

ROLE OF BUSINESS ENTERPRISES TO RESPECT HUMAN RIGHTS WITHIN OIL AND GAS (O&G) INDUSTRY IN MALAYSIA

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ABSTRACT

To date, transnational corporations (TNCs), including oil and gas (O&G) companies, have had no direct human rights obligations under international law. International law and human rights law have principally focused on protecting individuals from violations by States. The rapid expansion of transnational business activities has prompted renewed international discourse and action over the past decade to address the human rights abuses committed by companies. This paper is divided into a number of sections. At the onset, it aims to provide an explicit understanding of the United Nations Guiding Principles (UNGPs)' role in TNCs, particularly in the O&G industry, in respecting human rights impacts and challenges associated with the implementation of human rights. Accordingly, this paper examines the main human rights issues found in the O&G industry - namely environmental issues, indigenous peoples' issues and labour issues. To discuss the issues in detail, the authors have chosen case studies pertaining to the three O&G companies operating in Malaysia – Shell, BHP and PETRONAS. In each section, the authors attempt at relating on whether these three companies have operated within the UNGP framework. In conclusion, the closing remarks summarise the paper and provide recommendations for the way forward.

Keywords: Oil and Gas (O&G), Malaysia; Human rights; United Nations Guiding Principles (UNGPs); Transnational Corporations (TNCs).

1. INTRODUCTION

The development of transnational business operations through the establishment of massive TNCs has prompted the current phenomenon of economic globalisation. What we are faced with today are powerful transnational business entities, whose business operations are directly impairing the people's enjoyment of human rights. The movement of forces from State to non-State actors is a consequence of the development in international politics and economy; where democratization of government and financial globalization focuses on the thoughts of free market and exchange liberalization (Natsvlshvili, A., 2007).

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As indicated by Nicola Jagers, TNCs have a triple impact with respect to human rights. To begin with, they can be immediate violators of human rights, for example, by denying the privileges of their labourers or abusing the environment in and around their business operations. On the other hand, they can indirectly violate human rights by supporting an organization that already abuses human rights (Jagers, N., 1999). A sensible case citation for this is the encroachment of human rights by Royal Dutch Shell in Niger Delta, Nigeria. However, in the same way that TNCs may undermine a feasible fulfilment in human rights, they can also create a positive effect by improving their employees' lifestyles and increasing respect for monetary, social and cultural rights (Nisar *et al.*, 2014).

The relationship between TNCs and human rights are remarkably important and particular apparatuses are needed to balance them both. A definitive objective in this circumstance is to create a win-win situation by amplifying the merchandise that organizations produce while taking out the misuse they confer. Most importantly, overseeing and controlling a TNC's behaviour is about distinguishing, building up and receiving strategies and activities to minimize the negative impacts their business activities, whilst in the meantime maximizing on its beneficial outcomes. TNCs are the producers of monetary globalization, which is in fact an inescapable reality at present, thus the need for creating compelling procedures to tend to its results. As the occasions of corporate human rights infringement have expanded around the world, so have different endeavours to build up guidelines for corporate activities worldwide (Weissbrodt, 2005). This includes the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, the Organization for Economic Cooperation and Development Guidelines and the UN Global Compact. These endeavours can be seen as a significant stride toward guaranteeing international corporate obligation (Bamodu, 2006).

In spite of these developing endeavours to control business activity, a persevering element of the business and human rights landscape has been the exemption of corporate human rights violators and the subject of what, assuming any, human rights commitments businesses have under international law. The dismissal of the UN Norms in 2003 by business ventures, on the grounds that the Norms force a new set of commitments upon businesses, prompted the appointment of John Ruggie as Special Representative to the Secretary General of the United Nations (SRSG) on the issue of business and human rights (United Nation, 2005 Press Release, SG/A/934). With a re-established command, Ruggie moved to operationalize this system by introducing Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (Blitt, 2012).

In displaying the Guiding Principles to the Human Rights Council in June 2011, Ruggie (2011) expressed that "the Guiding Principles' commitment lies not in the making of new international law commitments but in using existing responsibilities and practices for States and organizations; coordinating them within a single, sensibly reasonable and extensive format; and recognizing where the present government misses the mark and how it ought to be progressed (U.N.Doc. A/HRC/17/31). Two weeks after Ruggie's presentation, the Council passed a resolution endorsing the Guiding Principles (Human Right Council, 2011). The Council likewise settled a Working Group to "*promote the effective and comprehensive dissemination and implementation of the Guiding Principles.*"

These Guiding Principles are grounded in recognition of the States' existing obligations to protect human rights, the role of business enterprises in respecting human rights and appropriate and effective remedies (Human Rights Council, 2011). This article examines the application of the Guiding Principles for business enterprises operating within the O&G industry. It begins by introducing the UNGPs; particularly Pillar II as it relates to business's responsibility to respect human rights. The next section identifies a range of segments that may be affected by O&G business activities. The authors focus on three main O&G companies in Malaysia; which are PETRONAS - the national oil company, Shell and BHP. These three companies were chosen on the grounds of relevancy as well as availability of information with regard to their respective businesses. This article adopts a theoretical and comparative analysis where the authors have referred to books, articles, journals and other relevant writings related to the subject. It involves a review of the existing academic literature and considers international legal documents and jurisprudence. The author also examines information that O&G companies have disclosed publicly with regard to their policies and practices in relation to human rights issues.

2. THE UNITED NATIONS GUIDING PRINCIPLES (UNGPS): PILLAR II

The Guiding Principles on Business and Human Rights were unanimously endorsed by the UN Human Rights Council in June 2011 and serve to implement the UN "Protect, Respect and Remedy" Framework proposed by Ruggie. They give a legitimate worldwide standard to avoiding and tending to the danger of antagonistic effects on human rights connected to business exercises. They likewise provide an instrument to quantify the progress made by businesses in meeting their human rights obligations (Ruggie, 2011). The command was made with an end goal to move past what had been a long-standing and profoundly divisive verbal confrontation over the human rights obligations of business enterprises. Ruggie's objective was to assemble important accord among all partners about the obligations of both States and organizations with respect to the business impact on human rights. Besides which, the Guiding Principles additionally highlight what steps States ought to take to regulate business impacts on human rights; give a plan for organizations to demonstrate that they respect human rights and lessen the danger of bringing about or adding to human rights violations, along with constituting a set of benchmarks for partners to evaluate their business's respect for human rights (Ruggie, 2011). The standards are composed under the UN three-pillar framework which incorporate the State obligation to ensure action against human rights infringement by or including enterprises, the corporate obligation to respect human rights, and access to remedy (United Nation Human Rights, 2011).

This article will only focus on Pillar II; that is the role of business enterprises, as significant organs of society, performing specific capacities with respect to human rights. The expression "respect" has been characterized as abstaining from encroaching human rights and addressing adverse human rights impacts (Guiding Principle 11). The expression "adverse human rights impacts" is utilized to mean an activity that evacuates or diminishes the capacity of a person to make the most of his or her human rights. It requires taking satisfactory measures for aversion, moderation and furthermore, remediation (Paragraph 2, Commentary to Guiding Principle 11). Under the UN Guiding Principles, the obligation of business enterprises to respect human rights incorporates all internationally perceived human rights – comprehended, at the very least, as those communicated in the International Bill of Human Rights (the Universal Declaration on Human Rights 1948, the International Covenant on Civil and Political Rights 1966 and the International Covenant on

Economic, Social and Cultural Rights 1966) and the standards concerning major rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work (Guiding Principle 12).

The analysis to Guiding Principle 12 likewise makes it clear that, depending on circumstances, businesses may need to consider extra international measures, for instance, where they may affect people in large gatherings or populaces that are at an increased danger of weakness or minimization. The degree to which businesses are impacted by these situations will greatly depend upon both, their business relationship and the adequacy of the procedures that they follow currently to anticipate, recognize, address and relieve such adverse effects. Stakeholders likewise focus on the pertinence of the two distinctive periods of the task cycle; both the sorting of potential effects and the specific frameworks that have been implemented to oversee them (Paragraph 3, Commentary to Guiding Principle 12).

Guiding Principle 13 characterizes between a business enterprise's obligation to respect human rights originated by its own particular exercises (Guiding Principle 13 (a)) and a business enterprise's obligation towards adverse human rights impacts caused by activities of persons or elements that are specifically connected to their operations or who/which they have a relationship with (Guiding Principle 13 (b)). Guiding Principle 19 explains further on how business enterprises can address these circumstances (Commentary, Guiding Principle 13). It implies that the obligation to respect is not an inactive obligation; that respecting human rights implies finding a way to comprehend and react to potential adverse impacts. These strides are compressed under Guiding Principle 15, which suggests that business enterprises should set up strategies and procedures to suit their size and circumstances, including:

- a) A policy that commits to meet their obligation to respect human rights;
- b) A human rights due diligence procedure to distinguish, avoid, moderate and record how they address their impacts on human rights;
- c) Processes to empower the remediation of any unfavourable human rights impacts they cause or to which they contribute.

The Guiding Principles give definite direction on what an enterprise's tasks are when committing to respect human rights. The strategy must be endorsed at the most senior level of the business. The policy, likewise, should be cultivated by experts and reflected in operational arrangements and techniques which are important to install and execute the strategy throughout the enterprise (Guiding Principle 16). Human rights due diligence is the centre idea of the Guiding Principles. Embraced fittingly, it serves to advise on an enterprise's commitment to the policy and the conduct of its business. The focus of due diligence is on recognizing and tending to the applicable impact on human rights which is associated with the enterprise's own activities and to its business relationship (Guiding Principle 17). Subsequently, these exercises and business relationships set the extent of human rights due diligence. Human rights due diligence is important for any business enterprise. Notwithstanding, the procedure will change depending on the extent of the business enterprise (Office of the High Commissioner of Human Rights, 2012).

Guiding Principle 18 clarifies that human rights due diligence includes, as an underlying step, the identification and evaluation of real and potential human rights impacts connected with a business enterprise's operations, products, services and relations. The reason for the evaluation is to

empower the business enterprise to figure out what move it might make to stay away from or react to impacts and to prioritize its response accordingly. This risk assessment may include a mapping of pertinent business activities and connections, followed by a social exercise and assessing data concerning the real and potential impacts on human rights by these activities (Guiding Principle 18). It further accentuates that when arranging new enterprises or activities, the human rights impact evaluation must be attempted at the most timely and achievable stage (Lindsay & McCorquodale, 2013).

Having identified real and potential human rights impacts, Guiding Principle 19 prescribes that enterprises must then incorporate the findings from their impact assessments into relevant internal functions and processes, and make suitable moves. So as to have the capacity to make a suitable move, business enterprises need to have processes that catch pertinent findings from impact assessments and ensure correspondence of those findings to relevant decision makers. Obligation, budget allocation and oversight of anticipating and relieving unfavourable human rights are issues that need to be assigned to appropriate authorities inside the business enterprise to guarantee proper outcomes (Guiding Principle 19).

Guiding Principle 21 suggests that business enterprises must communicate externally the steps they have taken to react to real and potential human rights impacts so as to ensure a measure of transparency and accountability to people or groups who might be impacted (Guiding Principle 21). Communication can take an assortment of forms, including individual meetings, online exchanges, discussions with influenced partners, and formal open reports. Formal reporting in itself is developing, from customary yearly reports and corporate obligation/sustainability reports, to incorporate online updates and coordinated money related and non-monetary reports (Paragraph 2, Commentary to Guiding Principle 21). The obligation to respect has been explained by reference to the Guiding Principles as the obligation of business enterprises to act with due diligence to distinguish their genuine and potential human rights impacts and afterward to address them. Fulfilling this obligation requires dynamic steps, the first of which is conducting a human rights due diligence study; where the findings should be used to educate the business's operations on how to respect human rights, for the most part, and specifically how to add value to or extend the set guidelines. Constancy will likewise ensure that the execution of a suitable human rights program will be considered as an important responsibility throughout the enterprise. Due diligence will be continuous, and fundamentally invigorate a business enterprise's methodology as new opportunities are explored and products and services are developed.

However, even though business enterprises have already provided the best policies and practices to avoid any human rights violations or negative impacts due to its activities, there may be some instances where business activities will have adverse human rights impacts that the enterprise has not foreseen. In such cases, business enterprises have the responsibility to provide or cooperate in a remediation process (Guiding Principle 22).

3. HUMAN RIGHTS ISSUES IN THE OIL AND GAS SECTOR

This section examines human rights issues that may occur due to business activities of O&G companies. Even though there are various aspects of human rights affected by the O&G industry, the authors have chosen to focus on the environment, indigenous peoples' rights and labour rights,

as they are the most affected by the activities of the O&G industry. For this purpose, the authors refer to the businesses of the three main O&G companies operating in Malaysia; which are PETRONAS, Shell and BHP.

Shell, in its Sustainability Report of 2015 reported that their business exercises are guided by the Shell General Business Principles and Code of Conduct. Shell likewise bolsters various external voluntary codes. These incorporate the United Nations Universal Declaration of Human Rights, the United Nations Global Compact, Organization for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises and the International Labour Organization Declaration on Fundamental Principles and Rights at Work (Shell Sustainability Report 2014).

The Shell human rights policy is consistent with UNGP and applies to its employees and contractors. Since 2010, Shell has been attempting to incorporate human rights into its current approaches, frameworks and practices. Shell grasps a varied and comprehensive work force and has an equal opportunities policy. It has created partnerships with international associations, organizations, common society and applicable bodies to comprehend and react to present and developing human rights issues. It additionally works with O&G industry bodies to help different organizations embrace human rights honours. For instance, in 2014, Shell helped IPIECA (the worldwide oil and gas industry relationship for ecological and social issues) build up a manual about group grievance instruments to offer handy devices for the business to execute components for groups (Shell Sustainability Report 2014). Its human rights policy concentrates on four key territories which are communities, securities, work rights and supply chain (Shell (2016) Human Rights).

For PETRONAS, realizing its part as a mindful corporate resident retreats to 1974, guided by their Vision, Mission and Shared Values (PETRONAS (2015) Our Vision, Mission and Value). Supporting these was PETRONAS' Corporate Sustainability Framework built up in 2001. Subsequently, the PETRONAS Code of Business Conduct (CoBE) was braced in 2012 to guarantee its pertinence with the changing worldwide environment. Among the upgrades was a stipulation on Sustainable Development. The CoBE is appropriate to all PETRONAS staff and Directors Group wide, including third-party personnel serving and performing work on their behalf. While it is insistent upon its organizations to acknowledge the PETRONAS Sustainable Development yearnings, PETRONAS suppliers, contractual workers and subcontractors are additionally required to guarantee that their deliverables fit in with the PETRONAS prerequisite standard (PETRONAS Sustainability Report 2014).

Understanding that the activities of the O&G industry have the potential to affect human rights, especially in connection to work and indigenous peoples, BHP has pledged to consider human rights commitments important and show this by resolving to work as per the United Nations Universal Declaration of Human Rights and the UN Global Compact standards. These responsibilities are operationalized through BHP Billiton Charter and BHP Billiton Code of Business Conduct. BHP measures the viability and acquires confirmation of their human rights processes through internal audits (BHP Billiton Sustainability Report 2015).

3.1. Environmental Standards

The upstream exercises (exploration, development and production of crude oil or natural gas) and downstream exercises (tankers, pipelines, retailers and consumers) are two imperative activities in the O&G industry. When talking about the ecological concerns, the activities address distinctive issues (Seraji *et al.*, 2017). At the upstream level, subsequent to the greater part of the preparations of petroleum and gas being from mainland rack and profound water, the ecological concern is more on the marine contamination. While, at the downstream level, the ecological issues are, for example, the outflow of gas, stockpiling and usage of petroleum and gas (MohdAli, 2010).

Shell, in its General Business Principle states that the company has a deliberate way to deal with environmental management. It sets guidelines and emphases for developing, measuring, assessing and reporting performance externally (Shell, General Business Principle). Shell has clear requirements and procedures to avoid operational spills. It has on-going projects set up to keep up and enhance their offices and pipelines. Be that as it may, spills still happen for reasons such as operational failures, accidents or unusual corrosion. In 2014, Shell accomplished its most minimal level of recorded operational spills. The volume of operational spills of oil and oil items added up to 0.7 thousand tons, down from 0.9 thousand tons in 2013. The quantity of operational oil slicks likewise diminished in 2014 to 153, down from 174 in 2013. In January 2015, Shell Petroleum Development Company declared a £55 million settlement concurrence with the Bodo community in Nigeria in respect of two operational spills in 2008. In 2014, damage and oil robbery remained significant reasons for spills. In spite of the fact that the quantity of spills diminished to 139 from 157 in 2013, the volume of these spills expanded to 2.7 thousand tons in 2014 from 2.2 thousand tons in 2013 (Shell Sustainability Report, 2014). These measures are in line with Guiding Principle 22 which stipulates that when a company identifies that their activities have caused adverse human rights impacts, then they should provide or cooperate in a remediation process.

Table 1: Sabotage Spills by number (Shell Sustainability Report 2014)

	2005	2006	2007	2008	2009	2010	2011	2012	2013
Sabotage spills ⁽⁹⁾	111	123	197	115	95	112	118	137	157

⁽⁸⁾ All spill volumes and numbers are for spills over 100 kilograms.

As of the end of March 2015, there were three spills under investigation in Nigeria that may result in adjustments, which took place prior to 2014.

⁽⁹⁾ All sabotage- and theft-related spills have occurred in Nigeria except in 2007 (0.7 thousand tonnes outside Nigeria) and 2006 (0.6 thousand tonnes outside Nigeria).

Table 2: Sabotage Spills by Volume (Shell Sustainability Report 2014)

	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Sabotage spills (thousand tonnes) ⁽⁹⁾	1.5	1.9	3.4	6.5	14.0	3.0	1.6	3.3	2.2	2.7

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BHP, in its Code of Conduct perceives the significance of being environmentally responsible. BHP exhibits ecological obligation by minimizing environmental effect by screening all of their activities (BHP Billiton, Code of Business Conduct). The company does not explore or remove assets inside the property of World Heritage-recorded properties; they do not explore or extricate assets neighbouring World Heritage-recorded properties unless the proposed action is perfect with the World Heritage exceptional all-inclusive qualities; they do not explore or extract assets inside the boundaries of the International Union for Conservation of Nature (IUCN) Protected Areas Categories I to IV unless an arrangement is executed that meets regulatory requirements, considers partner desires and adds to the qualities for which the secured zone is recorded; they do not work where there is a danger of direct effects to biological communities that could bring about the eradication of an IUCN Red List Threatened Species in the wild; and they do not discard mined waste rock or tailings into a waterway or marine environment (BHP Billiton, Environment Group Level Document). For instance, BHP's Petroleum Business utilizes industry driving innovation to lessen the danger of effect of its seaward operations on marine mammals. Use of remote real-time passive acoustic monitoring in Australia allows onshore observers to detect the presence of marine mammals during periods of low visibility, such as night time or fog. This empowers the BHP group to stop exercises and keep away from potential effects (BHP Billiton, Sustainability Report 2015).

As part of ensuring effective oil spill preparedness and response, PETRONAS subscribes as a member of the Oil Spill Response Limited (OSRL). One of the key benefits for being a member of OSRL includes guaranteed round-the-clock response to rapid aerial dispersant spraying facilities, one of the most effective methods of combating a major oil spill anywhere around the world. Further, PETRONAS also adopted a systematic approach named Integrated Environmental Site Management (IESM) to manage their activities at land-based sites to prevent, minimise and control the risk of land and groundwater contamination (PETRONAS 2016, Environment).

3.2. *Indigenous Rights*

When it comes to working in O&G fields, companies engage with a wide range of people who may be affected by or have concerns about oil sands activities. O&G activities have the potential to affect indigenous communities who hold specific rights for the protection of their cultures and traditional ways of life. As such, it is important for the O&G companies to recognise the traditional rights and values of the indigenous peoples, respect their cultural heritage and the significance of their lands, and provide opportunities for inclusion and advancement.

Shell, in its Sustainability Report of 2014 clarified that the company consults and draws in with indigenous peoples groups to see how their activities may affect upon indigenous peoples' rights. They then discover approaches to alleviate any adverse impacts and to expand advantage for the significant indigenous peoples. For instance, in Canada they have a few agreements set up that depict their purpose to work with numerous First Nations and Métis communities to reinforce connections, discussion and engagement on their undertakings. Shell keeps on working with IPIECA to build up a reliable approach and best practices over the oil and gas for free, prior and informed consent. They work to decrease the effect of development on the land and ensure indigenous peoples advantage from their operations through employment (Shell Sustainability Report 2014). Since 2005, Shell has spent more than C\$1.7 billion with local indigenous contracting companies. They as of now work with more than 70 indigenous organizations and contractual workers who provide services and products for their operations (Shell Sustainability Report 2014).

BHP Billiton's way to deal with and support indigenous peoples is explained in their Indigenous Peoples Policy Statement. Execution of the Policy Statement will help them fortify associations with indigenous peoples and be an esteemed accomplice in indigenous peoples' financial, social and cultural strengthening. They are currently in the process of developing an Indigenous Peoples Strategy to guide the usage of the Policy Statement. Responsibilities within the Policy Statement include understanding of indigenous peoples' rights and interests; building culturally diverse comprehension; conceding to proper engagement forms; and guaranteeing successful investment in basic leadership. The Policy Statement particularly addresses the issue of free, prior and informed consent through resolving to look for the assent of indigenous peoples groups for new operations or real capital ventures that are situated on lands generally possessed by, or under standard utilization of, indigenous peoples and which are liable to have negative impacts on indigenous peoples. In making this dedication, BHP seeks the privilege of governments to make decisions on the development of resources. Where consent cannot be achieved, a host government may choose to continue with a task subsequent to adjusting the rights and interests of the indigenous peoples with the more extensive populace. In these circumstances, BHP Billiton will decide if the project is mandatory (BHP Billiton, 2016, Indigenous Peoples Policy Statement).

PETRONAS has been having significant and opportune discourse with indigenous peoples to share experiences and acquire profitable contribution to shield the interests of their partners. In Malaysia, the Sabah-Sarawak Gas Pipeline (SSGP) project enveloped the laying of coastal gas pipelines from the Sabah Oil and Gas Terminal in Kimanis, Sabah to the PETRONAS Liquefied Natural Gas (LNG) Complex in Bintulu, Sarawak. With the foundation crossing a long area belonging to several groups of indigenous peoples, more than 91 kilometres (km) in Sabah and around 421 km in Sarawak, the undertaking required various discourse sessions with affected stakeholders to provide updates and accumulate input. The PETRONAS project team members communicated with delegates from the Berawan, Iban, Kayan, Kelabit, Kenyah, Lunbawang and Penang communities to hand out knowledge on the SSGP and its operational and support arrangements, incorporating the development opportunities in store for local communities; for example, procurement of employees. Comparative partner counsels were additionally held in Myanmar preceding the start of undertakings RSF 2 and 3. Open talks were held with villagers and neighbourhood powers on matters such as compensation and land acquisition to comprehend on-the-ground expectations. These sessions were conducted with the presence of local authorities comprising town heads, religious pioneers and town elders. To a great extent, criticism got focused on to ashore porosity

matters. In tending to this, the Company did a vibration test to show how the area remains reasonable for farming exercises, substantiated by demonstrated certainties. Compensation was additionally dispensed to land and yield proprietors in an opportune way. (PETRONAS Sustainability Report 2014 p. 55. Community Engagement).

Actions taken by these three companies, namely Shell, BHP and PETRONAS conforms with Guiding Principles 16, 17, 18, 20 and 21, which stipulate that business enterprises should address and communicate their human rights impacts with affected stakeholders. In the above cases, stakeholders refer to indigenous peoples.

3.3. *Labour Rights*

In the course of the most recent decade, the O&G business has seen colossal development. Somewhere between 2007 and 2012, when normal occupation in all U.S. commercial ventures fell by 2.7 percent, livelihood in the O&G industry expanded by more than 30 percent. As indicated by an exploration directed by Annette Bernhardt, a researcher on low-wage work, 84 percent of labourers in the oil, gas and mining industry were employed by contractors in 2012. The business has likewise seen an expansion in fatalities and wounds at work. There is however, no proof that these mishaps are an after effect of inadequate training or overworked labourers. On the other hand, accounts from different commercial ventures that vigorously outsource work mention that these dangers do exist (Sadasivam, 2014). Further, O&G labourers are generally non-union. They are segregated in man camps and in their locales. All things considered, when there is infringement of their rights, they do not know whom to turn into.

Shell, being a signatory to the UN Global Compact applies the International Labour Organization traditions on worker's rights and reacts to present and rising issues on the execution of the Global Compact standards (Hassan, 2012a; 2012b). In 2014, another supplier reviewing system was presented for stock suppliers as a component of their risk-based approach. This helps Shell to comprehend and alleviate work rights dangers connected with merchandise manufacturing. The company conducts ethical audits in industrial facilities that are being considered as a supplier to Shell. Every audit reviews a supplier's labour practices, HSE conditions and general business hones (Shell Sustainability Report 2014).

In 2014, reviews were completed in 17 factories, covering 91 products, in light of locations that they consider hazardous. The reviews highlight any regions that do not conform to Shell's norms, where suppliers may need to enhance conditions before they can be accepted by Shell. Around the same time, Shell distributed an Accommodation and Welfare Guide. The Guide characterizes the conditions for convenient, secure and agreeable shelter which meets the physical, mental, social and cultural needs of labourers. The Guide sets up a reliable international standard for those who build Shell facilities around the world to adhere to (Shell Sustainability Report 2014).

Since 2011, Shell has introduced the reporting of process safety in line with industry standards. Thus, in 2014, Shell achieved the lowest number of injuries. The data can be referred to in the table below.

Social data	2014	2013	2012	2011	2010	2009	2008	2007	2006	2005
Fatalities										
Total number	5	5	8	6	12	20	26	21	37	34
Employees	3	0	3	1	0	1	2	1	2	3
Contractors	2	5	5	5	12	19	24	20	35	31
Fatal accident rate (FAR)	0.74	0.79	1.32	0.96	1.56	2.3	3.4	3.1	5.6	5.0
Fatalities per 100 million working hours (employees and contractors)										

Table 3: Social data (Shell Sustainability Report 2014)

Injuries and Process Safety Incidents										
Total recordable case frequency (TRCF)	0.99	1.15	1.26	1.24	1.23	1.4	1.8	1.9	2.1	2.5
Injuries per million working hours (employees and contractors)										
Lost time injury frequency (LTIF)	0.28	0.36	0.34	0.36	0.35	0.4	0.6	0.7	0.8	1.0
Lost time injuries per million working hours (employees and contractors)										
Operational Process Safety Events										
Tier 1 [A]	57	65	91	n/c	n/c	n/c	n/c	n/c	n/c	n/c
Tier 2 [A]	194	246	308	n/c	n/c	n/c	n/c	n/c	n/c	n/c
Illnesses										
Total recordable occupational illness frequency (TROIF)	0.96	0.77	0.51	0.66	0.76	0.6	1.2	1.5	1.8	2.0
Illnesses per million working hours (employees only)										
Security										
Using armed security (% of countries)	24	19	17	14	9	17	17	16	15	19
Using armed company security (% of countries)	1	3	0	1	1	1	1	2	2	2
Using armed contractor security (% of countries)	10	8	10	9	6	10	9	12	9	11

Injuries and Process										
Safety Incidents										
Gender diversity [B]										
In supervisory/professional positions (% women)	29.0	28.8	28.1	27.3	26.3	26.4	24.7	24.6	23.2	21.8
In management positions (% women)	21.0	18.8	18.2	17.6	17.0	16.1	15.3	17.7	16.2	12.9
In senior leadership positions (% women)	18.2	17.2	16.2	16.6	15.3	14.0	13.6	12.9	11.6	9.9
Staff forums and grievance procedures										
% countries with staff access to staff forum, grievance procedure or other support system	100	100	100	99	100	99	100	100	99	100
Child labour (% countries with procedures in place)										
Own operations	100	100	100	100	99	98	100	99	95	88
Contractors	100	100	100	97	96	97	99	98	89	69
Suppliers								96	82	62
Forced labour (% countries with procedures in place)										
Own operations	100	100	100	100	99	98	n/c	n/c	n/c	n/c
Contractors and suppliers	100	100	100	97	95	89	n/c	n/c	n/c	n/c
Integrity										
Code of Conduct violations [C]	267	181	209	226	205	165	204	361	n/c	n/c
Contracts cancelled due to incompatibility with Business Principles	7	22	14	11	40	24	49	35	41	63
Contracting and procurement										
Estimated expenditure on goods and services in lower-income countries (\$ billion) [D][E]	14	12	14	12	13	12	12	13	10	9
Social investment [F]										
Estimated voluntary social investment (equity share) (\$ million)	160	159	149	125	121	132	148	170	140	127
Estimated social investment spend (equity share) in lower-income countries (\$ million) [G]	73	74	67	45	61	54	61	65	n/c	n/c

[A] Process safety events are classified based on guidance from the IOGP and API. In 2014 there were 91 Tier 1 and 48 Tier 2 sabotage related events.

[B] Diversity data obtained from our human resources system.

[C] Code of Conduct violations reported to our global telephone helpline and dedicated website, and through internal channels.

[D] Estimated expenditure in countries where gross domestic product amounts to less than \$15,000 a year per person (source: UNDP Human Development Index 2013).

[E] From 2013 onwards, this figure only includes the spend on goods and services by Shell Group Companies.

[F] Social investment spending varies from year to year depending on business climate, locations and type of activities under way. This is voluntary social investment and does not include social investments made through contractual agreements with host governments, voluntary work by Shell employees and donations of equipment.

[G] Estimated voluntary social investment spending in countries where gross domestic product amounts to less than \$15,000 a year per person (source: UNDP Human Development Index 2013).

Social investment and contracting and procurement data collected via our financial system since 2007

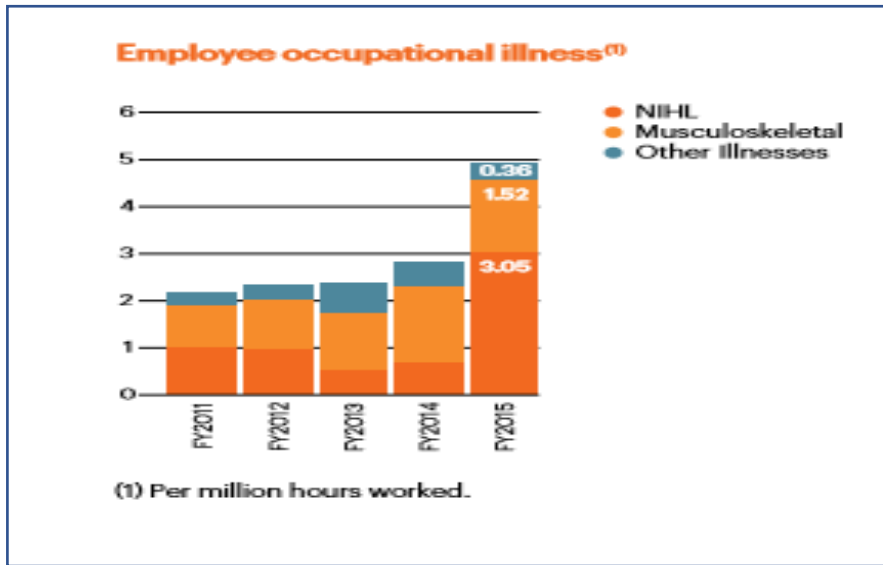
Data obtained from an internal survey completed by the senior Shell representative in each country

n/c = not calculated

Shell designs their facilities to reduce the likelihood of incidents and also to reduce the impact should anything unexpected happen. For example, in 2014, they had a number of larger incidents where the impact was reduced owing to the design of the facility. These events included a fire in a toluene tank in the Rhineland refinery (Germany); an explosion in a processing unit in the Moerdijk chemicals facility (Netherlands); a boiler explosion at the Sarnia refinery (Canada); broken equipment at an onshore gas well in Permian (USA) leading to a gas leak; and a leak at a flow station facility in Nembe (Nigeria) which was largely contained on-site (Shell Sustainability Report 2014).

Concerning occupational illness, BHP Billiton requires its companies to report ailment using the US Government's Occupational Safety and Health Administration (OSHA) criteria in order to have consistent reporting. This can bring about a lower edge for reporting and create some under-reporting compared local regulatory regimes, which presents multifaceted data, especially where they depend upon external parties to report illnesses. In FY2015, the rate of the workers' occupational illness was 4.93 for every million hours worked; an expansion of 74 for every penny in FY2014. The frequency of contractual workers' occupational illness was 0.84 for each million hours worked; a decline of 21 for each penny compared with FY2014. In FY2015, BHP investigated worker's occupational illness over the Group in response to observed geographical differences (Australian operations were in charge of 80 for each penny of every worker's occupational illness reported in FY2014) and the increase in illness reported (BHP Billiton Sustainability Report 2015).

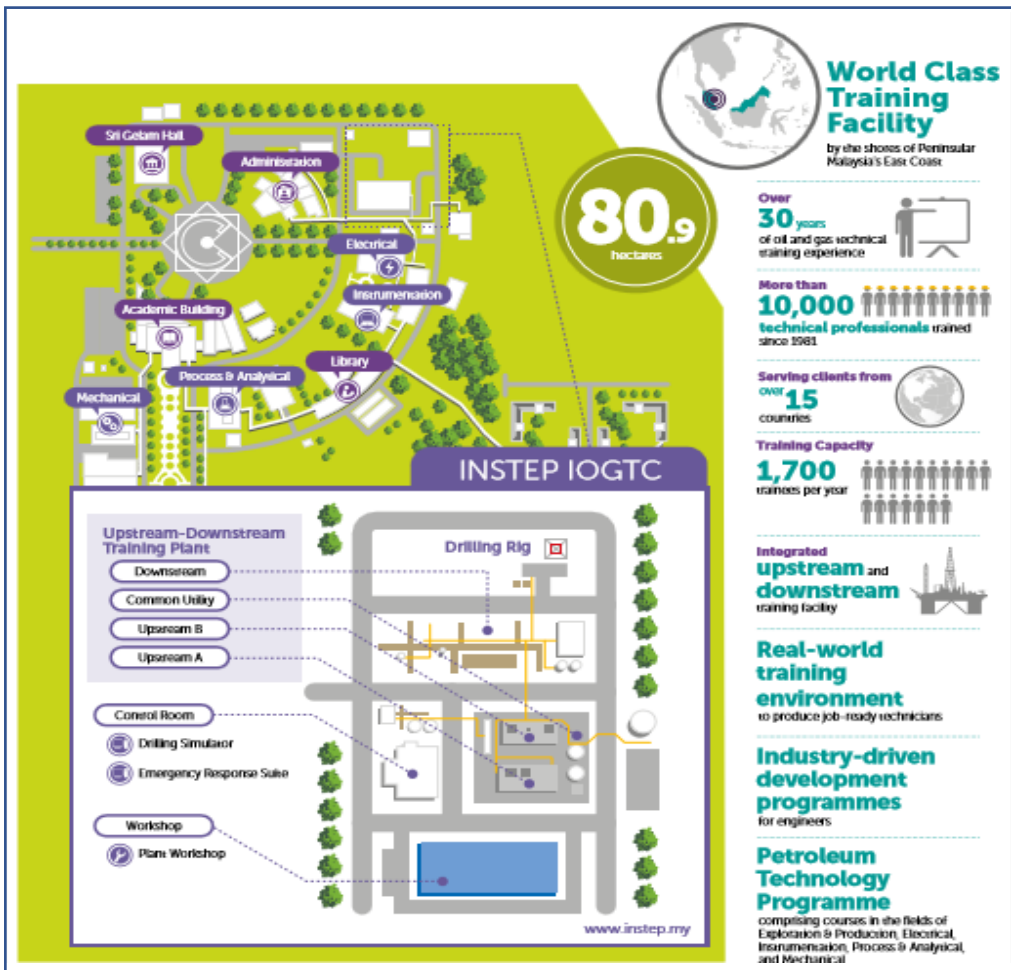
Graph 1: Employee occupational illness by BHP Billiton (BHP Billiton Sustainability Report 2015)



PETRONAS, through its Code of Conduct and Business Ethics statement, has proclaimed that they are committed to ensuring a protected and sound work environment within its facilities for all their employees (PETRONAS Sustainability Report 2014). Every PETRONAS group company should scrupulously and tirelessly follow all health, safety and environment (HSE) prerequisites, measures, work guidelines and standard working methods set out in manuals, handbooks and reports issued by PETRONAS (PETRONAS Code of Conduct and Business Ethics).

PETRONAS has also established several governance mechanisms to elevate their health, safety and environment (HSE) performance. Among others, are the PETRONAS HSE Policy, the HSE Management System, the HSE Mandatory Control Framework and PETRONAS Technical Standards. All of PETRONAS' employees and third party personnel serving at PETRONAS' facilities are mandated to comply with PETRONAS standards and rules on HSE. This is to ensure that PETRONAS' facilities in Malaysia and around the world are designed, operated and maintained in accordance with the standards aligned to industry best practices. The adequacy of PETRONAS' control barriers are also reviewed by assessing the design, technical and operational integrity of their facilities. By establishing these governance mechanisms, we can say that PETRONAS has met its responsibility to respect human rights under Guiding Principle 15.

Picture 1: Integrated O&G Training Centre (PETRONAS)



However, even with several governances and mechanisms to elevate it's HSE, Vancouver Sun reported that in late 2013, PETRONAS was dealing with 'very serious' safety and integrity issues throughout its offshore Malaysian operation. Six "pressure vessels" containers on offshore platforms holding pressurized gas or oil were found to have internal corrosion and had not been inspected for at least 20 years. Thus, creating a hazardous environment for the worker. In addition, in 2014, PETRONAS' new gas pipeline on Borneo Island was shut down, and remains out of use, due to a massive explosion caused by it being constructed on unstable soil (Peter O'Neil, 2016).

As such, regular drills and exercises are conducted to test PETRONAS' preparedness as well as to enhance their response mechanisms in minimising impacts arising from any emergency. Gaps identified are addressed by strengthening existing HSE procedures and controls. This involves learning from previous internal and external incidents to prevent recurrence. This is in accordance

with Guiding Principle 22 of the UNGP where business enterprises are advised to track the effectiveness of their response to adverse human rights impacts arising from their operations.

4. CONCLUSION

This article demonstrates the extent of the role that business enterprises play in respecting human rights within the O&G industry. Many O&G investments involve close relationships with States with poor human rights records, encouraging keen public scrutiny with respect to the industry's direct or indirect impact on human rights. The outcomes of O&G activities can have various effects on the environment, indigenous peoples and labour forces. By focusing on the activities carried out by Shell, BHP and PETRONAS, the authors have determined how big the impacts of their activities were in these areas. However, based on the statistics, we can conclude that although the activities carried out by Shell, BHP and PETRONAS had substantial impact upon these three areas, the actions taken by the three companies thereafter are consistent with the UNGPs. By providing compensation for oil spills in Nigeria, Shell's action conforms Guiding Principle 22. Further, consulting indigenous peoples during their operations is in accordance with Guiding Principle 16, 17, 18, 20 and 21. Therefore this paper advocates that there is a need for adoption of the UNGPs to govern O&G activities in order that the rights of the environment, indigenous peoples and labour can be well protected.

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