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Operationalising the United Nations Guiding Principles on Business and Human Rights – Perspectives from the Oil and Gas Sector

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INTRODUCTION

It has been six years since the United Nations (UN) Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs). The UNGPs have been accepted by international organisations and companies across different sectors as the universal standard for identifying and managing human rights risks related to business. International standards and frameworks have been updated to ensure alignment with the UNGPs, including the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises, the UN Global Compact, the International Standards Organisation (ISO) 26000 Guidance on Social Responsibility, the International Finance Corporation (IFC) Environmental and Social Performance Standards and the Food and Agriculture Organisation of the UN's Voluntary Guidelines on Responsible Governance of Tenure of Land, Fisheries and Forests.¹

Despite the rapid uptake of the UNGPs as a normative standard, implementation of the UNGPs has been slower. The Corporate Human Rights Benchmark (CHRB) assessed the human rights performance of 98 of the world's largest publicly traded companies in three sectors and found significant gaps in implementation of the UNGPs.² According to the CHRB, of the 98 companies assessed in 2016:

- one third do not have a publicly disclosed human rights policy;
- half do not indicate how their board considers human rights in decision making;
- three quarters have no provisions on access to remedy; and
- only one third identify human rights risks, of which only half indicated how they mitigate such risks.

Of the 98 companies benchmarked by the CHRB, only six received a score of above 50 per cent and only three companies (two of which were extractive sector companies), scored above 60 per cent. The average score across the sample was approximately 30 per cent.

Against this backdrop, we ask questions about why, how, and to what extent the UNGPs can be integrated into corporate policy frameworks, and operationalised in practice. The paper responds to these questions. It draws on our collective experience of working for BG Group, when we were tasked with establishing the Social Performance and Human Rights function as part of a company-wide change management program.³

¹ See: [<http://mneguidelines.oecd.org/guidelines/>;
<https://www.unglobalcompact.org/what-is-gc/mission/principles>;
<https://www.iso.org/iso-26000-social-responsibility.html>;
http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards;
<http://www.fao.org/docrep/016/i2801e/i2801e.pdf>]

² See: [<https://www.corporatebenchmark.org/>]

³ BG Group was a major British multinational oil and gas company with operations in 25 countries across Africa, Asia, Australia, Europe, North and South America. BG Group was a constituent on the FTSE 100 index and was a world leader in exploration, and production, trading and supply of liquefied natural gas (LNG). On 15 February 2016, BG Group plc was acquired by Royal Dutch/Shell plc following a £35 billion takeover.

Part one of the paper briefly examines *why* BG Group decided to implement the UNGPs, pointing to four interconnected drivers: normative pressures, operational and reputational risk management, investor behaviour, and corporate values. We note that these drivers are likely to be common to many companies, especially those in the extractive sector.

Part two then explores *how* the UNGPs can be applied in practice. We outline underlying design principles that informed BG Group's approach to operationalising the UNGPs. We suggest that implementation of the UNGPs should be legitimate in the eyes of internal and external stakeholders, integrated into company policy, performance based, focused on key issues, and transparent.

Part three examines some of the challenges and dilemmas of operationalising the UNGPs and recalls how, at the time, BG Group responded to some of these challenges.

PART 1: DRIVERS FOR ADOPTING THE UNGPS

BG Group's commitment to human rights dates back to 2005, when the company adopted a Human Rights Policy and updated its Business Principles, both of which set out the company's approach to human rights. As external expectations concerning the behaviour and management systems of companies evolved, so did BG Group's commitments and the level of understanding about what was required to implement those commitments. In 2007, BG Group recruited a Group Head of Social Performance to establish and professionalise social performance across the group. This appointment enabled a change management programme to systematically drive social performance practice across the group. In 2010, BG Group updated its Human Rights Policy to reflect the UNGPs, and empowered the Social Performance function to drive change. In the years that followed, BG Group enhanced its approach to implementing the UNGPs, including by strengthening its approach to implementing the Voluntary Principles on Security and Human Rights, commissioning human rights impact assessments, and publishing a position statement on human rights. In 2015, in recognition of the growing importance of the business and human rights agenda, both internationally and within the company, BG Group's Social Performance function was renamed Social Performance and Human Rights.

BG Group's decision and ongoing commitment to pro-actively support the implementation of the UNGPs in the context of its broader corporate policy framework was driven by four key factors: normative pressures and broad-based acceptance of the UNGPs, changes in BG Group's operational and reputational risk profile, investor scrutiny, and BG Group's corporate values. The relative significance of each of these drivers may vary depending on the risk profile, geography and operating context of a company. Based on our experience, we argue that it is important to recognise the interconnectivity between these drivers and respond to them in a holistic way, to hardwire respect for human rights in a company's corporate DNA.

NORMATIVE PRESSURES

The strength of the UNGPs is that they have gained broad-based acceptance as the authoritative normative standard on business and human rights. After years of debate, the UNGPs clearly differentiated corporate and state responsibilities with respect to human rights, and this articulation of responsibilities has gained broad-based acceptance from the corporate sector, government and civil society.⁴ The integration of the UNGPs into soft law standards such as the OECD Guidelines for Multi-National Enterprises confirms their status as the *de facto* governance framework for responsible business conduct. There is also evidence to suggest that the UN Guiding Principles are stimulating the development of 'hard law',⁵ which is shifting the narrative around corporate responsibility to one of accountability and legal compliance.

⁴ The UNGPs framework rests on three pillars: the **state duty to protect** against human rights through appropriate policies, regulation, and adjudication; the **corporate responsibility to respect** human rights through appropriate due-diligence mechanisms; and **greater access to remedy** by victims of human rights abuses; a responsibility for states and corporates.

⁵ For example the California *Transparency and Supply Chain Act* (2012), the UK *Modern Slavery Act* (2015) and the French *Duty of Vigilance Law* (2016) all touch on the responsibility of business to 'know and show' how they respect human rights. Similar legislation is being developed in Australia and Canada. See: <https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf>; <https://www.gov.uk/government/collections/modern-slavery-bill>;

In light of such broad-based acceptance, the integration of the UNGPs into BG Group's policy framework was a logical progression, given that BG Group was already in the process of aligning the company's internal controls with international standards.⁶

OPERATIONAL AND REPUTATIONAL RISK

In the extractives industries, operational, legal and reputational business risks related to human rights risks are well documented.⁷ These risks are twofold in their nature: they are risks to rightsholders and business risks. For communities, the presence of a major extractive company could potentially impact on the rights to enjoy access to land, water and a healthy environment. There are also many cases of human rights abuses perpetrated by security forces protecting company assets. For companies, community conflict caused by perceived or real human rights impacts can result in delays or an inability to develop a project at any stage of the project lifecycle (exploration, development, construction, operations or closure). Disruptions to production processes and threats to the safety of staff can result in billions of dollars-worth of lost revenues.⁸

Association with human rights impacts also carries reputational risks which can affect a company's brand and credibility with critical stakeholders. A number of extractive companies have been the target of lawsuits, advocacy and media campaigns in response to their direct or indirect relationships with negative human rights impacts.⁹

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&dateTexte=&categorieLien=id>]. In addition, the European Union's directive on non-financial reporting requires large companies to publicly report on how they manage their social and environmental impacts. In relation to the extractive industries, Chapter 10 of the EU *Accounting Directive* requires all European companies to publicly report on their payments to government from wherever they operate. See:

[<https://www.gov.uk/government/consultations/extractives-industries-reporting-implementing-the-eu-accounting-directive>]

⁶ BG Group was in the process of aligning its policies and processes to international standards such as the Equator Principles [<http://www.equator-principles.com>], the IFC Environmental and Social Performance Standards and the Voluntary Principles Security and Human and Rights (VPSHR) [<http://www.voluntaryprinciples.org>] and Extractive Industries Transparency Initiative (EITI) [<https://eiti.org>].

⁷ For instance, as covered in: Bebbington, Anthony (2011), *Social Conflict, Economic Development and the Extractive Industry: Evidence from South America*; Shankleman, Jill (2006), *Oil, Profits, and Peace: Does Business have a role in Peacemaking*, United States Institute of Peace; Collier, Paul and Hoeffler, Anke (2012) *High-value natural resources, development, and conflict: Channels of causation*, in *High-Value Natural Resources and Peacebuilding*, ed. Lujala and Rustad; Davis, Rachel and Franks, Daniel (2014) *The Costs of Company-Community Conflict in the Extractive Sector*, in *Corporate Social Responsibility Initiative*. Report No. 66. Cambridge, MA: Harvard Kennedy.

⁸ According to a 2008 Goldman Sachs study of the 190 largest oil and gas projects underway at that time, new projects took nearly double the time to come on stream than they did a decade ago. Analysis of a subset of these projects highlighted that non-technical risks accounted for nearly one-half of all risk factors, with stakeholder-related risks being the largest category (Davis and Franks 2014).

⁹ For instance, Royal Dutch/Shell for environmental pollution in the Niger Delta and complicity in human rights abuses perpetrated against the Ogoni people by state security forces, Rio Tinto over its copper mine in Bougainville which became a flashpoint for a civil war in Papua New Guinea, and Freeport-McMoran's copper and gold mine in West Papua, Indonesia, where the company has been accused of complicity in human rights abuses committed by state security forces as well as environmental impacts. See Agbonifo,

BG Group's decision to actively implement the UNGPs was partly driven by the company's expansion into countries with a higher human rights risk profile, such as Honduras, Tanzania, Kenya and Myanmar. The company recognised the need for strong controls and systems to safeguard against potential human rights impacts, and the related operational and reputational risks.

INVESTOR SCRUTINY

There is a clear trend towards greater consideration of environmental, social and governance (ESG) factors, including human rights, within the international investment community, beyond projects funded by the IFC or other financial institutions that have adopted the Equator Principles.¹⁰ Today, some of the largest pools of capital, such as pension and sovereign wealth funds are increasingly taking into consideration ESG factors in their capital allocation decisions. Growing interest and membership in the UN Principles for Responsible Investing (PRI) Initiative demonstrate this trend.¹¹

BG Group's decision to actively implement the UNGPs reflects this greater interest from investors in ESG factors. From 2011 to 2016, BG Group received numerous requests from investors for information on its approach to managing human rights risks. In response, BG Group recognised the importance of developing projects that would stand up to investors' increased ESG expectations and scrutiny.

CORPORATE VALUES

The argument for companies to take a proactive approach to managing human rights issues is often based on the "business case." However, based on our experience, we argue that a corporate culture that values respect for human rights is also a crucial driver for companies to implement the UNGPs. Embedding the UNGPs across a company requires the commitment and involvement of multiple stakeholders at all levels. A company cannot fully implement the UNGPs if the commitment to do so is only held by corporate social responsibility (CSR) / ethics / social performance practitioners. If a company is to successfully implement the UNGPs, a commitment to respecting human rights must be acknowledged and embraced by its leadership and staff. At BG Group, the mandate for implementing the UNGPs came from the CEO, the Group Executive and the Board Sustainability Committee. There was an explicit intent to take both a business and

John (2011) *Territorialising Niger Delta conflicts: place and contentious mobilisation*, Interface: a journal for and about social movements; Filer, Colin (1990) *The Bougainville Rebellion, The Mining Industry and The Process of Social Disintegration in Papua New Guinea*; Cochrane, Glynn (2017) *Anthropology in the Mining Industry: Community Relations after Bougainville Civil War*; and Leith, Dennis (2003) *The Politics of Power: Freeport in Suharto's Indonesia*.

¹⁰ For more than two decades, industrial and infrastructure projects seeking finance from the IFC have had to demonstrate compliance with the IFC's environmental and social policy framework requirements, now known as the IFC Performance Standards on Environmental and Social Sustainability. Similarly, the Equator Principles' environment and social risk management framework has now been adopted by 89 banks and export credit agencies. Compliance with the framework, which includes the UNGPs is mandatory for companies seeking project finance from those financial member institutions.

¹¹ Since its inauguration in 2005, PRI has increased their signatories from ~100 organisations with ~ 6 trillion USD under management to more than 1400 organisations with 59 trillion USD under management. See: [<https://www.unpri.org>]

value driven approach to human rights, championed at the highest levels of the company and reflected in BG Group's internal control framework.

PART 2: TURNING THE UNGPS INTO CORPORATE PRACTICE

In this section of the paper, we present five underlying principles which informed the design and implementation of the UNGPs at BG Group: legitimate, integrated, performance-based, focused, and transparent. Whilst we draw on examples from our experiences at BG Group, the use of these design principles is intended to provide useful reference points to human rights practitioners across industries.

LEGITIMACY

At BG Group, one of the success factors for operationalising the UNGPs was to establish legitimacy – internal and external. Internally, broad-based legitimacy was sought by establishing a clear policy framework and accountability for policy outcomes at the most senior management level of the company. BG Group’s Human Rights Policy was one of four policies that were mandatory for all employees, contractors, consultants and directors. This also included joint venture operations where BG Group was the operator.¹² These four policies were “core controls” and attracted disciplinary measures for breaches, including dismissal. This provided a clear indication that respect for human rights was a company priority.

In addition, BG Group’s Human Rights Policy was “owned” by the Executive Vice President Safety & Sustainability, with the Group Head of Social Performance and Human Rights responsible for driving implementation. The Board Sustainability Committee, which met at least four times a year, oversaw compliance. The accountability at executive and board level meant that all functions had to ensure appropriate rigour in the way that human rights were assessed and managed.

External legitimacy was sought by ensuring BG Group’s approach reflected rightsholders’ views and perspectives, was aligned with international standards and norms, and by involving independent human rights experts in the policy development process.

The content of BG Group’s social performance policy framework reflected issues that were raised through consultation and community feedback. On a project-by-project basis, rightsholders’ views on risks and impacts were also taken into consideration through BG Group’s processes of consultation, social impact assessment and management.

BG Group sought external feedback on its approach to human rights management. For instance, BG Group consulted with two leading business and human rights organisations: the Institute for Human Rights and Business (IHRB) and the Business and Human Rights Resource Centre when drafting its human rights position statement. This afforded BG Group’s efforts an element of external accountability, reflecting advice received from leading practice organisations. In addition, publishing BG Group’s policy commitments and information on its approach to human rights in the public domain played a role in legitimising its approach.

¹² In 2013 BG Group as part of a significant revision and streamlining of its internal control framework, reduced the number of policies from ~ 60 to 4, thereby further establishing the significance and importance of the company core controls.

INTEGRATION

BG Group built its approach to the UNGPs on a mature corporate governance system which already governed the management of many human rights risk areas. For example, the BG Group Social Performance Standard, introduced in 2007 and benchmarked against the IFC Performance Standards, covered issues relating to social and environmental impacts on local communities and other external stakeholders, stakeholder engagement and consultation, land acquisition and resettlement, Indigenous peoples, and access to remedy through grievance mechanisms. The issue of security and human rights had been taken up upon joining the Voluntary Principles on Security and Human Rights in 2001.

A social performance management and reporting system was also in place to ensure compliance with the Social Performance Standard across the BG Group, including both corporate and country or asset-level operations. Additionally, BG Group had developed grievance procedures for its staff and contractors to anonymously report to an independent third party any complaints through a mechanism called “Speak Up” and had mandatory asset-level grievance mechanisms for external stakeholders to voice their grievances related to BG Group.

Given the scope and depth of human rights provisions within the corporate governance structure at the time, BG Group integrated its approach to the UNGPs into existing company processes and controls, rather than establishing additional and parallel processes. For instance, given the established practice of environmental, social, and health impact assessments (ESHIA) at BG Group, an integrated approach to human rights due diligence was taken through existing social and environmental impact assessments. This avoided duplication of existing impact management systems and processes. This approach is supported by IPIECA¹³ in its guidance note on integrating human rights into ESHIAs.¹⁴ The degree to which ESHIAs were modified to account for human rights impacts in data collection, analysis, and reporting depended on the prevalence of human rights issues in BG Group’s areas of operation.

In Myanmar, for example, BG Group integrated human rights considerations into the design and implementation of its consultation and ESHIA process for offshore exploration activities in 2015-16. Rakhine state is a sensitive region in Myanmar due to its history of inter-communal violence, as well as widespread discrimination against Muslim minorities.¹⁵ By applying a human rights lens to its work, BG Group took into consideration the high vulnerability of Muslim fishermen in the area near its operations, ensuring that its own consultation activities did not trigger conflict or negative repercussions for fishing communities. The company also ensured that an appropriate grievance mechanism was established to provide access to remedy to both Buddhist and Muslim fishermen. While a stand-alone human rights impact assessment report

¹³ The oil and gas industry association for environmental and social issues.

¹⁴ See: [<http://www.ipieca.org/resources/good-practice/integrating-human-rights-into-environmental-social-and-health-impact-assessments-a-practical-guide-for-the-oil-and-gas-industry/>]

¹⁵ The Muslim communities in BG Group’s area of influence were predominantly from the Kaman ethnic group, in southern Rakhine state. Whilst the Kaman are formally recognised as Myanmar citizens unlike the Rohingya ethnic group, the Kaman were subject to violence during the intercommunal riots of 2012. In 2015 when BG Group conducted fieldwork, the region was relatively stable. We acknowledge that the situation in Rakhine has now changed, with the grave humanitarian crisis unfolding near the Myanmar / Bangladesh border.

was produced on salient human rights issues, the fieldwork and data collection for this was integrated with the ESHIA.

A comprehensive review of BG Group's asset level grievance mechanisms conducted in 2015 confirmed that existing procedures were aligned with the UNGPs' requirements on access to remedy. No substantive adjustments to BG Group's overall grievance mechanisms and access to remedy system were required. Recommendations for improvements were of operational nature, rather than principle based.

PERFORMANCE BASED

One of the key characteristics of BG Group's approach to the implementation and operationalisation of the UNGPs was to ensure a performance based approach. By this we mean that it was based on a system of mandatory controls (policies or standards), with clear accountability, senior oversight, and systems for planning, assurance and reporting to ensure compliance.

BG Group ensured that it fulfilled its obligations to do human rights due diligence by building on existing functional controls related to Human Resources, Procurement, Safety, Security, Ethical Conduct, Environment, and Social Performance. Each of these functions had a performance based system governed through mandatory standards and an inbuilt planning, assurance, and reporting cycle.

To ensure a human rights focus, and coordination between functions, BG Group established a cross-functional human rights taskforce, chaired by the Head of Social Performance and Human Rights. The taskforce met twice a year to provide assurance that potential human rights impacts were being systematically identified and addressed through internal controls. Each function provided a report, tracked compliance with the Human Rights Policy and identified human rights risks or incidents relating to their function. The taskforce discussed what steps, if any, needed to be taken to strengthen the internal controls related to human rights.

The human rights taskforce was comprised of representatives from each function. Meeting minutes were circulated to the Executive Vice President, Safety and Sustainability, the BG Group "owner" of the human rights policy. In addition, the taskforce discussed relevant human rights risks or issues related to investment decisions, new country entry, expansions related to the businesses, and relevant external trends. Where needed, the taskforce made recommendations to the Board to strengthen management processes and allocate additional resources to ensure compliance with the company's Human Rights Policy.

As the company matured, BG Group integrated human rights into the objectives and management scorecards of key personnel. For example, in Tanzania, BG Group identified human rights risks related to potential land acquisition and resettlement. Responsibility for managing these risks was integrated in the scorecards of the most senior subject matter expert and most senior level of management for BG Group in Tanzania, i.e. the Vice President Sustainability and the Country President.¹⁶ Under this management system, subject matter

¹⁶ This approach was agreed to following riots and fatalities related to a gas pipeline development project elsewhere in Tanzania. Although not related to BG Group, this helped raise the profile of potential human rights risks in Tanzania.

experts were responsible for the implementation of human rights management, while ultimate accountability for performance and delivery sat with the Country President.

FOCUSED

It is often said that all human rights are universal, indivisible and interdependent, and interrelated. The United Nations has declared that “the international community must treat human rights in a fair and equal manner, on the same footing, and with the same emphasis.”¹⁷ The advent of the business and human rights agenda has been hailed as a way to force companies to move beyond “window dressing” or a “pick and mix approach” to CSR, as companies need to acknowledge that they have a responsibility to respect all human rights.

We argue that it is not practical to insist that all human rights should be treated with the same emphasis. Companies have limited resources and need to prioritise. We suggest that the corporate implementation of the UN Guiding Principles should focus on the most important and relevant human rights issues for that business. This approach is reflected in the new business and human rights language of “saliency”, as per the UNGPs Reporting Framework.¹⁸ A company’s salient human rights issues are those that risk the most severe negative impact through the company’s activities or business relationships. This encourages companies to focus on actions where risks to people are the greatest.

Early adopters of the UN Reporting Framework, such as Unilever and Newmont, use the language of salience to explain their primary areas of focus.¹⁹ In its ‘public position on human rights,’ BG Group set out how the company managed salient human rights issues related to security provision, Indigenous people, land acquisition and resettlement, impacts on communities and the environment, workforce, contractors and suppliers, and access to remedy.

Prioritisation is necessary to ensure that the company focuses on priority areas for human rights risk management. From a project impact assessment point of view, our approach at BG Group was to conduct a rapid scan, and then focus on salient issues early in the impact assessment process. Some human rights impact assessments take a list of human rights, derived from the international bill of rights, and then assess a company’s potential impacts against each human right. The logic behind this is that no human rights issues are “missed”. While it is important not to miss potential “blind spots”, at BG Group, we limited a broad-based assessment to a rapid scoping exercise. This allowed us to focus on key issues for further consideration and investigation.

For example, BG Group determined that its exploration project off the coast of La Mosquitia, Honduras, was high-risk, despite the fact that early off-shore exploration activities are usually low-impact from a human rights perspective. This was due to the high levels of vulnerability of Indigenous, local fishing communities, as well as their strained relationships with government authorities, further complicated by the presence of drug trafficking activities and armed forces

¹⁷ From the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights in Vienna on 25 June 1993, UN Office of the High Commissioner for Human Rights, See: [<http://www.ohchr.org/EN/ProfessionalInterest/Pages/Vienna.aspx>]

¹⁸ See: [<https://www.ungpreporting.org/>]

¹⁹ See: [https://www.unilever.com/Images/unilever-human-rights-report-2015_tcm244-437226_en.pdf]; [<http://sustainabilityreport.newmont.com/2015/ethics-and-governance/human-rights#!performance>]

in the region. The risk of BG Group's presence to negatively affect relationships between these groups and contribute to conflict was identified as a salient human rights risk area. In response, BG Group commissioned a conflict and human rights assessment, which focused specifically on BG Group's presence in the region and existing drivers of conflict, which, if triggered or exacerbated, could result in negative human rights impacts.

BG Group's ability to adequately respect the Indigenous right to consultation was considered to be another salient human rights risk given the company's limited ethnographic understanding of Honduras and the lack of clear government regulation of Indigenous consultation. As such, BG Group commissioned a number of studies and assessments to ensure that the scope of consultation activities included all communities potentially affected by operations. This then informed the design of a consultation process aligned with the ILO (International Labour Organisation) Convention 169 on Indigenous and Tribal Peoples.

TRANSPARENT

There are ever increasing demands for companies to be transparent about how they manage human rights impacts. The European Coalition for Corporate Justice, for example, states that "the disclosure of information about the social, environmental and human rights impacts of companies' activities is essential to prevent adverse business impacts and hold companies to account when they occur".²⁰ The UNGPs also emphasise transparency – the corporate responsibility to respect requires a company to have a publicly available policy commitment to human rights, and to communicate their human rights performance.

Transparency was a key principle in pro-active management of human rights at BG Group. At the corporate level, BG Group published its human rights policy and a public position on human rights which outlined BG Group's human rights commitments and human rights governance system.²¹ BG Group reported on its human rights performance in an annual sustainability report. This included information on grievances as well as incidents reported through its "Speak Up" mechanism.

By ensuring information was available in the public domain, BG Group demonstrated its willingness to be held accountable. Transparency about potential impacts with rightsholders and interested parties allowed for meaningful and constructive engagement with external stakeholders. A high level of disclosure helped to establish BG Group's position as a high performer in social and environmental performance.²²

BG Group also sought to be open and transparent about actual and potential impacts from its projects and operations. For instance, in Queensland, Australia, BG Group established six community consultative committees across the extended footprint of its Queensland Curtis Liquefied Natural Gas (QCLNG) project (upstream, pipeline and LNG plant). The committees were first established in early 2010 to provide a forum for information exchange between the

²⁰ European Coalition for Corporate Justice, see: [<http://corporatejustice.org/news/135-5-years-of-ungps-5-business-human-rights-issues-to-focus-on>]

²¹ See: [<https://business-humanrights.org/en/bg-group-publishes-revised-company-wide-human-rights-approach-in-line-with-un-guiding-principles>]

²² In 2014 and 2015 BG Group was consistently ranked as a leader by the FTSE 4 Good index in "Human Rights and Community" and "Corporate Governance" receiving maximum scores in these two areas.

company and community representatives from a cross-section of society. The committees identified and provided feedback about issues and opportunities related to company impacts, construction and operational activities. Minutes of these meetings were published on the company website.²³ In Myanmar, where external scrutiny on companies operating in the country is high, BG Group shared information about potential impacts in a number of forums which included:

1. A desktop human rights assessment commissioned by BG Group to inform its entry into Myanmar, was shared with the Myanmar Centre for Responsible Business, with the removal of sensitive information such as names of individuals. The Myanmar Centre for Responsible Business (MCRB) used this information to inform the development of the Oil and Gas Sector Wide Impact Assessment (SWIA) which is available in the public domain as a resource that can be used by civil society, industry, government, communities and others.²⁴
2. At the local level, BG Group presented the findings of the environmental and social impact assessment (ESIA) to potentially affected communities and local stakeholders. Local-level transparency enabled BG Group to sense-check the findings of the assessment, seek feedback on mitigation strategies and ensure that communication channels were established between potentially affected communities and BG Group.
3. At the national level, BG Group convened a workshop to share the findings of its environmental and social impact assessment with local, national and international civil society representatives, international development agencies, and other interested parties. BG Group disclosed information in a way in which stakeholders were able to understand technical information, ask questions, raise concerns and make observations. The workshop demonstrated the company's willingness to be transparent with critical stakeholders.
4. BG Group published its ESIA on the company website in English with a summary in Burmese.

Partnerships with key human rights organisations as well as strategic stakeholder engagement processes require transparency, and also help to demonstrate a commitment to transparency. As an example, BG Group entered into a strategic partnership with the US-based international NGO, RESOLVE, to participate in a multi-stakeholder dialogue on Free Prior and Informed Consent (FPIC), a process to safeguard Indigenous people's collective rights, a sensitive issue for extractive companies. Openness and willingness to discuss sensitive issues was crucial in order to meaningfully contribute to this dialogue, and to enable BG Group to benefit from the insights and inputs of other organisations.

²³ See: [<http://www.bg-group.com/762/qgc/sustainability/community/community-consultative-committees/>]

²⁴ See: [<http://www.myanmar-responsiblebusiness.org/swia/oil-and-gas.html>]

PART 3: DILEMMAS AND CHALLENGES

It would be remiss to focus on operationalising the UNGPs and overlook the dilemmas of practical implementation. Here we explore three key challenges and dilemmas:

- seeking the “right balance” to transparency;
- maintaining the corporate ability to exercise leverage over host government stakeholders; and
- implementing the Corporate Responsibility to Respect in the absence of the State Duty to Protect.

SEEKING THE BALANCE ON TRANSPARENCY

We support the principle of transparency and recognise that it is integral to effective implementation of the UNGPs. At the same time, we have come up against limitations around what information a company can, and indeed should, disclose in the public domain. We disagree with the notion that all information relevant to human rights should be disclosed by a corporate entity. In fact, on some occasions, this can create or exacerbate existing human rights risks.

Publishing information about sensitive human rights issues can exacerbate social tensions, and put rightsholders at risk. In our experience at BG Group, we concluded that full disclosure of issues discussed at consultation meetings relating to overlapping land claims in Bolivia (as part of an impact assessment) could have exacerbated inter-community tension and conflict between Indigenous groups and between Indigenous groups and *campesinos*.²⁵ Likewise, publishing information about communities who rely on artisanal mining, fishing or farming practices that are not considered legal or supported by the state, could have put those communities at risk of state intervention and/or intimidation. It is important that companies consider the risks of publishing information in the interests of corporate transparency in cases in which that may put rightsholders at risk.

When considering publishing information from grievance mechanisms and details about complaints, caution needs to be exercised to protect complainants and respect their right to privacy, especially if grievances are raised anonymously. Anonymity is only one form of protection – in some cases even a general characterisation of a complaint could make it possible for the complainant to be identified. Where this could lead to victimisation, details should not be published.

The UNGP reporting framework recognises that companies may not always be able to disclose certain information, but sees this occurring in exceptional circumstances.²⁶ The reporting framework recommends that a company indicates the nature of the information it has omitted, and explains the reasons for the omission, such as risk to human rights of stakeholders, specific legal prohibitions, confidentiality constraints, or the absence of reliable information. The framework posits that where a company is prevented from disclosing information in specific or

²⁵ Peasant communities, mainly tenant farmers or farm workers in Latin America.

²⁶ As above, [<http://www.ungpreporting.com>]

explicit form, it should, wherever possible, provide it in aggregated or anonymized form to avoid significant gaps in its disclosure.

Based on our experience, aggregating or anonymising information can come with challenges. On one hand, information that is presented in a highly generalised format tends to lose purpose and meaning. On the other hand, when information is anonymised, if the circumstances of the situation are recognisable, vulnerable groups could potentially face the risk of exposure and potential harassment. We argue that the principle of transparency and disclosure should always be weighed up against the risk of putting rightsholders at risk, and increasing the likelihood of victimisation and/or retaliation. Integral to the principle of corporate transparency is a responsibility for how information is disclosed, used, and cognisance of unintended consequences, to ensure the protection of rightsholders.

MAINTAINING THE CORPORATE ABILITY TO EXERCISE LEVERAGE OVER HOST GOVERNMENT STAKEHOLDERS

There can also be a tension between adhering to the principle of transparency and seeking leverage over government to protect human rights. If a company discloses information about human rights impacts, especially when dealing with sensitive issues involving state authorities, it could inadvertently damage its relations with government. From a business perspective, this could have significant commercial implications. From a human rights perspective, this could lead to company losing leverage with government to agree on a course of action that would have a positive human rights outcome.

When BG Group entered Myanmar in 2013 to explore offshore from Rakhine State, it sought to conduct an ESIA informed by community input and participation. Access to field sites in Rakhine State was only possible through government permissions, something the company gained by establishing respectful relations. This enabled BG Group to conduct a consultation and impact assessment which included Muslim minorities, establish grievance mechanisms and implement beneficial social investment programmes for communities in Rakhine state.²⁷

IMPLEMENTING THE CORPORATE RESPONSIBILITY TO RESPECT IN THE ABSENCE OF THE STATE DUTY TO PROTECT

The UNGPs are clear in that the corporate responsibility to respect human rights is independent of the state duty to protect human rights. The challenge here is that it is harder for companies to meet the responsibility to respect human rights when states do not have adequate standards and regulations, or do not enforce them effectively.

We are supportive of the corporate responsibility to respect human rights. We simply ask, from a practical perspective: to what extent can a company fulfil its obligations in the absence of the state fulfilling its duty to protect? Many extractive companies are signatory to the Voluntary Principles on Security and Human Rights (VPSHRs) which govern how companies manage human rights risks relating to security forces around their sites. Where public security forces,

²⁷ We acknowledge that the situation in Myanmar has now changed with mass displacement of Rohingya people from northern Rakhine state and the ongoing humanitarian crisis.

such as the police or the military, are stationed around a company's operations, a company can engage the government in order to agree on what is expected from public security forces when providing protection to its facilities. However, the company cannot dictate the operating procedures of a national security force. This can be sensitive and viewed as a threat to a nation's sovereignty. BG Group's approach to managing this issue was to engage with government and relevant public security personnel in accordance with the VPSHRs. For example, in Honduras, although the government informed BG Group that its security forces had received training from the US forces, BG Group held security briefings with the public security forces supporting its project in Honduras, which included a presentation on the VPSHRs.

The management of issues such as land acquisition and resettlement also require state support. In countries such as Kazakhstan, Tanzania, and Mozambique, resettlement is a government-led activity. Resettlement of people is a high impact activity and unless properly managed it can lead to long-term social, economic and human rights impacts for affected people. Government support is crucial for ensuring that resettlement is conducted to international standards, including improving or restoring the living conditions and livelihoods of displaced persons. However, companies may not be able to control what standards are adopted in a government-led resettlement project. The approach BG Group adopted when its joint ventures in Kazakhstan and Tanzania involved resettlement was to establish a steering committee with key government representatives. This provided a forum to engage with government and agree on a set of resettlement principles, and to ensure the design and implementation of resettlement programme was consistent with international standards.

These dilemmas illustrate that operationalising the corporate responsibility to protect is not simple. Companies face a complex set of challenges in terms of what they can or should do, especially when operating in contexts where the state is unwilling or unable to meet its human rights obligations. We believe that companies need to be pragmatic, and always be cognisant of risks to rightsholders.

CONCLUSION

The UNGPs have been widely accepted as the normative standard on business and human rights. Drawing from our experience in the extractives sector, we have explored how the UNGPs were applied at BG Group in the period between 2010 and 2016. We have described some of the underlying design principles that informed the company's approach at the time, and explored some of the dilemmas and challenges that accompany the practical implementation of the corporate responsibility to respect human rights.

At BG Group, the pre-existence of a strong, performance-based management control and assurance systems enabled the effective and efficient integration and management of human rights issues over time. The building of internal staff capacity and a strong internal function were also important. Further to existing management control systems, the importance of top level leadership cannot be overstated in terms of securing company "buy-in". BG Group's CEO put the company's position on human rights into the public domain and called for human rights orientation for the executive board. This sent a clear signal that respecting human rights was essential to the way the company did business.

We believe that implementation and operationalisation of the UNGPs should be legitimate in the eyes of internal and external stakeholders, integrated into company systems, performance based, focused on key issues and transparent. We also recognise that implementing the UNGPs is a journey. BG Group's approach to human rights evolved over time in terms of becoming more explicit, rigorous, and systematic, as the company responded to external expectations and an increasing human rights risk profile.