund, which are increased by the possible split of Papua into three provinces, the Panel continues to believe that a mechanism to bring forward and smooth out the flow of revenues to Papua could be of major benefit. Accordingly, the Panel recommends that BP utilize its financial expertise to determine whether there are viable options for such a financing mechanism. BP can act as a generator of ideas that ultimately could be utilized to bring forward and smooth out this anticipated flow of revenues.

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<sup>16</sup> The recent report *Financing Water for All*, by the World Panel on Financing Water Infrastructure, highlights the enormous needs worldwide for clean water and wastewater disposal and treatments, and their proven benefits to public health. Technical assistance and funding on concessional terms to local governments are the most effective means of providing these services in rural areas. See *Financing Water For All*, Report of the World Panel on Financing Water Infrastructure (March 2003).

## **Recommendations:**

- **As the construction phase of the Project approaches, BP's community development activities will need to move more from planning and dialogue to provision of benefits in the areas of health, education and infrastructure.**
- **Continue to work in partnership with USAID, UNDP, and DFID toward long term sustainable growth and local government capacity building in the Bird's Head region.**
- **Encourage and support measures to promote sustainable and diverse economic development in the Bird's Head region, and focus particularly on the potential benefits of a micro-finance program.**
- **Provide increased tangible benefits to the north shore communities in order to rectify perceived imbalances regarding allocation of benefits between the north and south shore communities of Bintuni Bay.**
- **Develop a sound working relationship with the Regent and other government officials at the new district capital of Bintuni.**
- **Utilize BP's skills in finance to work with the GOI and multinational lenders to determine the viability of possible financing mechanisms to smooth out and bring forward the flow of revenues to Papua.**

## **VI. Security**

Security remains one of the most sensitive and complex issues facing Tangguh. Given the importance of Tangguh to Indonesia, it is plain that both the police and the TNI will have a role in Tangguh security.

The Panel reaffirms its support for community based security. This concept was endorsed by all of the officials with whom the Panel met in Jakarta and Papua. BPMIGAS and the police expressed positive views regarding community based security at a Lemhanas conference in Jakarta on July 8, 2003. However, the practical issues of implementation have not yet been addressed specifically. The regional police informed the Panel that a unit of the police's mobile brigade ("Brimob") must be present in all new districts. The policy is not specific to Tangguh; however, it would likely result in some deployment of Brimob in the

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<sup>17</sup> Appendix 4 to the Panel's First Report explained the delay in the revenue flow extensively, estimating that it

Bintuni District's capital. The police Chief of Operations<sup>18</sup> pointed out that Tangguh is important to the prestige of Indonesia and therefore security must be a top priority. He indicated an urgency to resolve issues relating to the police presence in the Bintuni District. Separately, no official with whom the Panel met indicated a need for a TNI presence at Tangguh. Thus, the Panel continues to believe that community based security is viable and should be pursued.

There is a need for prompt guidance regarding specific engagement with the police and ultimately with the TNI. Police expenditures will increase as a result of the need to provide security in the new Bintuni district. BP must face the reality of providing some appropriate support for those increased costs. Any support must be approved by and provided through BPMIGAS, which has endorsed community based security, and has entered into a Memorandum of Understanding ("MOU") regarding security with the national police<sup>19</sup>. BP should explore promptly with BPMIGAS the form and scope of support that is lawful in Indonesia, permissible under the MOU and consistent with community based security. Such support should be completely transparent.

Any specific support for the police should also be consistent with the standards set out in the Voluntary Principles on Security<sup>20</sup>, the United Nations Universal Declaration on Human

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would be 2012 before major resources will flow to Papua.

<sup>18</sup> The former Police Chief, with whom the Panel met last year, I Made Pastika, successfully ran the investigation following the Bali bombings on October 12, 2002, and is now Police Chief of Bali. His successor did not meet with the Panel, which met with the Chief of Operations, Colonel Max D. Aer.

<sup>19</sup> An MOU "relating to enforcement of security improvement of Natural Oil and Gas Upstream Operation" was entered into on June 20, 2003 between BPMIGAS and the national police. The MOU addresses the subject of security at all upstream oil and gas operations, delegating the agreement's implementation at the regional level to the Chief of regional police on behalf of the national police. It also states that the budget for security enforcement shall be "burdened proportionately to [the] budget of individual parties involved in security enforcement."

<sup>20</sup> The Voluntary Principles on Security, attached at Appendix 2, provide the following guidance: "Companies that provide equipment to public security should take all appropriate and lawful measures to mitigate any foreseeable negative consequences, including human rights abuses and violations of international humanitarian law," and ". . . should, to the extent reasonable, monitor the use of equipment provided by the Company . . . ."

Rights, and other international standards relevant to human rights and the provision of security<sup>21</sup>. In addition, to the extent possible, BP should seek an agreement that specifies the precise services that are to be provided and sets standards of training, performance and accountability to which the police will commit themselves to adhere as well as the monitoring of that performance. The same standards should apply for any support provided to the TNI.

Separately, BP is seeking bids by private security contractors to implement the private security component of community based security. Consequently, the local community component of Tangguh security will be under the immediate supervision of a contractor rather than directed by BP. BP must ensure that recruitment of security guards meets its commitment to hiring of Papuans and that all guards be trained to respect the rights of employees and the local community. Given the sensitivity of any adverse actions by security guards, it is essential that BP emphasize to its contractor the importance of BP's Code of Conduct and of limiting the use of force to that which is "strictly necessary" and "proportional to the threat" as prescribed in the Voluntary Principles on Security<sup>22</sup>. If possible, adherence to these principles should be incorporated in BP's contract with its security provider, together with sanctions for violations. In addition, BP must closely supervise and monitor its security contractor to ensure that these standards are met.

### **Recommendations:**

- **Continue the dialogue with the TNI and the regional military commander as well as the regional and local police authorities to implement community based security and seek an understanding of the specific responses to handling any security problems that may arise during construction or production.**

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<sup>21</sup> The two most important such standards are the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms, which are included at Appendix 2.

<sup>22</sup> Voluntary Principles on Security, Appendix 2.

- **Explore promptly with BPMIGAS and the regional police authorities the form and scope of support BP should provide for community based security pursuant to the Memorandum of Understanding between BPMIGAS and the national police.**
- **Provide support only through BPMIGAS, and only for facilities or equipment that are consistent with the standards set out in the Voluntary Principles on Security, the United Nations Universal Declaration of Human Rights, and other international standards relevant to human rights and the provision of security.**
- **Specify in writing the precise services that BP will provide for security and identify standards of performance to which the police are expected to adhere.**
- **Closely supervise and monitor BP's security contractor to ensure that the private security force is properly trained, complies with BP's Code of Conduct and the standards of the Voluntary Principles on Security.**

## **VII. Mitigation of Construction Activities**

As construction approaches, the mitigation of adverse impacts resulting from construction must be a priority. The Panel has reviewed the Engineering, Procurement and Construction (“EPC”) contract, including its provisions on oversight, environment, health and safety, security, recruitment, workforce management and community relations. The Panel had an extensive briefing from and discussion with the EPC contractor, which together with its subcontractors will manage the entire workforce constructing the LNG onshore facilities.

The EPC contractor is fully aware of BP's policies, goals and standards for security, community relations, environmental protection and local hiring. It is aware of the importance of these goals and has pledged to meet them. The Panel reaffirms its support for BP's plans to minimize adverse effects of temporary labor in the Bintuni Bay region and its objectives for employment of Papuan workers. The Panel also endorses the contractor's plan to limit offsite activities of workers and, to the greatest degree possible, to minimize use of cash at and around the work site.

However, it is likely that some problems, possibly related to alcohol, drugs or prostitution, will arise. BP and its contractors must be prepared for such transgressions and be

ready to respond firmly. The EPC contract includes an HSE Reward Program, designed to encourage contract and subcontract workers in “achieving agreed-to health, safety and environmental targets.” However, the contract does not include any reward program for BP’s other important objectives, or any specific penalties for violations of BP’s Code of Conduct or other failures to meet BP’s stated goals. BP should ensure that all employees of EPC subcontractors are fully aware of its Code of Conduct and its policies applicable to community relations, workforce hiring and management. The EPC contractor should consider a system in all subcontracts of rewards for outstanding performance in these areas similar to the HSE Reward Program. Moreover, the EPC contractor should consider a provision imposing specific monetary sanctions for violations of these requirements. It is particularly important that violations be penalized promptly. Further, all subcontractors should be monitored by the EPC contractor and BP. Sanctions should be applied against any subcontractor that does not fully implement the contract’s stated objectives.

**Recommendations:**

- **Develop a specific plan to respond to any violations of BP’s policies and standards by its contractors.**
- **Ensure that all contractors and subcontractors are monitored effectively by the EPC contractor and BP.**
- **Ensure that all subcontractors under the EPC are fully aware of BP’s Code of Conduct and its policies applicable to community relations and workforce hiring and management, and encourage EPC contractors to include in all subcontracts provisions for rewarding outstanding performance and imposing sanctions for violations of these requirements.**

**VIII. Training and Employment of Papuans**

BP’s commitment to provide a job opportunity for one member of each household in every DAV and its commitment generally to train and hire Papuans for the Project is off to a good start. Papuans represent a substantial part of BP’s community affairs team (“CAFT”) and

all of the eighty-two security force guards. In addition, BP has trained local villagers in basic skills such as plumbing, electrical and catering, some of whom are working for its contractor on the construction of Tanah Merah Baru. It has also recruited twenty-three Papuan college graduates who are being trained in more sophisticated aspects of LNG operations.

However, the main obligations for employment of Papuans and training and employment of Bintuni Bay villagers will fall upon BP's contractors and subcontractors. It is essential that BP monitor and enforce these contractual obligations for both employment and training. It will be insufficient for subcontractors to report that trained Papuans are not available. Efforts must continue to recruit and train members of the local workforce. Virtually all Papuan government officials with whom the Panel met highlighted the issue of jobs for Papuans as one of their key expectations and primary benefits to be derived from Tangguh. BP must make sure that these commitments are fulfilled.

Despite these commitments, contractors and subcontractors must be permitted to dismiss employees for cause, whether they are Papuans, other Indonesians or expatriates. Any dismissal should abide by the standards set out in the ILO Convention Concerning Termination of Employment at the Initiative of the Employer.<sup>23</sup> Specifically, dismissals should be documented carefully, and, except in cases of serious misconduct, prior notice and appropriate warning should be given to the employee where practicable. BP or the EPC contractor should review all proposed dismissals of Papuans by subcontractors. If such review demonstrates that dismissal is justified, and permissible under relevant ILO conventions, it should not be prevented by concerns about local reaction.

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<sup>23</sup> This convention is attached at Appendix 3.

In addition, it is critical that fishing not be disrupted. The Panel's visit to Tanah Merah reconfirmed the villagers' dependence on shrimp fishing for their livelihood. The relocation of Tanah Merah, with its new points of access to the Bay, together with restrictions on fishing that will arise from construction of the LNG facilities, require BP's attention to the possible diminution in the villagers' catch.

The Panel reiterates the recommendation in its First Report that BP support the modernization of the local fishing fleet for DAVs whose fishing will be affected by construction of facilities by providing assistance for better boats and other equipment. While there are serious concerns about fishing in Bintuni Bay and the depletion of shrimp stocks, this relates to large commercial fishing operations and is not a concern likely to be exacerbated by improved equipment at the DAVs. The Panel witnessed large shrimp trawler and production facilities operated by the Jayanti Group, illustrating the relatively small impact of these villagers. These activities also demonstrate the need for a fisheries management plan for Bintuni Bay, both for the long-term protection of the livelihoods of local villagers and for the protection of the environment.

### **Recommendations:**

- **Monitor and enforce the contractual commitments of BP's contractors and subcontractors to recruit, train and employ Bintuni Bay villagers and other Papuans.**
- **Ensure that contractors and subcontractors institute procedures to protect employees' rights and follow international labor standards for any employee dismissals.**
- **Review pursuant to ILO standards all proposed dismissals of Papuan workers.**
- **Undertake measures to safeguard and enhance the fishing livelihoods of local villagers, such as modernization of the fishing fleet for those DAVs whose fishing will be affected by the construction of Tangguh facilities.**
- **Encourage and support the establishment of a Bintuni Bay fisheries management plan aimed at the long term protection of the livelihoods of local villagers, the fish stocks and the environment.**

## **IX. Public Information**

Despite much good work on information dissemination, it was plain throughout the Panel's meetings in Papua with government officials, educators and NGOs, that much of BP's goals, programs and benefits have not yet been communicated effectively. Many were seemingly unaware of the benefits that BP had already brought to the region and therefore had an incomplete view of the Project. To correct this, BP should implement a broader and more effective public information strategy and structure.

In the First Report, the Panel recommended that BP produce and disseminate more information about the Project and BP's programs. Much has been done. However, the work has principally focused on communicating with NGOs and other stakeholders' representatives. Even this has not been entirely effective. Surprisingly, there was greater awareness of BP's community assistance programs and other local benefits in the international NGO community than in the local NGO community. This reflects the difficulty of communication in remote locations and the need to communicate more of BP's information locally in Indonesian.

As BP moves toward construction, communication should seek a broader audience and, to the extent possible, engage directly with the people of the region. This can be done with a more journalistic approach to public information. Information should be disseminated in Indonesian, in plain language and with bullet points for ease of understanding. It should avoid the jargon of donor and developmental agencies. BP should look for stories of interest to the media and, where possible, invite editors, journalists and other opinion makers to the area to see first hand Tanah Merah Baru (once completed) and other tangible benefits being provided.

### **Recommendations:**

- **Strengthen BP's public information effort and underlying structure.**

- **Seek a broader audience for BP’s communications regarding its goals, programs and benefits, and to the extent possible, engage directly with the people of the region.**
- **Undertake measures to improve the effectiveness of BP’s local communications regarding Tangguh, such as dissemination of information in Indonesian and the use of plain language and bullet points for ease of understanding.**
- **Invite journalists and other opinion makers to see first hand the tangible benefits of Tangguh.**

## **X. Environment**

Environmental protection must remain one of BP’s top priorities. The Panel was reminded of the vast, remote and relatively pristine ecosystem of Bintuni Bay. The Panel met with a group of environmental NGOs and with the Minister of the Environment. All emphasized the ecological importance of this region.

Thus far, BP’s environmental commitments in the AMDAL and its preservation programs have won the support of most of the environmental community. BP has continued its effort, as recommended by the Panel, to safeguard biodiversity in the region. Its work with The Nature Conservancy to produce a biodiversity action plan; its partnership in the Global Development Alliance to provide community education programs in Bintuni Bay; and its support for an environmental atlas of the region are all helpful elements of an effort to understand the ecosystem and preserve it.

The two most serious environmental issues facing the area are (1) the pressures from development on preservation of the mangrove forests; and (2) the depletion of fish stocks in Bintuni Bay by large commercial trawlers. Because Tangguh will likely exacerbate these problems, BP should strengthen its support for the preservation of critical mangrove forests, and support development of a fisheries management plan, including a current baseline of existing

stocks. This will encourage action to promote a sustainable harvest and it will guard against any criticism that the Tangguh Project is the cause of the depletion of stocks in Bintuni Bay.

### **Recommendations:**

- **Continue to support partnerships with environmental organizations and AID agencies to protect the environment of Bintuni Bay, particularly preservation of critical mangrove forests.**
- **Support the development of a fisheries management plan for Bintuni Bay, including a current baseline of existing stocks.**

### **XI. Transparency**

It is important to BP and to stakeholders of the Project that there be accountability and disclosure regarding public finances and revenue allocations relating to Tangguh. The need for such transparency attracted the attention of the G8 Summit at Evian and the World Summit on Sustainable Development in Johannesburg where the UK-led Extractive Industries Transparency Initiative (“EITI”) was launched. BP is a leader in fiscal transparency for extractive companies. The Panel raised issues of transparency with virtually all Indonesian government officials. The Panel is encouraged by the responses it received, but it does not underestimate the practical difficulties likely to arise in the implementation of the EITI guidelines.

While this is an issue that affects BP significantly, it is not an issue BP can control on its own. Transparency in the context of Tangguh will require the GOI to publish its receipts, by category, and its disbursements, including all revenue sharing to the provincial or district governments and tax and royalty payments withheld. In addition, full transparency will require the provincial government to disclose allocations to districts and subdistricts and any other uses of these funds.

The Panel recommends that BP work with BPMIGAS and other Indonesian and Papuan authorities to secure full and clear publication of all revenue flows received by or disbursed from the GOI and the provincial governments relating to Tangguh.

**Recommendation:**

- **Work with BPMIGAS and other Indonesian and Papuan authorities to encourage full and clear publication of all revenue flows relating to Tangguh to clarify the implementation of the revenue sharing provisions of Special Autonomy.**

**XII. Relocation of Tanah Merah**

The Panel toured the construction site for Tanah Merah Baru, viewed the model family home, toured existing Tanah Merah and met with village leaders. The contrast between existing homes in the village and the homes being built is striking. Although some significant issues remain with regard to relocation and compensation, there is consensus among Tanah Merah villagers of a generally positive attitude toward BP and an eagerness to move. The villagers expect and should receive a material improvement in fundamental living conditions. Benefits also will flow to Saengga villagers, where all homes and public facilities will be renovated.

**Recommendations:**

- **Address promptly any problems that arise in connection with the relocation and resettlement of Tanah Merah villagers or the renovations of Saengga village.**

**XIII. Relations with BPMIGAS and the Minister of Energy**

BP's actions in many respects are limited by the required approvals of BPMIGAS, its partner and regulatory authority. Although BP has been awarded the construction and operating rights at Tangguh, its dealing with any agencies of the GOI, including the police and the TNI, must be conducted through BPMIGAS.

Although BPMIGAS raised specific issues with regard to BPMIGAS' claim to first tranche petroleum, which remain to be resolved, BP has developed a close relationship with the Director and other senior officials as recommended in the Panel's First Report.

It is particularly important to bring BPMIGAS into any arrangements with regard to community based security. BPMIGAS has entered into security relationships with the police and the TNI in other oil and gas facilities and a generic MOU regarding security at upstream oil and gas facilities. The Panel recommends that BP continue to work closely with BPMIGAS and seek its endorsement and implementation of the specific aspects of community based security.

## APPENDIX 1

### **INDIVIDUALS AND ENTITIES CONSULTED**

#### Government Officials: Indonesia

Des Alwi, First Secretary (Economic Affairs), Embassy of Indonesia in London

H.E. Soemadi Brotodiningrat, Indonesian Ambassador to the United States

N.T. Dammen, Charge d'Affaires, Embassy of Indonesia in London

Ibnu Hadi, Counsellor, Economic Division, Embassy of Indonesia in Washington, D.C.

Manuel Kaisepo, Minister for Eastern Territories

Dr. Dorodjatun Kuntjoro-Jakati, Minister for Economics, Finance and Trade

Nabiel Makaraim, Environment Minister

A. Sidick Nitikusuma, Senior Executive Advisor, BPMIGAS (Executive Agency for Upstream Oil and Gas Business Activities)

I Made Pastika, Chief of Police for Bali, formerly Chief of Police for Papua

H.E. Juwono Sudarsono, Indonesian Ambassador to the UK, former Minister of Defense

Rachmat Sudibjo, Chairman, BPMIGAS (Executive Agency for Upstream Oil and Gas Business Activities)

Yoga P. Suprpto, Project Manager, Pertamina

Benny P. Suryawinata, Assistant Deputy for Foreign Affairs to the Coordinating Minister for Security and Political Affairs

General Yudhi, Deputy Chairman, LEMHANAS

Susilo Bambang Yudhoyono, Coordinating Minister for Security and Political Affairs

Purnomo Yusgiantoro, Minister of Mines and Energy

General Nurdin Zenal, Regional TNI Commander for Papua

#### Government Officials: Papua

Colonel Max D. Aer, Chief of Operations of Papuan Police

Decky Asmuruf, Secretary

Frans Nikopas Awak, Babo Camat

John Ibo, President, Provincial Assembly

Pak Mandagan, Regent of Manokwari District

Pak Mandowen, President of Manokwari Representative Council

Colonel Molosan, Deputy to General Simbolon (during General Simbolon's post as Regional TNI Commander in Papua)

Bernard Nofuerbanana, Babo Adat leader

Lt. Daniel Pakiding, Regional Police Chief for Babo

Captain Puryomo, Local military commander

Jaap Solossa, Governor

Colonel Suarno, Director of Security of Papuan Police

Attorney General

Chairman, Committee on Security

Director of Planning for Manokwari, and several other senior officers of Manokwari

Government Officials: United States

H.E. Ralph Boyce, U.S. Ambassador to Indonesia

Karen Brooks, Director for Asian Affairs, National Security Council

Christopher Camponovo, U.S. Department of State, Bureau of Democracy, Human Rights & Labor

Richard Hough, Director of Programming, U.S. Agency for International Development (“USAID”)

Karin Lang, U.S. Department of State, Bureau of East Asian and Pacific Affairs, Office of Indonesia and East Timor

Allan D. Langland, Deputy Director, U.S. Department of State, Bureau of East Asian and Pacific Affairs, Office of Indonesia and East Timor

Jon D. Lindborg, Deputy Director, USAID

Anne Patterson, USAID

Maria Pica, Senior Advisor, U.S. Department of State, Bureau of Democracy, Human Rights & Labor

Fred Pollock, Director, Natural Resources Management Program, USAID

Michael Uyehara, Energy and Minerals Resource Officer, U.S. Embassy in Jakarta

Shari Villarosa, Economic Counselor, U.S. Embassy in Jakarta

John Wegge, Advisor, Office of Decentralized Local Government, USAID

Holly Wise, USAID

Government Officials: United Kingdom

H.E. Richard Gozney, UK Ambassador to Indonesia

Eleanor Kiloh, Second Secretary (Political), UK Embassy in Jakarta

Jonathan Temple, UK Embassy in Washington, D.C.

Government Officials: New Zealand

H.E. Chris Elder, Ambassador, Embassy of New Zealand in Jakarta

Government Officials: China

Ma Jisheng, Counsellor (Political), Embassy of China in Jakarta

Tan Weiwen, Minister Counsellor (Economic and Commercial), Embassy of China in Jakarta

Xu Qiyi, Second Secretary (Economic and Commercial), Embassy of China in Jakarta

Residents of the Bird’s Head Region of Papua

Pak Biam, Camat of Aranday, and a village leader of Aranday

Neles Tebay, Catholic Priest of the Diocese of Jayapura

Villagers of Saengga

Villagers of Tanah Merah, including the committee that oversees effects of the Tangguh project

Representatives of Taroy

### Non-Governmental Organizations

American Center for International Labor Solidarity (Timothy Ryan, Program Director, Asia Region)  
Amnesty International (Charles Brown; Lucia Withers)  
Asia Foundation (Rudi Jueng, Assistant Director)  
British Council (Wendy Lee, Social Development Advisor)  
Center for Human Rights at the RFK Memorial (Miriam Young; Abigail Abrash Walton)  
Citizens International (John Wells)  
Down to Earth (Liz Chidley)  
ELS-HAM (John Rumbiak)  
Earthwatch (Coralie Abbott, Corporate Programmes Manager)  
FOKKER (Budi Setiyauto, Executive Secretary; Yul Chaidir, Steering Committee; Robert Mondosi, Steering Committee)  
Human Rights Watch (Mike Jendrzeczyk)  
IBLF, The Prince of Wales International Business Leaders Forum (Lucy Amis, Business and Human Rights Programme Manager)  
Indonesia Human Rights Network (Edmund McWilliams)  
International Committee of the Red Cross (Frank Sieverts, Assistant to the Head of the Regional Delegation, North America)  
International Crisis Group (Sidney Jones, Indonesia Project Director; Kathy Ward, ICG Deputy Director)  
International Labor Organization (Tony Freeman)  
International Labor Rights Fund (Dr. Bama Athreya)  
National Democratic Institute for International Affairs (Blair King)  
The Nature Conservancy (Ian Dutton, Country Director for Indonesia; Titayanto Pieter, Conservation Partnerships Manager)  
Papua Presidium Council (Thom Beanal, Willy Mandowen)  
Proyek Pesisir (Maurice Knight, Chief of Party, Coastal Resources Management Project)  
TAPOL, The Indonesia Human Rights Campaign (Danny Bates)  
UK Overseas Development Institute (Michael Warner)  
US-ASEAN Council (John Phipps)  
West Papua Association UK (Linda Kaucher)  
World Wildlife Fund (Heike Mainhardt; Benja Victor Mambai; Clive Wicks)  
Various NGOs from Jayapura, Manokwari and elsewhere in the Bird's Head region

### Private Sector

AGI Security & Business Intelligence (Don Greenlees, Director, Research and Analysis)  
Chemonics (Jonathan Simon, Senior Manager)  
Citigroup International (Michael Zink, Citigroup Country Officer, Indonesia)  
Halliburton KBR (John G. Baguley, Project Manager)  
ISIS Asset Management (Robert Barrington)  
JGC Corporation (Tadashi Asanabe, Project Director)  
JMSB-KMSB-SIME Consortium (Ron E. Hogan, Project Director)  
Kiani Kertas (Jend. TNI (Pur.) Luhut Panjaitan MPA, President Commissioner)  
Perform Project, RTI International (Ben Witjes, Senior PDPP Regional Advisor)

### International Institutions

United Nations Development Programme (Bo Asplund, UNDP Resident Representative in Indonesia; Shahrokh Mohammadi, Deputy Resident Representative)

World Bank in Indonesia (Bert Hofman, Lead Economist)

### Academic Institutions in Papua

UNIPA (University of Papua, Manokwari) (Rector; Agus Sumule)

University of Cenderawasih (Frans A. Wospakrik, Rector)

### Individuals

Mr. Herbert Behrstock, International Development Consultant

Admiral Dennis Blair, Ret. U.S. Navy, Chair of the Indonesia Commission, Center for Preventative Action, Council on Foreign Relations

Dr. Jonah Blank, Professional Staff Member, U.S. Senate Committee on Foreign Relations

Professor Michael M. Cernea, Advisor to BP on Resettlement of Tanah Merah

Mr. Hugh Dowson

Mr. Bennett Freeman, Principal, Sustainable Investment Strategies

Mr. Brigham Montrose Golden

Mr. Bara Hasibuan, Intern, U.S. House of Representatives International Relations Committee

Dr. Ayse Kudat, Advisor to BP on Resettlement of Tanah Merah

Ambassador Edward Masters, Chairman, U.S.-Indonesia Society

Ms. Gabrielle K. McDonald, Human Rights Advisor to Freeport McMoRan

Mr. Octovianus Mote

Mr. David Phillips, Senior Fellow and Deputy Director of the Center for Preventative Action, Council on Foreign Relations

Mr. Ed Pressman

Mr. Gare Smith, Foley Hoag

Ambassador Barnabas Suebu, Former Governor of Papua



### Fact Sheet

Bureau of Democracy, Human Rights, and Labor  
Washington, DC  
February 20, 2001

## Voluntary Principles on Security and Human Rights

Governments of the United States and the United Kingdom, companies in the extractive and energy sectors ("Companies"), and non-governmental organizations, all with an interest in human rights and corporate social responsibility, have engaged in a dialogue on security and human rights.

The participants recognize the importance of the promotion and protection of human rights throughout the world and the constructive role business and civil society -- including non-governmental organizations, labor/trade unions, and local communities -- can play in advancing these goals. Through this dialogue, the participants have developed the following set of voluntary principles to guide Companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms. Mindful of these goals, the participants agree to the importance of continuing this dialogue and keeping under review these principles to ensure their continuing relevance and efficacy.

*Acknowledging* that security is a fundamental need, shared by individuals, communities, businesses, and governments alike, and acknowledging the difficult security issues faced by Companies operating globally, we recognize that security and respect for human rights can and should be consistent;

*Understanding* that governments have the primary responsibility to promote and protect human rights and that all parties to a conflict are obliged to observe applicable international humanitarian law, we recognize that we share the common goal of promoting respect for human rights, particularly those set forth in the Universal Declaration of Human Rights, and international humanitarian law;

*Emphasizing* the importance of safeguarding the integrity of company personnel and property, Companies recognize a commitment 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 (e.g., the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials), particularly with regard to the use of force;

*Taking note* of the effect that Companies' activities may have on local communities, we recognize the value of engaging with civil society and host and home governments to contribute to the welfare of the local community while mitigating any potential for conflict where possible;

*Understanding* that useful, credible information is a vital component of security and human rights, we recognize the importance of sharing and understanding our respective experiences regarding, *inter alia*, best security practices and procedures, country human rights situations, and public and private security, subject to confidentiality constraints;

*Acknowledging* that home governments and multilateral institutions may, on occasion, assist host governments with security sector reform, developing institutional capacities and strengthening the rule of law, we recognize the important role Companies and civil society can play in supporting these efforts;

We hereby express our support for the following voluntary principles regarding security and human rights in the extractive sector, which fall into three categories, risk assessment, relations with public security, and relations with private security:

## RISK ASSESSMENT

The ability to assess accurately risks present in a Company's operating environment is critical to the security of personnel, local communities and assets; the success of the Company's short and long-term operations; and to the promotion and protection of human rights. In some circumstances, this is relatively simple; in others, it is important to obtain extensive background information from different sources; monitoring and adapting to changing, complex political, economic, law enforcement, military and social situations; and maintaining productive relations with local communities and government officials.

The quality of complicated risk assessments is largely dependent on the assembling of regularly updated, credible information from a broad range of perspectives -- local and national governments, security firms, other companies, home governments, multilateral institutions, and civil society knowledgeable about local conditions. This information may be most effective when shared to the fullest extent possible (bearing in mind confidentiality considerations) between Companies, concerned civil society, and governments.

Bearing in mind these general principles, we recognize that accurate, effective risk assessments should consider the following factors:

- **Identification of security risks.** Security risks can result from political, economic, civil or social factors. Moreover, certain personnel and assets may be at greater risk than others. Identification of security risks allows a Company to take measures to minimize risk and to assess whether Company actions may heighten risk.
- **Potential for violence.** Depending on the environment, violence can be widespread or limited to particular regions, and it can develop with little or no warning. Civil society, home and host government representatives, and other sources should be consulted to identify risks presented by the potential for violence. Risk assessments should examine patterns of violence in areas of Company operations for educational, predictive, and preventative purposes.
- **Human rights records.** Risk assessments should consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security. Awareness of past abuses and allegations can help Companies to avoid recurrences as well as to promote accountability. Also, identification of the capability of the above entities to respond to situations of violence in a lawful manner (i.e., consistent with applicable international standards) allows Companies to develop appropriate measures in operating environments.
- **Rule of law.** Risk assessments should consider the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses and for those responsible for violations of international humanitarian law in a manner that respects the rights of the accused.
- **Conflict analysis.** Identification of and understanding the root causes and nature of local conflicts, as well as the level of adherence to human rights and international humanitarian law standards by key actors, can be instructive for the development of strategies for managing relations between the Company, local communities, Company employees and their unions, and host governments. Risk assessments should also consider the potential for future conflicts.
- **Equipment transfers.** Where Companies provide equipment (including lethal and non-lethal equipment) to public or private security, they should consider the risk of such transfers, any relevant export licensing requirements, and the feasibility of measures to mitigate foreseeable negative consequences, including adequate controls to prevent misappropriation or diversion of equipment which may lead to human rights abuses. In making risk assessments, companies should consider any relevant past incidents involving previous equipment transfers.

## INTERACTIONS BETWEEN COMPANIES AND PUBLIC SECURITY

Although governments have the primary role of maintaining law and order, security and respect for human rights, Companies have an interest in ensuring that actions taken by governments, particularly the actions of public security providers, are consistent with the protection and promotion of human rights. In cases where there is a need to supplement security provided by host governments, Companies may be required or expected to contribute to, or otherwise reimburse, the costs of protecting Company facilities and personnel borne by public security. While public security is expected to act in a manner consistent with local and national

laws as well as with human rights standards and international humanitarian law, within this context abuses may nevertheless occur.

In an effort to reduce the risk of such abuses and to promote respect for human rights generally, we have identified the following voluntary principles to guide relationships between Companies and public security regarding security provided to Companies:

### **Security Arrangements**

- Companies should consult regularly with host governments and local communities about the impact of their security arrangements on those communities.
- Companies should communicate their policies regarding ethical conduct and human rights to public security providers, and express their desire that security be provided in a manner consistent with those policies by personnel with adequate and effective training.
- Companies should encourage host governments to permit making security arrangements transparent and accessible to the public, subject to any overriding safety and security concerns.

### **Deployment and Conduct**

- The primary role of public security should be to maintain the rule of law, including safeguarding human rights and deterring acts that threaten Company personnel and facilities. The type and number of public security forces deployed should be competent, appropriate and proportional to the threat.
- Equipment imports and exports should comply with all applicable law and regulations. Companies that provide equipment to public security should take all appropriate and lawful measures to mitigate any foreseeable negative consequences, including human rights abuses and violations of international humanitarian law.
- Companies should use their influence to promote the following principles with public security: (a) individuals credibly implicated in human rights abuses should not provide security services for Companies; (b) force should be used only when strictly necessary and to an extent proportional to the threat; and (c) the rights of individuals should not be violated while exercising the right to exercise freedom of association and peaceful assembly, the right to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.
- In cases where physical force is used by public security, such incidents should be reported to the appropriate authorities and to the Company. Where force is used, medical aid should be provided to injured persons, including to offenders.

### **Consultation and Advice**

- Companies should hold structured meetings with public security on a regular basis to discuss security, human rights and related work-place safety issues. Companies should also consult regularly with other Companies, host and home governments, and civil society to discuss security and human rights. Where Companies operating in the same region have common concerns, they should consider collectively raising those concerns with the host and home governments.
- In their consultations with host governments, Companies should take all appropriate measures to promote observance of applicable international law enforcement principles, particularly those reflected in the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms.
- Companies should support efforts by governments, civil society and multilateral institutions to provide human rights training and education for public security as well as their efforts to strengthen state institutions to ensure accountability and respect for human rights.

**Responses to Human Rights Abuses**

- Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate, Companies should urge investigation and that action be taken to prevent any recurrence.
- Companies should actively monitor the status of investigations and press for their proper resolution.
- Companies should, to the extent reasonable, monitor the use of equipment provided by the Company and to investigate properly situations in which such equipment is used in an inappropriate manner.
- Every effort should be made to ensure that information used as the basis for allegations of human rights abuses is credible and based on reliable evidence. The security and safety of sources should be protected. Additional or more accurate information that may alter previous allegations should be made available as appropriate to concerned parties.

**INTERACTIONS BETWEEN COMPANIES AND PRIVATE SECURITY**

Where host governments are unable or unwilling to provide adequate security to protect a Company's personnel or assets, it may be necessary to engage private security providers as a complement to public security. In this context, private security may have to coordinate with state forces, (law enforcement, in particular) to carry weapons and to consider the defensive local use of force. Given the risks associated with such activities, we recognize the following voluntary principles to guide private security conduct:

- Private security should observe the policies of the contracting Company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; emerging best practices developed by industry, civil society, and governments; and promote the observance of international humanitarian law.
- Private security should maintain high levels of technical and professional proficiency, particularly with regard to the local use of force and firearms.
- Private security should act in a lawful manner. They should exercise restraint and caution in a manner consistent with applicable international guidelines regarding the local use of force, including the UN Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials, as well as with emerging best practices developed by Companies, civil society, and governments.
- Private security should have policies regarding appropriate conduct and the local use of force (e.g., rules of engagement). Practice under these policies should be capable of being monitored by Companies or, where appropriate, by independent third parties. Such monitoring should encompass detailed investigations into allegations of abusive or unlawful acts; the availability of disciplinary measures sufficient to prevent and deter; and procedures for reporting allegations to relevant local law enforcement authorities when appropriate.
- All allegations of human rights abuses by private security should be recorded. Credible allegations should be properly investigated. In those cases where allegations against private security providers are forwarded to the relevant law enforcement authorities, Companies should actively monitor the status of investigations and press for their proper resolution.
- Consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities. Companies should designate services, technology and equipment capable of offensive and defensive purposes as being for defensive use only.
- Private security should (a) not employ individuals credibly implicated in human rights abuses to provide security services; (b) use force only when strictly necessary and to an extent proportional to the threat; and (c) not violate the rights of individuals while exercising the right to exercise freedom of association

and peaceful assembly, to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

- In cases where physical force is used, private security should properly investigate and report the incident to the Company. Private security should refer the matter to local authorities and/or take disciplinary action where appropriate. Where force is used, medical aid should be provided to injured persons, including to offenders.
- Private security should maintain the confidentiality of information obtained as a result of its position as security provider, except where to do so would jeopardize the principles contained herein.

To minimize the risk that private security exceed their authority as providers of security, and to promote respect for human rights generally, we have developed the following additional voluntary principles and guidelines:

- Where appropriate, Companies should include the principles outlined above as contractual provisions in agreements with private security providers and ensure that private security personnel are adequately trained to respect the rights of employees and the local community. To the extent practicable, agreements between Companies and private security should require investigation of unlawful or abusive behavior and appropriate disciplinary action. Agreements should also permit termination of the relationship by Companies where there is credible evidence of unlawful or abusive behavior by private security personnel.
- Companies should consult and monitor private security providers to ensure they fulfil their obligation to provide security in a manner consistent with the principles outlined above. Where appropriate, Companies should seek to employ private security providers that are representative of the local population.
- Companies should review the background of private security they intend to employ, particularly with regard to the use of excessive force. Such reviews should include an assessment of previous services provided to the host government and whether these services raise concern about the private security firm's dual role as a private security provider and government contractor.
- Companies should consult with other Companies, home country officials, host country officials, and civil society regarding experiences with private security. Where appropriate and lawful, Companies should facilitate the exchange of information about unlawful activity and abuses committed by private security providers.

**Note:** First released on December 20, 2000

[End.]

[End]



## **Code of Conduct for Law Enforcement Officials**

**Adopted by General Assembly resolution 34/169 of 17 December 1979**

### ***Article 1***

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession. Commentary:

- (a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.
- (b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.
- (c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.
- (d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

### ***Article 2***

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

- (a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.
- (b) National commentaries to this provision should indicate regional or national provisions

identifying and protecting these rights.

### **Article 3**

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

(a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.

(b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.

(c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

### **Article 4**

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

### **Article 5**

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary:

(a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which: "[Such an act is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows:

". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

### **Article 6**

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

### **Article 7**

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary:

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their

own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

### **Article 8**

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

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**Office of the United Nations High Commissioner for Human Rights**  
Geneva, Switzerland



## **Basic Principles on the Use of Force and Firearms by Law Enforcement Officials**

**Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990.**

Whereas the work of law enforcement officials <sup>\*</sup> is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,

Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and

conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

### ***General provisions***

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.
2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.
3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.
4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.
5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:
  - (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
  - (b) Minimize damage and injury, and respect and preserve human life;
  - (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
  - (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.
7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.
8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

### ***Special provisions***

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.
10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.
11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:
  - (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
  - (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
  - (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
  - (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
  - (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
  - (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

***Policing unlawful assemblies***

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

***Policing persons in custody or detention***

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

***Qualifications, training and counselling***

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and

firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

### ***Reporting and review procedures***

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

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### **Note:**

\* In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of

the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services. [\[back to text\]](#)

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## C158 Termination of Employment Convention, 1982

Convention concerning Termination of Employment at the Initiative of the Employer (Note: Date of coming into force: 23:11:1985.)  
Convention:C158  
Place:Geneva  
Session of the Conference:68  
Date of adoption:22:06:1982

The General Conference of the International Labour Organisation,

Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-eighth Session on 2 June 1982, and

Noting the existing international standards contained in the Termination of Employment Recommendation, 1963, and

Noting that since the adoption of the Termination of Employment Recommendation, 1963, significant developments have occurred in the law and practice of many member States on the questions covered by that Recommendation, and

Considering that these developments have made it appropriate to adopt new international standards on the subject, particularly having regard to the serious problems in this field resulting from the economic difficulties and technological changes experienced in recent years in many countries,

Having decided upon the adoption of certain proposals with regard to termination of employment at the initiative of the employer, which is the fifth item on the agenda of the session, and

Having determined that these proposals shall take the form of an international Convention;

adopts the twenty-second day of June of the year one thousand nine hundred and eighty-two, the following Convention, which may be cited as the Termination of Employment Convention, 1982:

### Part I. Methods of Implementation, Scope and Definitions

#### Article 1

The provisions of this Convention shall, in so far as they are not otherwise made effective by means of collective agreements, arbitration awards or court decisions or in such other manner as may be consistent with national practice, be given effect by laws or regulations.

#### Article 2

1. This Convention applies to all branches of economic activity and to all employed persons.

2. A Member may exclude the following categories of employed persons from all or some

of the provisions of this Convention:

(a) workers engaged under a contract of employment for a specified period of time or a specified task;

(b) workers serving a period of probation or a qualifying period of employment, determined in advance and of reasonable duration;

(c) workers engaged on a casual basis for a short period.

3. Adequate safeguards shall be provided against recourse to contracts of employment for a specified period of time the aim of which is to avoid the protection resulting from this Convention.

4. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof categories of employed persons whose terms and conditions of employment are governed by special arrangements which as a whole provide protection that is at least equivalent to the protection afforded under the Convention.

5. In so far as necessary, measures may be taken by the competent authority or through the appropriate machinery in a country, after consultation with the organisations of employers and workers concerned, where such exist, to exclude from the application of this Convention or certain provisions thereof other limited categories of employed persons in respect of which special problems of a substantial nature arise in the light of the particular conditions of employment of the workers concerned or the size or nature of the undertaking that employs them.

6. Each Member which ratifies this Convention shall list in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation any categories which may have been excluded in pursuance of paragraphs 4 and 5 of this Article, giving the reasons for such exclusion, and shall state in subsequent reports the position of its law and practice regarding the categories excluded, and the extent to which effect has been given or is proposed to be given to the Convention in respect of such categories.

### Article 3

For the purpose of this Convention the terms *termination* and [ termination of employment mean termination of employment at the initiative of the employer.

## Part II. Standards of General Application

### Division A. Justification for Termination

#### Article 4

The employment of a worker shall not be terminated unless there is a valid reason for

such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

#### Article 5

The following, inter alia, shall not constitute valid reasons for termination: (a) union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

(b) seeking office as, or acting or having acted in the capacity of, a workers' representative;

(c) the filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

(d) race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

(e) absence from work during maternity leave.

#### Article 6

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

#### Division B. Procedure Prior to or at the Time of Termination

#### Article 7

The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

#### Division C. Procedure of Appeal Against Termination

#### Article 8

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorised by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

3. A worker may be deemed to have waived his right to appeal against the termination of his employment if he has not exercised that right within a reasonable period of time after termination.

#### Article 9

1. The bodies referred to in Article 8 of this Convention shall be empowered to examine the reasons given for the termination and the other circumstances relating to the case and to render a decision on whether the termination was justified.

2. In order for the worker not to have to bear alone the burden of proving that the termination was not justified, the methods of implementation referred to in Article 1 of this Convention shall provide for one or the other or both of the following possibilities:

(a) the burden of proving the existence of a valid reason for the termination as defined in Article 4 of this Convention shall rest on the employer;

(b) the bodies referred to in Article 8 of this Convention shall be empowered to reach a conclusion on the reason for the termination having regard to the evidence provided by the parties and according to procedures provided for by national law and practice.

3. In cases of termination stated to be for reasons based on the operational requirements of the undertaking, establishment or service, the bodies referred to in Article 8 of this Convention shall be empowered to determine whether the termination was indeed for these reasons, but the extent to which they shall also be empowered to decide whether these reasons are sufficient to justify that termination shall be determined by the methods of implementation referred to in Article 1 of this Convention.

#### Article 10

If the bodies referred to in Article 8 of this Convention find that termination is unjustified and if they are not empowered or do not find it practicable, in accordance with national law and practice, to declare the termination invalid and/or order or propose reinstatement of the worker, they shall be empowered to order payment of adequate compensation or such other relief as may be deemed appropriate.

#### Division D. Period of Notice

#### Article 11

A worker whose employment is to be terminated shall be entitled to a reasonable period of notice or compensation in lieu thereof, unless he is guilty of serious misconduct, that is, misconduct of such a nature that it would be unreasonable to require the employer to continue his employment during the notice period.

#### Division E. Severance Allowance and Other Income Protection

#### Article 12

1. A worker whose employment has been terminated shall be entitled, in accordance with

national law and practice, to-

(a) a severance allowance or other separation benefits, the amount of which shall be based inter alia on length of service and the level of wages, and paid directly by the employer or by a fund constituted by employers' contributions; or

(b) benefits from unemployment insurance or assistance or other forms of social security, such as old-age or invalidity benefits, under the normal conditions to which such benefits are subject; or

(c) a combination of such allowance and benefits.

2. A worker who does not fulfil the qualifying conditions for unemployment insurance or assistance under a scheme of general scope need not be paid any allowance or benefit referred to in paragraph 1, subparagraph (a), of this Article solely because he is not receiving an unemployment benefit under paragraph 1, subparagraph (b).

3. Provision may be made by the methods of implementation referred to in Article 1 of this Convention for loss of entitlement to the allowance or benefits referred to in paragraph 1, subparagraph (a), of this Article in the event of termination for serious misconduct.

### Part III. Supplementary Provisions concerning Terminations of Employment for Economic, Technological, Structural or Similar Reasons

#### Division A. Consultation of Workers' Representatives

#### Article 13

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, the employer shall:

(a) provide the workers' representatives concerned in good time with relevant information including the reasons for the terminations contemplated, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out;

(b) give, in accordance with national law and practice, the workers' representatives concerned, as early as possible, an opportunity for consultation on measures to be taken to avert or to minimise the terminations and measures to mitigate the adverse effects of any terminations on the workers concerned such as finding alternative employment.

2. The applicability of paragraph 1 of this Article may be limited by the methods of implementation referred to in Article 1 of this Convention to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.

3. For the purposes of this Article the term *the workers' representatives concerned* means the workers' representatives recognised as such by national law or practice, in conformity with the Workers' Representatives Convention, 1971.

## Division B. Notification to the Competent Authority

## Article 14

1. When the employer contemplates terminations for reasons of an economic, technological, structural or similar nature, he shall notify, in accordance with national law and practice, the competent authority thereof as early as possible, giving relevant information, including a written statement of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out.
2. National laws or regulations may limit the applicability of paragraph 1 of this Article to cases in which the number of workers whose termination of employment is contemplated is at least a specified number or percentage of the workforce.
3. The employer shall notify the competent authority of the terminations referred to in paragraph 1 of this Article a minimum period of time before carrying out the terminations, such period to be specified by national laws or regulations.

## PART IV. PROVISIONS

## Article 15

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

## Article 16

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratification has been registered.

## Article 17

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

## Article 18

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications and denunciations communicated to him by the Members of the Organisation.

2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

## Article 19

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with article 102 of the Charter of the United Nations full particulars of all ratifications and acts of denunciation registered by him in accordance with the provisions of the preceding Articles.

## Article 20

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

## Article 21

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides-

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 17 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

## Article 22

The English and French versions of the text of this Convention are equally authoritative.