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**The Voluntary Principles of Security and Human Rights : Assessing Impact on Company Behaviour
in Colombia**

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**The Voluntary Principles on Security and Human Rights:
Assessing Impact on Company Behaviour in Colombia**

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Thesis submitted to the
Faculty of Graduate and Postdoctoral Studies
In partial fulfillment of the requirements
For the MA degree in Globalization and International Development

Globalization and International Development
Faculty of Social Sciences
University of Ottawa

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Your file *Votre référence*
ISBN: 978-0-494-61272-9
Our file *Notre référence*
ISBN: 978-0-494-61272-9

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LIST OF ACRONYMS

ACP	Asociación Colombiana del Petróleo (Association of Colombian Oil Producers)
AUC	Autodefensas Unidas de Colombia (United Self-Defense Forces)
ANH	Agencia Nacional de Hidrocarburos (National Hydrocarbons Agency)
ATCA	Alien Tort Claims Act
CSBP	Conflict Sensitive Business Practices
CSR	Corporate Social Responsibility
ELN	Ejército de Liberación Nacional (National Liberation Army)
FARC	Fuerzas Armadas Revolucionarias de Colombia – Ejército del Pueblo (Revolutionary Armed Forces of Colombia)
HES	Health, Environment and Safety
HESC	Health, environment, Safety and Communities
TNCs	Transnational Corporations
VPs	Voluntary Principles on Security and Human Rights

ABSTRACT

The debate over the use of legal regulation and voluntary initiatives for generating responsible business practices from companies operating abroad has raised concerns regarding the effectiveness of voluntary initiatives. A main argument against voluntary initiatives is that companies adopt them solely to boost corporate image, and that implementation has been limited. To provide insight into this debate, research was conducted on the Voluntary Principles on Security and Human Rights (VPs), an initiative in the extractive sector that focuses on safeguarding human rights. The research involved three case studies on companies operating in Colombia, including BHP Billiton, Occidental Petroleum and Talisman Energy. The findings of this research indicate that overall the initiative has generated some improvement in the way that companies manage potential security and human rights risks, providing evidence that companies are not adopting voluntary initiatives solely for the purpose of boosting public relations.

ACKNOWLEDGEMENTS

I would like to acknowledge and express my sincere appreciation to those who contributed to the writing of this thesis. I would first and foremost like to thank my thesis supervisor, Don Hubert, who has helped immensely in not only guiding me through this process, but also assisting me in narrowing down a topic that truly interests me.

I would like to thank my thesis committee members, Paul Haslam and Deborah Sick, who have assisted me in both the writing of my thesis proposal and in fine tuning the methodological aspects of my research.

I would like to thank all of those who provided me with valuable information about the VPs, the extractive sector, and the companies examined in this thesis. This would not have been possible without them.

I would like to thank all of my friends in the Globalization and International Development program. I have thoroughly enjoyed spending the last two years learning from all of you. I would specifically like to thank my roommate and close friend Christa Romaldi, with whom I spent countless theses writing sessions.

And finally, I would like to thank my parents, who have supported me in all of my academic endeavours, and who have been extremely understanding and patient with me through this process.

PART I: INTRODUCTION

The continued explosion in the number of companies operating overseas has amplified the level of scrutiny from civil society organizations regarding the negative impacts that many of these companies have on the communities surrounding their operations (Koenig-Archibugi, 2004; 234). Some of these negative impacts have included poor labour standards for employees, a lack of transparency and reporting on company operations, a lack of contribution to local development, unsustainable environmental practices, and human rights violations. Much of the scrutiny afforded to companies operating overseas stems from the lack of national or international regulation of company behaviour. While some host governments have applied national regulation to companies operating in their territory who have violated national or international law, other host governments have ignored such violations. In extreme cases, host governments have been involved or participated in such violations. Companies have also enjoyed a lack of accountability in their home states, as the use of national regulation for holding companies accountable for violations committed abroad is often unclear. In addition, the lack of accountability and regulation at both the home and host state level is extended to the international context, as general international law or international humanitarian law do not address company behaviour.

In place of regulatory standards, the private sector has responded to the criticisms of civil society organizations with a plethora of voluntary corporate social responsibility initiatives. These voluntary initiatives provide companies with a set of guidelines or a code of conduct outlining their commitments to ethical behaviour and providing guidance on best practices. While some have accepted adherence to voluntary initiatives as an efficient way to promote responsible business practices, these types of initiatives have come under scrutiny from sceptics who are concerned with their effectiveness. In particular, many critics claim that companies are only adopting these initiatives as a way to better their corporate image, and that the initiatives are not resulting in improved company behaviour.

These emerging criticisms highlight the need for further research on the actual effectiveness of voluntary initiatives.

This paper examines one international initiative to have emerged as a result of particular concerns regarding security and human rights in the extractive industries. The creation of the Voluntary Principles on Security and Human Rights followed allegations of complicity in human rights violations that were brought against the private and public security forces responsible for providing several companies operating abroad with protection. These allegations highlighted the complexity of extractive operations located in weak states or states experiencing conflict, and resulted in the realization that companies face many challenges related to their use of private and public security forces (Tripathi, 2009; Personal Communication). The VPs are designed to guide the operations of companies operating in conflict zones and unstable environments, in order to assure that neither they nor their affiliates are complicit in human rights violations. The following research explores how effective the VPs have been at generating changes in policy, and to some extent practice, of company members, attempting to reduce the risk of member companies becoming complicit in human rights violations through their relationships with security forces.

The paper is divided into three parts. The first part is composed of two chapters. The first chapter sets the context for the research by examining the debate revolving around legal regulation of transnational corporations (TNCs) operating abroad and voluntary codes of conduct. The second chapter presents the more focused area of research, the VPs, and sets out the research design, including an outline of the methodology and analytical framework that was used to conduct the case studies.

The second part includes a background of the conflict in Colombia, and the application of the methodology and framework of the research to three case studies of the following VPs members: Occidental Petroleum, Talisman and BHP Billiton. The case studies include a background of company operations, past human rights accusations, and detailed information outlining the company's implementation of the VPs into their policy and operations.

The third and final part synthesizes the findings of the case studies presented in the second part in order to identify specific conclusions relating to the three case studies, as well as broader conclusions relating to the debate over voluntary initiatives. In the context of specific conclusions, the research questions are addressed and key areas of success, as well as challenges faced by the companies in terms of implementation, are discussed. The chapter concludes with a general discussion of what this research means in relation to broader issues of corporate social responsibility and the use of voluntary codes.

CHAPTER 1: VOLUNTARY CODES OF CONDUCT VS. LEGAL ACCOUNTABILITY

Prior to the focus on corporate social responsibility (CSR), companies operating internationally enjoyed relatively less intense scrutiny regarding their operations abroad. This absence of scrutiny was coupled with an absence of regulation, as companies were not being held accountable for their negative actions abroad by their home governments or their host governments in the countries where they were operating. This absence of regulation was extended to the international context, and as Simons (2004: 103) wrote, “[n]either general international law nor international human rights law clearly impose direct legal obligations on TNCs to respect human rights”.

Yet, several scandals involving companies operating abroad, such as the Shell oil spill in Nigeria or the use of child labour by Nike, have brought criticism from civil society regarding a lack of regulation and accountability for companies operating abroad, and has led to a resurgence in interest in CSR (Carrasco, 2007; 455). While the focus had previously been on environmental, labour and social aspects, this focus has extended to include concerns over human rights. This is particularly the case for those companies operating in developing countries, where governments are often unable or unwilling to monitor and regulate corporate activity when dealing with human rights (Koenig-Archibugi, 2004; 234). These scandals, along with the growth and strengthening of NGO global networking, a process facilitated by globalization, has led to a relatively influential international network of civil society organizations that are able to apply pressure to companies having devastating impacts outside of their home state (Guaqueta, 2007; 23:). As Watts (2005, 375) states, “There is now a small army of civil society groups, watchdog agencies, and NGOs devoted to the monitoring and surveillance of corporate activity in an increasingly global world”.

Aside from putting more pressure on companies to demonstrate greater due diligence regarding how they address human rights, the lack of national and international regulation governing the behaviour of TNCs operating in states abroad has also led NGOs to demand that governments implement stronger regulation. Those in favour of stronger regulation believe that the strengthening of national and international law will lead to

greater accountability for TNCs. This will provide greater incentive to comply, as TNCs who do not comply will be penalized (Richardson, 2004; 181).

In terms of national regulation by home countries, there has been research into the use of domestic legal systems as a potential avenue for prosecuting corporate actors who violate international criminal law and international humanitarian law. A report released by the Fafo foundation published the findings of a 16 country survey of domestic legal systems in an attempt to examine the possibility of using national legal systems to hold TNCs liable for violations of international criminal and humanitarian law. The report “confirms the view that it is possible to hold business entities liable for the commission of international crimes” (Fafo, 2006; 27).

For example, the United States has imposed national legislation in the form of the Alien Tort Claims Act (ATCA) that allows foreign citizens to sue TNCs for breaking international law, for example human rights violations, outside of the US (Shamir, 2004; 639). Nevertheless, the use of ATCA is not without limitation because the scope of the act is still debated, thus whether or not it can be effectively used for holding corporations accountable remains unclear (Choudhury, 2005; 44). For example, under ATCA, courts can only hold TNCs accountable for slave trading, genocide and war crimes. Any other violation of international law is only defined as an obligation of the state. “In other words, if a corporation is charged with violating the law of nations on grounds other than slave trading, genocide, or war crimes, it cannot be held liable unless the plaintiff establishes that the nonstate actor proximately caused the violation by “exercising control” over a government actor or shows that a corporate defendant acted in the capacity of a state actor” (Shamir, 2004; 642). While there remain obstacles with the use of domestic legal systems in this manner, there is the potential that it could become increasingly useful as states begin to set precedence in this area (Fafo, 2006; 28).

Yet it is difficult for home and host states to regulate corporate activity and to enact legislation holding TNCs accountable for human rights violations. For host states, these difficulties stem from the overwhelming importance of TNCs to national economies, particularly for states in the developing world since many of them lack the infrastructure or

the political will to take action against them. Home states often hesitate to regulate corporate activity abroad because of the potential impact this could have on diplomatic relations with host states (Moon, 2007; 305; Richardson, 2004; 172).

In terms of international law, one challenge has been that it was created for states as opposed to non-state actors. Under traditional international human rights law, states have the sole responsibility to protect human rights while TNCs are responsible for abiding by the law imposed by the state (Simons, 2005; 76). While many still believe that human rights obligations should remain with states, there is some debate over whether or not TNCs should also hold this responsibility (Sorell, 2004; 129). This argument is most often used in cases where governance is weak and states are not upholding human rights. The responsibility then shifts to the TNCs operating in that state to assure that they are abiding by human rights law to the best of their ability (Duke, 2000; 343).

Another challenge for implementing international legal regulation is the lack of clarity on the meaning of complicity in human rights violations. In most cases TNCs are not accused of directly committing human rights violations, but of complicity in human rights violations through the actions of their security companies and links to government forces. Therefore, there is debate regarding whether or not TNCs should be held accountable for violations committed by third parties, and whether or not the actions of third parties should have been foreseen (ICJ, 2008; 1; Ruggie, "Business and Human Rights", 2007; 10). While John Ruggie, Special Representative to the Secretary General on Business and Human Rights, defines complicity in human rights abuses by TNCs as "...indirect involvement by companies in human rights abuses - where the actual harm is committed by another party, including governments and non-State actors" (Ruggie, 2008; 20), there still remains some uncertainty regarding the idea of complicity. There is little agreement regarding whether or not TNCs could be held liable in cases where they should have known their actions would lead to or contribute to human rights violations.

While the absence of national and international regulation continues, companies have responded to NGO pressure with a plethora of voluntary corporate responsibility initiatives, designed to provide companies with a way of demonstrating that they are acting

responsibly. These initiatives have included various fields, such as labour, environment and development, yet only recently have initiatives been developed that focus on human rights (Watts, 2005; 9.3). While these initiatives are not considered to be regulatory, there are some that believe that a body of soft-law may emerge and eventually develop into more robust regulatory mechanisms (Guaqueta, "Company Operations" 2006; 23; Weissbrodt & Kruger, 2003; 914). These include both internal and external initiatives that provide codes of conduct or guidelines to TNCs in various industries.

Proponents of voluntary initiatives argue that voluntary initiatives provide companies with incentive to become members as other companies begin to join (Richardson, 2004; 174). TNCs that join voluntary initiatives are also seen as having a comparative advantage as they create a positive corporate image, and are less likely to face negative media attention or be pressured by NGOs and communities (Duke, 2000; 346). NGOs could therefore potentially serve as monitors of TNC activity, to assure that they are abiding by their selected standards (Duke, 2000; 253).

Furthermore, it is argued that one single set of international standards for all TNCs will not take into account the diversity of the corporate world. There are approximately 63 000 TNCs worldwide, according to UNCTAD (Fuchs, 2007; 2), and all are of different size, structure and belonging to different industries. Proponents argue that voluntary initiatives can be tailored to achieve the best guidelines and principles that are suitable for TNCs in different contexts (Radon, Dragos & Maassarani 2008; 56; Richardson, 2004; 174).

In addition, although TNCs have been involved in human rights abuses, there is some growing consensus that they can also have a more positive and influential role in terms of peace and security (Tripathi, 2008; Personal Communication; Sherman, 2001; 1). Corporate actors often have first hand access to government officials and are able to engage in 'quiet diplomacy' or 'closed-door' meetings to assure that their business is protected. This allows them to form close working relationships with local authorities, making their business a potential outlet for mediation for states experiencing conflict. Voluntary initiatives can encourage companies to take a proactive role in advocating for the respect and protection of human rights to the governments in the states where they

operate. While this can be an important aspect of voluntary initiatives that has been pointed out, it is important to consider that this can have disadvantages. TNCs may use this to their advantage to further their own interests, instead of what is in the best interest of the state (Sherman, 2001; 7).

Despite the claims of proponents of voluntary initiatives, these initiatives have been widely criticized by NGOs who claim that companies are joining solely to boost their corporate image and public relations, and that companies are not in fact changing the way that they operate. For example, in his article *Corporate Social Responsibility – a PR Invention?*, Peter Frankental addresses many paradoxes in the area of corporate social responsibility, including: governance structures that are concerned more with the interests of shareholders than stakeholders; markets that do not favour ethical companies; a definition of CSR that remains unclear; the inability of companies to admit any wrongdoing; lack of compliance mechanisms for voluntary initiatives; and the positioning of CSR issues on the margins of a company's governance structure as opposed to being embedded within the entire corporate structure. He concludes "that corporate social responsibility is an invention of PR, and will remain so, until the paradoxes which [he] outlined are addressed" (Frankental, 2001; 23). Foremost among these challenges is the question of whether or not these types of voluntary initiatives are sufficient for holding TNCs accountable for human rights violations (Radon, Dragos &Maassarani 2008; 56: International Council on Human Rights Policy, 2002).

Sceptics argue that these initiatives are too vague, do not use obligatory language and have not resulted in concrete actions by their members (Simons, 2005; 79; Vogel, 2005; 140 Richardson, 2004; 175). The lack of effective monitoring mechanisms is also particularly problematic. Simons argues that there is little monitoring of TNC activity under voluntary codes, and that these efforts are often deficient of meaningful oversight capacity (Simons, 2005; 87).

While both the positive and negative aspects of voluntary initiatives have been highlighted, there has been limited empirical research performed on existing CSR initiatives, particularly efforts to measure the impacts they have had and their

effectiveness (Pearson & Seyfang, 2001; 50). As Blowfield (2007, 684) writes, “it is surprising how patchy attempts to assess the outcomes of CSR empirically have been, and that we do not know more about CSR’s overall impact than we do”. Measuring the effectiveness of voluntary initiatives can be difficult because of the various factors that are involved in success or failure of a CSR initiative, and the differences between various voluntary initiatives make them hard to compare. A review of the available literature suggests that the research that has been conducted also differs highly in depth, scope, focus and methods, making it difficult to draw broader conclusions. Of the research conducted, much of it revolves around the impact of CSR initiatives on labour standards, the environment and development, and less on human rights.

The research on CRS mechanisms that address labour standards indicates that these mechanisms have had mixed results. Two recent reports produced by Verite¹ for their China Suppliers Conference in 2005 demonstrate two case studies where social compliance measures have led to significant changes in two factories where they were implemented (Verite, 2005). However, other reports seem to indicate that while there have been successes, there are still many problematic issues with CSR mechanisms and labour standards. In a study on the Thai footwear and apparel industries, for example, researchers found that codes of conduct have improved some aspects of labour standards, such as occupational health, but did not have an impact on many other issues such as the treatment of employees (Yimprasert & Candland, 2000).

Pearson and Seyfang also found in their study of voluntary codes of conduct for labour standards that CSR mechanisms still had many challenges to overcome, such as poor monitoring and ulterior motives for TNC participation. Yet they did point out that these mechanisms allow for an expansion in participation at the negotiation level of several groups that had once been excluded. This has allowed for better communication among affected constituencies and for more representation of workers’ interests in terms of policy dialogue (Pearson & Seyfang, 2001; 69).

¹ Verite is a non-governmental organization that monitors international labour issues, focusing particularly on off-shore operations.

Additionally, Kolk and Tulder (2002) attempted to identify factors that increase the likelihood of implementation of voluntary initiatives addressing child labour. They found that overall, voluntary initiatives were an effective way of promoting corporate responsibility when addressing the issue of child labour. Additionally, they found that third party verification was an important part of what made a voluntary initiative successful. This is an important finding as lack of monitoring has been one of the criticisms listed by those who are sceptical of voluntary initiatives.

In terms of contributing to local community development, results for CSR initiatives have not been encouraging. Some even claim that we know little about how these initiatives affect the people for whom they are designed (Blowfield, 2007; 693). In his report prepared for the Corporate Responsibility Research Conference, Ralf Barkemeyer found that the UN Global Compact, for example, had little impact on the ground in developing countries and was not living up to its developmental promises (Barkemeyer, 2007; 18). In another study performed by Frynas, it was found that the oil, gas and mining sectors have not followed through with their intentions on development assistance (Frynas, 2005; 581)

Of the shortcomings identified in the research on voluntary initiatives, one of the most frequent issues appears to be that of monitoring. For example, in their analysis of self-regulatory CSR mechanisms in relation to human rights, Gagnon, Macklin and Simons found that few of these mechanisms adequately addressed or provided monitoring and reporting by an outside source (Gagnon, Macklin & Simons, 2003; 3). Wells also found in his analysis of NGO-monitoring of international labour standards that NGOs faced many structural limitations in providing third-party monitoring (Wells, 2007; 63). He states that a “lack of monitoring capacity, particularly regarding more complex issues, such as freedom of association, discrimination and harassment, is a pivotal weakness of all NGO monitoring models” (Wells, 2007; 63).

CHAPTER 2: THE VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS

This thesis is designed to respond to the lack of empirical study of the impact and effectiveness of voluntary codes of conduct. Specifically, it seeks to examine the degree to which the substantive elements of voluntary commitments are integrated into the practice of company operations. The voluntary initiative that will be examined here is the Voluntary Principles on Security and Human Rights, a unique multilateral voluntary initiative that places an emphasis on the adherence to human rights principles for TNCs operating in states experiencing prolonged conflict or civil war. This initiative was chosen particularly because of its salience in the area of CSR, as the current relationship between the extractive industries, securitization and human rights violations has become a recent focus. As Watts (2005, 379) explains, there is a growing “necessity for oil companies to operate in undemocratic, military, and weak postcolonial petro-states (failed or rogue or crony capitalist to use the current parlance)”. The fact that companies in the extractive industries have been operating in a context where human rights violations occur frequently has meant that the two have become interconnected (Watts, 2005; 379).

The VPs, which are now recognized as the baseline standard for companies operating in the extractive industries, were formed in 2000 following an eleven month dialogue process (Ganesan, 2006; Simons, 2005: 82). They were created in response to concerns regarding companies in the extractive industries and human rights, and provide participating TNCs with guidelines for operating in such conflict situations, focusing on risk assessment, and the arrangements between TNCs and private and public security forces. The main objective of the VPs is to assure the safety and security of company operations in host states, while assuring that companies are not committing or contributing to human rights violations. They encourage companies to examine in greater depth the impact that their actions can have on the human rights situation of surrounding communities (VPs, 2008; The Principles). For example, when a company seeks the assistance of the public forces of a host state, the nature of the relationship between the public forces and citizens must be taken into consideration, especially in terms of past human rights records.

While the VPs are a set of principles, they are procedural in nature as they instruct companies on how to practice due diligence in the area of human rights, particularly in regards to their private and public security providers. For example, the VPs state that “[c]ompanies should consult regularly with host governments and local communities about the impact of their security arrangements on those communities” (VPs, 2009; The Principles). Aside from these practical guidelines, the VPs also provide a forum where members can engage in dialogue regarding the extractive industries, company behaviour, security arrangements and human rights protection. Member companies can share best practices and learn from each other’s experiences in dealing with the issues at hand. Information is also shared between different constituencies, including companies, NGOs and governments, which can provide a variety of perspectives and an examination of situations from different angles. In order to assure the highest level of openness amongst members, the transcripts from meetings and forums of the VPs are not available to anyone outside of the participating members (VPs, 2008; The Principles).

The VPs also require companies to become more involved and aware of the communities and states where they operate. They are encouraged to develop a greater understanding of these communities and attempt to mitigate or prevent the negative social, environmental, economic and political consequences that they may have on the security situations of communities affected by conflict. The VPs can therefore be regarded as a corporate tool for TNCs who are attempting to engage in socially responsible economic activity in countries experiencing conflict, and wish to engage in such dialogue with other stakeholders (Guaqueta, “Company Operations” 2006; 28).

The structure of the VPs consists of the Plenary, the Steering Committee, various working groups, in country task forces and the secretariat. The plenary consists of all members of the VPs, who meet annually to discuss issues of implementation, administration and outreach. The steering committee is made up of two members from company participants, NGO participants and government participants, along with the government hosting the plenary. The committee is charged with leading the plenary for that particular year and acts as a conduit to the rest of the plenary. The secretariat is run

by Business for Social Responsibility and the International Business Leaders Forum. The role of the Business for Social Responsibility and the International Business Leaders Forum is mainly as a facilitator of the VPs, and to manage administrative aspects of the process (Business for Social Responsibility, 2008; 2).

In January 2006, the 5-year anniversary of the VPs, the Communications Working Group presented an in-depth report on the successes and challenges in implementing the VPs. This provided much needed information regarding the successes and challenges involved in implementing the voluntary principles, as well as more specific information regarding implementation in Colombia and Indonesia (VPs, 2008; Timeline of Events).

Participants of the VPs include not only companies in the extractive industries, but also national governments and NGOs, all concerned with the role of TNCs in protecting and promoting human rights. There are currently 18 TNCs, five governments, eight NGOs and three Observers participating in the VPs (for a complete list of participants see Annex 1). Membership of the VPs is on a voluntary basis and in order for companies to be allowed to sign on to the VPs they must receive the consensus from the existing participants. Aside from formal participants, the VPs include companies who have adopted the principles yet have not officially signed on (Hendry, 2008; p14).

While participation is voluntary, participation criteria for the VPs were formally implemented after agreement at the 2007 plenary in Washington, DC. The criteria were designed to increase the robustness of the VPs and make members more accountable for their actions and to their commitment to implementing the VPs. The new criteria include minimum requirements that must be met before companies can sign on to the principles, a dispute resolution mechanism where complaints can be brought against participating companies, increased transparency for the process of accepting new members and a commitment to reporting on implementation (VPs, 2008; Participants).

Methodology

The literature covering CSR is quite extensive, however one area that has been limited is research on the effectiveness of voluntary initiatives. Because voluntary initiatives have been under examined, there is little known about the circumstances under

which companies will implement such standards. As a result, this study sought to test two related hypotheses. The first hypothesis is that contrary to the prevailing notion that companies join voluntary initiatives in order to boost their corporate image, and that this results in minimal change in company behaviour, the VPs are being implemented by companies because they provide guidance on how to respond to important challenges facing corporations operating in conflict zones. The second hypothesis is that the VPs will be more effectively integrated into company policy and practice in cases where the company has been exposed to a previous significant human rights scandal. Through the use of literature research, company reports and interviews, three case studies were conducted on member companies operating in Colombia in order to test the stated hypotheses. The case studies are of an inductive nature, as they provide building blocks for theory development and hypotheses generation, yet in themselves they “do not cumulate directly to a theory” (George & Bennett, 2004; 75).

Colombia was chosen as the country of focus for this study because it presents a ‘most-likely’ case for the integration of the VPs into company policy and practice. “Most-likely cases (...) are tailored to cast strong doubt on theories if the theories do not fit” (George & Bennett, 2004; 121). What this means is that in a most-likely case it would be expected that the VPs would be integrated into company policy and practice, and this would undermine the claim of NGOs and other critics that voluntary initiatives are joined solely as a public relations exercise. Colombia represents a most-likely case for the implementation of the VPs both because the extractive sector faces precisely the challenge with public and private security that the VPs were designed to address, and because they’ve been the focus of considerable efforts by supporters of the VPs and civil society. The long standing conflict between the government of Colombia and guerrilla groups has seen companies operating in the extractive industries become a target for guerrilla attacks. This has created a situation where companies require protection by either private or public security forces in order to assure the safety of their personnel and operations. The country therefore provides a case where the implementation of the VPs in Colombia would be expected. Furthermore, Colombia was also one of the first countries to be given a

significant amount of attention by the members of the VPs. The VPs have been active in the country since June 2003, hosting several meetings and attempting to create a dialogue in Colombia focused on human rights. The attention afforded by the VPs is coupled with a large amount of attention afforded to human rights in Colombia by various levels of civil society. If the VPs are to have influence on company behaviour, and not just their public relations, it is likely that this be the case in Colombia.

The three companies selected for case study include BHP Billiton, Occidental Petroleum and Talisman Energy. The three companies were selected both because they operate in Colombia, and because they also offer most-likely cases of implementation of the VPs. Both Talisman and Occidental Petroleum offer most-likely cases because they have experienced human rights scandals in the past, while BHP Billiton offers a control case because it has not experienced a significant human rights scandal. The three companies therefore offer clear variation in terms of their level of exposure to human rights scandal, and their experience with the impact of human rights accusations on their corporate reputation, and therefore present relevant cases that can address the stated hypotheses.

Talisman has experienced the most public and widely-recognized human rights scandal after its operation in the Sudan was highly criticized for the violent forced displacement of populations, which included the killing of civilians, surrounding Talisman's oilfields by the Sudanese government. It is alleged that Talisman provided some support to the government of Sudan in these actions, particularly through its payments to the Sudanese government and the use of its airstrip for army helicopters and airships that later went on to attack civilians. Talisman was sued in US courts under the ATCA for its actions in the Sudan, and the high level of criticism eventually led to the withdrawal of the company from the operation (Harker, 2000).

Occidental was also subject to negative attention to criticism after its private security company allegedly provided information to Colombian forces which led to the bombing and killings of 19 civilians in 1997 (Global Policy Forum, 2001). Like Talisman, a case was brought against Occidental under the ATCA (Girion, 2003), however this

complaint was eventually dismissed and the incident generated much less international attention (Kovalik, 2005). This particular case provides further variation because Occidental's human rights scandal occurred in the Colombian context.

BHP Billiton has not experienced a highly publicized human rights scandal, although the company has had allegations brought against it by local towns surrounding their operations in Colombia. However, these allegations have received less negative publicity and criticism than that experienced by Talisman and Occidental Petroleum, and they have also involved human rights violations that are characterized as less severe. The accusations have included harassment and intimidation by security personnel, and forced displacement (War on Want, 2007; p27).

In order to adequately assess the effectiveness of the VPs, it was important to clearly define the concept of effectiveness at the onset of the study. For the purposes of this research, effectiveness is understood to mean the degree to which the VPs have been incorporated into the internal conduct, policies and practices of the companies who claim to be implementing them. Implementation of the VPs would require concrete action both at a corporate level, for example in terms of engaging in dialogue with other companies regarding best practices, and on the ground, including practical actions such as human rights training and risk assessments. Thus, in order for the VPs to be considered 'effective', companies would have to demonstrate that they are integrating the VPs into their policies and practices, including such things as impact and risk assessments, human rights training for public and private security forces, monitoring mechanisms and comprehensive stakeholder consultations (International Alert, 2008). Aside from these indicators, companies would also need to demonstrate that the importance of the VPs was reaching personnel at all levels, including those working at company headquarters and those working on site at various locations where the company operates. It is important to distinguish effectiveness as defined for the purposes of this research with effectiveness in terms of minimizing human rights violations. As effectiveness has been defined in terms of changes to company policy and practice, the research is not able to establish whether or

not the VPs have been able to improve the actual human rights situation in the areas surrounding company operations.

When conducting the research, a set of indicators designed to measure VPs implementation were used as a guide when creating questions that were posed to the key informants that were interviewed. The indicators were created in June 2008 by International Alert, one of the NGO pillar members of the VPs. The Performance Indicators, made up of 11 indicators, were test-piloted by Occidental Petroleum and Cerrejon in Colombia. The indicators required that companies examine in depth their implementation of the VPs thus far. While the scope of the Performance Indicators is much greater than the scope of this research, and requires significantly more in depth information that was not obtainable, they have assisted in creating questions that will draw out the necessary information to highlight current implementation of the VPs by the three companies being examined and assesses the stated hypotheses. In addition to the International Alert Indicators, the VPs themselves were also used in the creation of questions in order to design them in a manner that directly addressed the specific guidelines outlined by the VPs.

The first phase consisted of background research and a literature review of the VPs and the political situation in Colombia. Information on the VPs allowed for an understanding of what is required from its members, while the information gathered on the situation in Colombia provided the context in which companies are implementing the VPs. Research in this phase drew on a variety of sources, including corporate websites, CSR reporting, NGO websites and reports, informal interviews, as well as newspaper and journal articles. The knowledge gained from this was used when formulating the questions used for interviewing key informants.

In the second phase of research, relevant information on company involvement in human rights violations was gathered in order to assess company experience with human rights scandal. Additionally, information regarding company efforts to implement the VPs and integrate them into their internal policy and practice was collected. This information

was drawn from company CSR reports, newspapers, journal articles, press releases, internet websites, NGO publications, speeches and interviews with informants from the various constituencies involved in the VPs and their implementation, including government officials, company employees and NGO staff at varying levels. Informants from the civil society sector were selected from NGOs that are members of the VPs, as well as those that are working on issues of business and human rights in Colombia. Drawing from different constituencies allowed for a more accurate assessment of the effectiveness of the VPs, and minimize potential biases. These interviews were conducted over the phone and via e-mail due to the locations of the informants.

The third phase of research involved a comparison of the information drawn from each case study. This allowed for an assessment of the differing levels of compliance among the three companies being examined, as well as the discovery of potential variables that affected efforts to integrate the VPs. Important themes drawn out from the case studies were analyzed in order to establish conclusions in regards to the research hypotheses, and to identify potential areas for further research.

Limitations and Considerations

While the research conducted for this project was conducted in a manner to provide the most accurate findings and conclusions, there were several limitations that need to be considered when reflecting on the overall ability to draw conclusions. First, conducting field research was not feasible for this project, which limited the ability to collect information regarding what type of implementation is being done on the ground in Colombia by all three of the companies studied. While the amount of sources that were used adds to the validity of the findings, the research relies primarily on information provided by informants involved with the various pillars of the VPs, and therefore is a limitation that needs to be taken into consideration.

Second, the information that was drawn from this research pertained more to the policy changes made by companies than to changes in their practices. While many of the changes in policy necessitate a change in practice, it was more difficult to assess whether

or not this was in fact the case. Therefore, the conclusions drawn in regards to the effectiveness of the VPs in generating policy change in companies are stronger than those drawn in regards to the changes in company practice.

Thirdly, it is important to acknowledge the biases that lie with the informants that were interviewed for this research. These biases are inherent in the interests of the organizations, companies or governments for which the informants work for. While an attempt was made to assure that the perceptions of each constituency were balanced by the others, the informants that were interviewed came primarily from the private sector. This is an important consideration to be made, particularly in terms of the analysis and conclusions of this research. However, because the research focused on internal company policy, and not the impact of these policies on human rights, this is somewhat less detrimental. In addition, the informants that were interviewed varied in their positions in the company as well as their experience with the VPs. As companies often change personnel, it was particularly difficult to secure informants who were part of the process of joining the VPs, and who had institutional knowledge of the reasoning and rationale for joining.

Fourthly, as the VPs are a relatively new initiative, there is a limited amount of information available regarding the initiative. There is very little academic literature that specifically addresses the VPs, nor information from non-academic media sources. The nature of the issue area that is addressed by the VPs also limits the amount of information available. Confidentiality rules for members of the VPs, as well as for companies who have entered into agreements with other companies or governments, limits the amount of information that can be shared with the public.

Finally, the impact of the general push for corporate social responsibility must be taken into consideration as a factor that has influenced many companies to join initiatives such as the VPs. The Global Compact, the Global Reporting Initiative, the Extractive Industries Transparency Initiative and other global CSR initiatives have all been part of the CSR movement. Some of the changes that companies have shown in different areas, for example reporting and transparency have also been influenced by these mechanisms.

PART II: HUMAN RIGHTS AND THE EXTRACTIVE SECTOR IN COLOMBIA

The long-running civil war in Colombia has meant that companies in the extractive sector face many of the challenges which the VPs were designed to address. The conflict has lasted for over a century, and for the most part has stemmed from tensions between liberals and conservatives in the country (Stoke, 2005; 4). The current conflict between leftist guerrilla groups and the central government emerged from this tension, beginning in the 1960s and continuing for the past four decades (Stokes, 2005; 4: Ballentine & Nitzschke, 2003; 5: Randall, 1992; 249).

The largest leftist guerrilla movement in Colombia is the Revolutionary Armed Forces of Colombia (FARC), which began in 1966. Another significant leftist guerrilla group in Colombia is the National Liberation Army (ELN), which was created in 1964 (Randall, 1992; 249). Both groups arose from frustrations experienced with the lack of acknowledgement and inclusion of socialist ideologies in the Colombian political landscape (Guaqueta, 2007; 274). While the ELN, along with other smaller revolutionary guerrilla groups, developed voluntarily out of the efforts of scholars to create a revolution similar to that of the Cuban revolution, the FARC was created as a response to government militarized aggression against peasant families residing in Communist-inspired regions of Colombia (Pizzaro, 1992; 181). While these groups were not a strong force at the onset of the conflict, they became quite powerful throughout the 1980s. Both groups gain funds from drug trafficking, kidnapping ransoms, extortion, sabotaging oil pipelines and theft (Guaqueta, 2007; 275: Amis, Hodges & Jeffery, 2006; 9: Ballentine & Nitzschke, 2003; 5: Randall, 1992; 249).

As leftist guerrilla groups began to gain strength in Colombia, paramilitary groups emerged as another relevant actor in the Colombian conflict. These groups were formed through the efforts of the Colombian government to arm and train civilians to fight off leftist guerrilla groups, and were supported by economic elites such as cattle ranchers, land owners and agricultural entrepreneurs. While combating leftist guerrillas was the primary goal of the paramilitary, "their main targets in fact have been elements of the democratic left – labor leaders, candidates and elected officials belonging to the political party Union

Patriotica, professionals, and student activists” (Bergquist, 1992; 2). Paramilitary groups were eventually made illegal in 1989 after many groups committed grave human rights violations, however it is alleged by many that they remain closely linked to both the government of Colombia and the business sector (Guaqueta, 2007; 275; Jara, 2007; 1; Bergquist, 1992; 2). They are often described as conducting the government’s ‘dirty work’, however the government denies this link (Amnesty International, 2006; 2). The paramilitary groups have united under the umbrella organization the United Self-Defence Forces (AUC) (Guaqueta, 2007; 275), though their groups remain somewhat fragmented (Bejarano, 2005; 228).

In response to the strengthening of leftist movements, as well as the breakdown of attempted peace negotiations, the Colombian government began a counter-insurgency strategy against both the rebel movements and paramilitary groups, with an attempt to suppress their supporters. This response from the government has been characterized by mass human rights violations that include forced displacement, kidnapping, rape and sexual assault, death threats, and murder (Amnesty International, 2007; 1; Stokes, 2005; 4). Despite these allegations, and pressure from local and international civil society groups, the counter-insurgency tactic has continued to be favoured by the government in lieu of diplomatic negotiations (Ballentine & Nitzschke, 2003; 6). It has been largely funded using a significant amount of public revenues acquired from Colombia’s natural resources, as well as political aid from foreign countries, such as the US (Ballentine & Nitzschke, 2003; 5).

The result of the government’s counter-insurgency movement against guerrilla groups has been a significant decrease in FARC forces, and an almost complete eradication of the ELN. Influencing the relative decline of the FARC and ELN is the amelioration of the political climate in Colombia. While there remain tensions among the differing levels of socio-economic status, Colombia has undergone a significant process of democratization which has allowed for the participation of leftist and socialist political ideals at differing levels of government. This has alleviated many of the grievances that certain segments of the Colombian population had with the government, eliminating the need to identify with FARC, the ELN, or other smaller rebel movements. These groups have also lost many of

their supporters due to their human rights record and their link to the drug trade (Guaqueta, "Doing Business" 2006; 276).

The current conflict has had many negative impacts on Colombia. A large portion of Colombians live in poverty, which has in turn led to an increase in the informal economy (Stokes, 2005; 4) as well as criminal activity, notably the drug trade. Large inequalities between elites and non-elites can in turn mobilize to take action with various parties to the conflict (Bejarano, 2005; 225). There have also been a large number of people, estimated as high as 2.5 million, who have been internally displaced due to the conflict (Amis, Hodges & Jeffery, 2006; 8).

The Extractive Sector in Colombia

Colombia is rich in natural resources, such as oil and coal (Amis, Hodges & Jeffery, 2006; 8), and has therefore attracted large investments from TNCs operating in the extractive sector. While many companies have been able to prosper in Colombia, the ongoing conflict has made operating in the country very difficult. Companies operating in the extractive industries in Colombia have faced increasing pressure and criticism because of their link to the parties of the on-going conflict. Both the FARC and the ELN were able to utilize the private sector, particularly oil companies, in order to extort money. Companies are forced to pay guerrilla groups large sums of money to protect their pipelines and operations from sabotage, as well as to prevent kidnappings of employees for ransom (Pearce, 2004; 13). Paramilitary groups also profit by demanding a tax from companies, known as 'vacunas', as payment for their protection services (Pearce, 2004; 14; Aviles, 2001; 40).

Aside from providing protection from guerrilla attacks, paramilitary groups and the Colombian government have also been involved in the violent coercion and intimidation of communities in close range to extractive operations who are opposed to resource projects. Community members are either forced off their land due to fear of reprisal, or are forced to sell their land at extremely low prices. This occurs despite the fact that indigenous groups are protected by a constitutional right that requires their consultation regarding new projects such as oil exploration operations and mining operations (Leech, 2004).

Paramilitary groups have also targeted other groups and individuals that are opposed to new projects or attempt to organize any other barriers to the private sector, such as unions and civil society organizations. For example, the union representing Colombia's oil workers has experienced harassment and persecution, including the assassination of dozens of its members (Leech, 2004). While the government has taken some steps to ending the violence against unionists in Colombia, paramilitary groups and guerrilla groups continue to target trade unionists and their actions often remain unpunished (Amnesty International, 2007; 1,8).

Despite the conflict in Colombia, the private sector had been able to experience prosperous growth and foreign investment in industries such as manufacturing and the service sector. These successes had provided companies with little incentive to promote peace negotiations in Colombia, where the private sector was relatively invisible. This changed in the late 1990s, when an escalation in violence and decline in security led to an increase in attacks on businesses and poor economic conditions. This provided business leaders with the incentive to become involved in the peace process (Guaqueta, "Doing Business" 2006; 277).

As a result of the internal turmoil in Colombia and the impact it has had on corporate operations in the extractive industries, companies have devoted significant resources to security in order to assure the safety of both their employees and operations. Aside from reinforcing their own security departments, companies have also entered into agreements with the government of Colombia to provide financial and material support in return for protection by state forces (Guaqueta & Puentes, 2007; 3). Material support in this context includes such items as food, clothing, medical supplies and transportation. Many companies have come under intense scrutiny for their relationship with the Colombian government relating to these agreements, due to the negative human rights record of the Colombian forces (Guaqueta & Puentes, 2007; 4).

Another way in which companies have further elevated their security is by hiring private security companies. A private security company is a "registered civilian company that specializes in providing contract commercial services to domestic and foreign entities

with the intent to protect personnel and humanitarian and industrial assets within the rule of applicable domestic law” (Goddard, 2001; 26). Private security companies are contracted out not only by companies, but also by states and NGOs, in order to perform various tasks that include logistical support, training, consultation, intelligence gathering and supplying security personnel (Walker & Whyte, 2005; 562). While there has been more international attention on the relationship between companies and the public forces of Colombia, private security companies operating for companies in Colombia have also come under criticism due to various international human rights scandals that have involved private security companies committing or assisting in grave human rights violations (Guaqueta, 2009; Personal Communication).

Colombia and the VPs

The conflict in Colombia has drawn significant attention from members of the VPs. Members of the VPs have been active in Colombia since June 2003 when a US-UK led delegation visited the country in order to meet with a variety of actors in Colombia to discuss the implementation of the VPs. An in-country process began in September 2003, using the VPs as a framework. This Colombian working group, also known as the National Committee on the Voluntary Principles, is a multistakeholder process, and includes: various members of the Colombian government; multinational companies operating in Colombia; the state-owned oil company Ecopetrol; Asociación Colombiana del Petróleo (ACP), Colombia’s oil industry association. Through various workshops, dialogue sessions and consultations, the group has had substantial success in generating discussion regarding best practices in the areas of business, human rights and security, as well as disseminating knowledge of the VPs to key actors in Colombia. The group has created a draft set of guidelines that are specific for Colombia in order to facilitate risk assessment in the state, and has also engaged actors in a series of workshops in order to open dialogue. The working group was also able to facilitate the inclusion of human rights language and a commitment to the VPs in the contractual agreements between Ecopetrol and the state forces that provide them protection (VPs, 2006; Executive Summary).

Colombia's engagement with the VPs attracted the attention of John Ruggie who made special mention of the country during his speech at the 2007 VPs Plenary. While Colombia is not yet a member of the VPs, Ruggie pointed out that the government has already incorporated the language of the VPs in their legal agreements with companies whose operations are protected by the state forces. The government has also begun to provide human rights training to the state forces, an initiative that is supported by several companies operating in Colombia, and has also established a complaints mechanism for alleged human rights violations and created human rights offices at various levels of the state forces. Ruggie concluded his remarks about Colombia with the following statement; "I'm sure there is more work to be done in Colombia, but there is also already much to be learned and shared" (Ruggie, "Remarks", 2007: 5).

According to a case study performed on the in-country process in Colombia performed by one of the VPs working groups, the successes achieved by the Colombian process have been able to provide some valuable lessons learned about the VPs. Firstly, the process demonstrated that companies should attempt to incorporate the VPs before commencing operations in a host country, as this is the time when the most national focus is given to operations. It presents an opportunity for companies to encourage the inclusion of human rights language and the VPs into company contracts with the state. States are more inclined to accept such inclusions during initial negotiations as opposed to after the project has already begun. Secondly, the in country process is made easier when led by a core group of companies that are highly committed to the VPs. The core group of companies requires a leading company or group that will utilize their status to attempt to gain support and cooperation from the state. Thirdly, the in country process in Colombia has demonstrated the importance of host state cooperation and participation, such as that demonstrated by the Colombian Vice President Francisco Santos, who chairs the National Committee, and Human Rights Advisor Carlos Franco. While these lessons learned have demonstrated some areas of success with the in country process in Colombia, the process has also highlighted several challenges, specifically with the vague language of the guidelines, lack of NGO participation, differing levels of support from home governments

and some hesitancy on the part of TNCs to share information (VPs, 2006; The Colombian Case Study).

Although NGO participation for the most part has been limited, one local NGO has become extensively involved in the promotion of the VPs in Colombia for both signatories and non-signatories. Fundacion Ideas Para La Paz is a non-profit think-tank that was founded in 1999 by Colombian business leaders. The mandate of the organization is “to contribute to sustainable peace in the country by disseminating conflict resolution skills and knowledge among key policymaking actors, influencing public policy and raising greater awareness among the business community on the need for greater private sector engagement in conflict prevention and peace building” (Amis, Hodges & Jeffry, 2006; 79).

Fundacion Ideas Para La Paz and International Alert have been substantially involved in working with companies that have been attempting to address problematic issues with their security arrangements and incorporate a human rights focus into company policy and practice. The NGO’s participation has included significant involvement with specific companies that adhere to the VPs, specifically in terms of facilitating implementation. According to company websites, some examples of this include assisting with human rights training and creating and conducting risk and impact assessments (BHP Billiton, 2007: 263; Occidental Petroleum, 2005: 7). Recently, International Alert and Fundacion Ideas Para La Paz have engaged with both Occidental Petroleum and Cerrejon (equally owned by BHP Billiton, Anglo American and Xstrata) in testing a set of indicators that were produced for members of the VPs by International Alert. The indicators were created in order to “assist global efforts to bring in uniformity, clarity, and simplicity for material information that can be made available to make better decisions within the company, measure and evaluate performance internally or externally, and assist in bringing about a climate of accountability in the process” (International Alert, 2008; 1). The indicators were originally created for the Colombian context, however following positive feedback at the 2008 plenary meeting, International Alert has adapted the indicators to apply to an international context (International Alert, 2008; 1).

In 2003, the National Committee on the Voluntary Principles was created in order to establish an initiative that modeled the VPs. Initially, a few companies made up the committee with relatively less government involvement however as the initiative progressed, the Colombian government began to play a bigger role. Also, while the original companies of the National Committee were from the oil and mining industries, two more companies from the energy sector requested to join. The non-extractive companies maintained that they experienced the same challenges related to security and human rights as companies in the oil and mining industries, and wished to benefit from the process as well. This therefore broadened the scope of the National Committee from its original purpose of mirroring the VPs (Orsini, 2009; Personal communication).

Eventually, the name of the National Committee was changed to the Mining and Energy Committee for Security and Human Rights. This change followed the resistance that the Colombian government received from NGO members of the VPs over the possibility of Colombia becoming a member of the VPs. The government did not want to create instability in the VPs membership over its potential membership, and therefore did not continue its attempt to join. Yet, the desire to continue working on key VPs issues of security and human rights led the government to continue its endeavours with the National Committee under its new name (Orsini, 2009: *Personal Communication*).

Members of the Colombian government that participate in the Committee include: Director of Human Rights and International Humanitarian Law (President); Human Rights Office of the Ministry of Defence, Human Rights Office of the Foreign Ministry; Human Rights Office of the Army; High Representative for the Protection of Infrastructure. There are other sections of the Colombian government for which the Committee is in the process of including in the committee, such as the Attorney's Office, National Ombudsman and the Super-intendancy of Private Security. The goal is to eventually include all of the key government departments that are related to the key elements of the VPs (Orsini, 2009; Personal Communication). Also included in the membership of the Committee, aside from the companies, are Fundacion Ideas Para La Paz (secretary) and the Colombian Oil Association (ACP) (Orsini, 2009; Personal Communication).

Aside from the Colombian Guidelines being designed for companies in non-extractive industries, several key additions were made that distinguish them from the VPs. The founders of this initiative have created a text that is more precise than the VPs, and have also added three areas to be addressed by participants: extortion by illegal armed groups and mafia organizations, security and protection of union members and employees, and compliance along the supply-chain. There is also an attempt being made to assure that governance structures and procedures are clearly outlined at the start of this initiative, as well as a monitoring, investigation and recommendation model (Fundacion Ideas Para La Paz, (n.d.); 1).

In 2006 Fundacion Ideas Para La Paz and the International Business Leaders Forum, together with the UN Global Compact, held the Stakeholder Meeting on Business and Armed Conflict in Colombia. The meeting was held in Bogota, and included senior representatives from the Colombian business sector, government officials and Colombian NGOs. The theme of the conference was the potential impact that the private sector can have in addressing the Colombian conflict. The key outcome of this meeting was a commitment made by various companies to explore the possibility of creating a code of conduct, based on the experience of the VPs, which would assist companies in balancing their security needs with a commitment to respecting human rights (Global Compact, 2006).

CHAPTER 3: BHP BILLITON

BHP Billiton emerged out of a Dual Listed Companies merger between BHP Limited and Billiton Plc that occurred in 2001. This implies that while they remain two separate companies, BHP Billiton Limited and BHP Billiton Plc, they operate together as BHP Billiton. The company headquarters for each branch of the company are located in different countries, with BHP Billiton Limited located in Australia and BHP Billiton Plc located in the United Kingdom. The company is involved in the extraction of a variety of minerals and natural resources in 25 countries around the world, including among others oil, coal and aluminum, and the company also offers a variety of services and products to its consumers (BHP Billiton, "Our Structure", "Our Profile", 2009). The company employs over 41,000 employees, and reported revenue of \$59.5 billion for the FY2008 (BHP Billiton, "Our Profile", 2009).

Overall, BHP Billiton has not encountered allegations of egregious human rights violations that have garnered the same amount of attention as Talisman or Occidental. Many of the allegations that the company has received have been related to environmental conditions, labour rights and unsafe working conditions. Of the allegations that have been centered on human rights violations, the majority of these have involved less serious offenses, such as intimidation, harassment and forced displacement (Richardson, 2008). While this in no way minimizes the impact that these offenses can have on local populations, the results of these violations have not involved the loss of life.

In Colombia, BHP Billiton has had specific accusations brought against the security personnel working at Cerrejon. The majority of these accusations stem from forced relocation of neighbouring communities, including Viejo Oreganal, Espinal, Tamaquito, Roche, Chancleta, Patilla, Los Remedios and Tabaco, all of which allegedly occurred with little or no compensation. It has been alleged that these forced relocations included intimidation, harassment, destruction of property and a number of reported injuries. Cerrejon has also been accused of creating unliveable living conditions, in order to persuade local residents to leave their homes (Mines and Communities, 2006).

There have also been some allegations by local communities of continued intimidation and harassment by private security forces at Cerrejon. These accusations stem mostly from local community members who are trying to access Cerrejon land in order to hunt or fish. The company claims that there have been issues with theft of Cerrejon property in recent years, specifically of copper cables, and that the company is attempting to balance its security requirements with the rights of the local population. Cerrejon is also attempting to meet its security requirements in terms of safety from FARC rebels that are moving across the Venezuelan border. While these allegations require immediate attention and investigation, in general the balance between safety and security, and local human rights, seems to have been reached. Many community members feel that the security situation has improved with the presence of armed forces responsible for protecting Cerrejon in the area (Cerrejon Independent Review Panel, 2008: 41).

BHP Billiton adopted the VPs in 2003. In the company's first sustainability report following their adoption of the VPs, the company stated that this had been done "so that our policies and systems are in line with the International Council on Mining and Metal's Sustainable Development Framework and key stakeholder expectations" (BHP Billiton, 2003: 13). Furthermore, the company also stated that the VPs had been adopted in order to provide the company with guidelines for engaging with communities (BHP Billiton, 2003: 21).

According to Alexandra Guaqueta, Public Affairs Advisor at Cerrejon, the VPs have been considered to be very useful. The company is in the process of changing phases in terms of their work with the VPs. In the first phase, the company has implemented many of the new policies that are outlined in this section, and has also modified various systems and conducted human rights training. The transition is currently underway from this phase, into a new phase that will involve identifying the impact of the changes made in the first phase (Guaqueta, 2009; Personal Communication).

BHP Billiton Policies and Procedures

BHP Billiton does not have a specific security or human rights policy. The company has included human rights components in its Code of Business Conduct and its Health,

Safety, Environment and Community (HSEC) Management Standards; however the statements that are made regarding human rights are vague in comparison to the other companies being examined. The Code of Business Conduct does outline the company's commitment to the VPs, the UN Global Compact and the UN Declaration on Human Rights. It also outlines expectations of what employees should and should not do in order to assure that they and the company do not commit any human rights violations. This language is also vague and does not provide any direction for employees on how to react and conduct themselves in specific security situations that employees working on the ground may encounter.

Standard 8 of the company's HSEC Standards is dedicated to Business Conduct, Human Rights and Community Development. However, there is little mentioned in the area of human rights. The only mention of human rights in relation to security, aside from a commitment to the UN Declaration on Human Rights, is the following statement: "Where security personnel are required, systems are in place to ensure they are familiar with and operate in accordance with the US-UK Voluntary Principles on Security and Human Rights" (BHP Billiton HSEC Standards, 2007: 14). The company does not elaborate on what these systems are or how they operate.

Further mention of human rights is found in Standard 3; Risk and Change Management. In this standard, it is stated that:

HSEC risks and opportunities are assessed, prioritised and managed as appropriate to the nature, scale and HSEC impacts of the operations and activities. This process takes into account health and safety, human rights, the surrounding physical, ecological, social and cultural environment, biodiversity, applicable legal and other requirements and financial implications. Low probability, high consequence events are specifically identified and assessed. The hierarchy of control is used in the development of risk mitigation activities (BHP Billiton, 2007: HSEC Management Standards).

This provides some onus on the company to consider human rights when conducting assessments of new and current operations.

According to BHP Billiton, the company's policy regarding the requirements for its suppliers is a work in progress. The company does identify potential human rights risks with its suppliers during its screening process, engagement with suppliers and through a monitoring process of its suppliers. Contracted suppliers are expected to follow HSEC Management Standard 8; Business Conduct, Human Rights and Community Development, as well as adhere to BHP Billiton's Code of Business Conduct, including compliance with the UN Universal Declaration on Human Rights. It is mandatory for these expectations to be considered in contractual agreements between the company and its suppliers. BHP Billiton's assessment process monitors their suppliers, and when these assessments demonstrate a high level of risk in terms of human rights, further screening is conducted (BHP Billiton, 2008: 182).

BHP Billiton has a complaints and grievance system that runs through their business conduct governance procedures and all BHP Billiton sites must maintain a complaints register to record community complaints. This system is comprised of several channels that have traditionally been used for environmental and labour issues, and misconduct such as corruption or bribery (Guaqueta, 2009; Personal Communication), however the system also considers human rights incidents, and includes provisions for non-retaliation (BHP Billiton, 2008; 134).

BHP Billiton has a Risk Management Policy and conducts general risk assessments for all of its new and current operations. The risk management framework is called the Enterprise-wide Risk Management (EwRM), and includes a human rights self-assessment and a HSEC Standards assessment. The EwRM also includes the identification and assessment of country risks, related to the political, social and economic situations of particular countries (BHP billiton, 2006: 205).

BHP Billiton began developing the human rights self-assessment toolkit used in the risk assessment following the adoption of the VPs in 2003. This toolkit was distributed to all BHP Billiton operations and formed part of their HSEC Management system. The self-assessment involves an evaluation of the performance of contractors and suppliers that includes a review of past human rights records. The toolkit was revised in 2005 following a

stakeholder dialogue forum, in order to better align the toolkit with risk-management processes. It was also revised in 2006 to assure that the assessment continued to align with the company's EwRM approach.

At BHP, like many companies, risk assessments have been a traditional tool for gauging the various risks associated with initiating operations in certain areas. The focus of these assessments had for the most part been on economic incentive and environmental issues, and less on social, political, security and human rights issues. Also, the way in which risk assessments were conducted, both at the narrow and broader level, needed to be reconsidered. Narrow risk assessments, such as security risk assessments, were conducted by the security department without input from other relevant departments, such as community affairs. Broader risk assessments were conducted at the higher level, and focused on more quantitative measures (Guaqueta, 2009; Personal Communication).

BHP Billiton requires that relevant local civil society organizations be identified in the areas of all of the company's operations. Strategies for engaging with these organizations are required when each operation creates the site community engagement plan. The company also engages with local and international level, especially through the company's Forum on Corporate Responsibility. The BHP Billiton Forum on Corporate Responsibility was created in order to bring together corporate senior managers, key NGOs and community representatives in order to discuss pertinent social issues affecting all stakeholders. The forum convenes once a year, and provides participants with the opportunity to engage in an open dialogue with senior management regarding contentious issues. While the company is not bound by the suggestions made by stakeholders, participants are free to express alternatives and to disagree with company decisions (BHP Billiton, 2005; 97).

BHP Billiton has taken measures to implement the VPs through the training of their personnel and other relevant stakeholders on issues of human rights. They have taken a variety of approaches in doing so. In terms of company-wide human rights training, BHP Billiton has created an online program on their intranet system that houses information regarding social issues that are relevant to the extractive and natural resource sectors. This

includes both key references to outside material and best practice notes on how to deal with specific situations. Some of the issue areas included in the program include human rights, indigenous populations, stakeholder relationships and conflict resolution (BHP Billiton, 2008: 139). In 2004, the company also created a guide for managers and employees that centers on human rights, as well as a presentation for employees that educate them on their responsibilities for respecting human rights (BHP Billiton, 2004; 76).

BHP Billiton produces annual sustainability reports that include topics such as the environment, community relations, security and human rights. While these reports included the company's commitment to human rights prior to joining the VPs, the focus on human rights in BHP's reports has increased substantially since it became a member. The 2004 sustainability report is the first report that contains a significant amount of discussion regarding the company's commitment to human rights, as well as their activities in promoting them (BHP Billiton, 2004).

Cerrejon produces its own corporate social responsibility reports annually, with the first report published in 2005. Human rights are a significant theme in these reports. The company has also released two reports following the Independent Third Party Review of its operations. These reports focused on how the company is responding to the recommendations included in the review.

BHP Billiton Operations in Colombia

BHP Billiton's interests in Colombia currently include two operations. The first is a 33.3% ownership share of the Cerrejon Coal Company that operates in the northern Guajira peninsula. This ownership was acquired by a subsidiary of BHP Billiton Plc in 2002, and is shared in equal parts with subsidiaries of Anglo American and Xstrata. The Cerrejon Coal mine encompasses not only the largest export open pit coal mine in the world, but also 150km of railroad leading to an export terminal located in Puerto Bolivar. Also included are supportive facilities, such as two airports located at the mine and export terminal, and administrative facilities in Bogota (BHP Billiton, 2009; Cerrejon Coal Company).

BHP's second operation in Colombia is a 99.9% ownership of Cerro Matoso S.A., a ferronickel mine and smelting operation located near Montelibano, a small town in the northern province of Cordoba. Construction on this mine began in 1980, with production commencing in 1982. The operation includes open pits where ore is mined, as well as a smelter location next to the mine where the ore is processed into ferronickel granules (BHP Billiton, 2009; Cerro Matoso S.A.).

The security situation in LaGuajira, the location of Cerrejon, has not improved like that of many parts of the country. Some believe this is due to the recent focus on the natural resources available in the area by the government and companies in the extractive industries. Recently, at least one encampment of FARC members has been established across the Colombian-Venezuelan border, which is located relatively close to Cerrejon. There have been reports of FARC members crossing the border, with sightings in the region between Tamaquitos and the Venezuelan border. This presents a potential threat to Cerrejon's operations and personnel (Independent Social Review, 2008).

Cerrejon has been the target of many attacks by the FARC and other terrorist or rebel groups. In May 2008, a train carrying coal from Cerrejon was bombed and derailed by terrorists. In total, 40 of the 120 cars were derailed. There were no deaths or injuries reported following the attack, although railroad operations were closed down for several days (Bahr, 2008). This is not the first time that the trains carrying coal from Cerrejon have been attacked. In 2003, suspected FARC rebels derailed 17 wagons that were transporting coal from Cerrejon.

Cerrejon personnel have also been the target of guerrilla groups, namely through kidnapping attempts that have been both successful and unsuccessful. In 2003, approximately 10 members of the FARC stopped two buses carrying 44 Cerrejon employees, and took the employees as hostages. The FARC members eventually abandoned the bus once the Colombian military had responded to the incident with troops and warplanes (Associated Press Worldstream, 2003).

Cerrejon Human Rights Policies and Procedures

Cerrejon has its own human rights policy that is available on its website. The policy includes statements that confirm Cerrejon's commitment to conducting itself in a manner that is respectful of human rights, as well as its commitment to holding its contractors to the same standards. The policy also includes a commitment to the VPs and the Global Compact (Cerrejon Website). There is further mention of both human rights and the VPs in Cerrejon's Safety, Health, Environment and Community Policy, where the company maintains that it will train and commit its employees to the VPs and International Humanitarian Law. The policy also states that the company will "...maintain transparent relations with Private Security Contractors, with the Security Organizations of the State, and with the Army and Police, within the frame of the Voluntary Principles" (Cerrejon Report, 2006: 55).

Cerrejon is currently in the process of revamping its complaint mechanism in order to add a human rights component to the system. The new system will see the various channels come together under the same policy, in order to systematize the standards and regulations for each channel. Part of this revamping process will also be promoting awareness of the complaints mechanism in order to assure that employees and community members are aware that these channels exist (Guaqueta, 2009; Personal communication).

All allegations of human rights violations are investigated internally by members of the Human Rights Programme to identify whether or not Cerrejon personnel were involved. Meetings are held with the head of the department where the potential violation has occurred, and potential corrective measures are established and monitored to assure that all parties are implementing them (Cerrejon Report, 2007). Cerrejon maintains however that this investigation does not replace that of the Colombian authorities. The primary responsibility for upholding human rights and making those responsible for human rights violations accountable remains that of the state (Guaqueta, 2009; Personal Communication).

Cerrejon has also implemented a human rights early warning system in order to identify potential human rights violations. This project has been implemented in

partnership with the National Ombudsman's Office, who created the system in order to prevent mass human rights violations and forced displacement. This system has been incorporated into the human rights training program, and according to BHP Billiton, has allowed Cerrejon to assist in preventing two potentially criminal events from occurring (BHP Billiton, 2007: 263).

Aside from the implementation of various policies and procedures regarding human rights, Cerrejon has also engaged in a revamping of its corporate culture following the Independent Third Party Review of its operations. This included a statement on the company's values and CSR focus areas, as well as an action plan created in 2008. The action plan, to be completed in 2010, includes training comprising of one managerial-level workshop, two middle-management workshops, and thirty workshops for employees. As part of the training process, three additional training sessions on the VPs have been planned for 2009 (Cerrejon, 2009: Second Progress Report).

Cerrejon has also restructured its Social Engagement Department. The creation of the Social Responsibility Department will address three key areas for Cerrejon; social engagement, resettlements and human rights. The company has also employed a new human rights officer as of 2005, and this person is responsible for implementation of the VPs (Guaqueta, 2009; Personal communication).

At Cerrejon, the company conducts both broader risk assessments, as well as risk assessments that address particular issues. Broad assessments are an ongoing process and occur yearly, at the minimum, while specific issue risk assessments are conducted and discussed through workshops that occur several times a month. The VPs have encouraged Cerrejon to better integrate social, political and human rights variables to create a more interdisciplinary and inclusive risk assessment (Guaqueta, 2009; Personal Communication). The information included in risk and impact assessments include various elements, such as the current activity of illegal armed groups in the region, political calendar, and current levels and causes of violence. Such information is important as it can have significant impacts on the stability of the region, and therefore on the stability of the company's operations. For example, during periods of elections, violence in the region tends to

escalate, with more frequent assassinations and attacks. In order to gather pertinent information, the company will consult with various stakeholders such as local government officials, community members, local authorities, local NGOs, as well as academics (Guaqueta, 2009; Personal Communication).

Once risk assessments are complete, the reports are forwarded up the various hierarchal levels of Cerrejon to relevant personnel. One of the obstacles that the company faces is loss of information through this process. As information travels from one department or personnel member to the next, various details can sometimes be left out. Therefore, it is often mostly the conclusions and recommendations of the risk assessment that are presented to senior personnel of the company (Guaqueta, 2009; Personal Communication).

Under an agreement with the Colombian Ministry of Defence, Cerrejon receives protection from the Colombian military, in return for non-lethal material provisions. These provisions include things such as food, medical supplies and transportation. Currently, the details of these transfer agreements remain confidential. An example of the details included in these agreements is the number of soldiers that will be used to protect the company's operations and where they will be stationed. Cerrejon's 2005 social responsibility report includes an excerpt from the agreement, which states that:

the MINISTRY and the COMPANY agrees that the support and the goods that are donated will be used with strict subjection to the legal and constitutional order of the Colombian State, the Voluntary Principles, and any other international treaty of human rights and International Humanitarian laws ratified by Colombia. In the same way, the parts of the present pact agree that in no case the support given by the company will use for the purchase of materials or equipment of deadly nature. The Ministry compromises to use the equipments and materials acquired with the supports provided by the company only for the predicted protection in the first clause of this agreement and to only use the force when in the opinion of the commander of the respective military unit considered that the circumstances

require it and always for the purpose of defending the civil population and the environment. (Cerrejón, 2005; 55)

The reasoning behind the private nature of these agreements is that the Colombian government considers these agreements to be an issue of national security, and therefore does not want them to be made public (Guaqueta, 2009; Personal Communication). The agreements are overseen by a Coordination Committee that is operated by Cerrejón. They also include a clause that establishes periodic inspections by a committee made up of representatives from the Ministry of Defence and company personnel. There are also other methods that the company uses in order to monitor the use of equipment. For example, the company services the vehicles which it provides to the state forces. The company is therefore able to detect whether the vehicle has been overused or damaged, which are possible indications of misuse (Guaqueta, 2009; Personal Communication).

Cerrejón holds meetings with the state forces of Colombia on a regular basis. The meetings discuss the administration of agreements, for example the details of transfers of provisions. They also discuss the security situation of La Guajira so that the company is aware of what the current risks are to the company, as well as what measures the state forces are taking to protect it. The company also has daily contact with the state forces of Colombia and the Ministry of Defence regarding the battalions and soldiers that are on the ground at Cerrejón's operations (Guaqueta, 2009; Personal Communication).

At Cerrejón, there are two private security companies providing the site with approximately 900 guards, most of whom are unarmed. It is the responsibility of the new human rights officer to oversee the provision of private security at the mine, and the company holds monthly meetings with relevant personnel in order to discuss various issues affecting security provision. Private security contractors are all subjected to a record check in order to assure that there have been no accusations of past human rights incidents. They also receive human rights training, as the company finds that the security firm's own training is not always sufficient. This training includes cultural awareness training in order to assure that private security forces understand the cultural make up of the surrounding communities (Guaqueta, 2009; Personal Communication). The training received by private

security providers has been reported by the Independent Social Review as having been effective, and has generated significant progress (Cerrejón Independent Review Panel, 2008).

Unlike state forces with which the company has agreements, private security firms are held under contracts. Contracts are more robust than agreements, because they can be legally enforced. The implication of holding contractual agreements is that the company holds greater leverage over private security firms because they are able to terminate contracts if private security firms break the terms of the contract. This provides Cerrejón with the ability to require greater due diligence by private security providers when it comes to human rights issues (Guaqueta, 2009: Personal Communication).

At Cerrejón, the company consults with the government at both a bilateral and multilateral level. At the bilateral level, Cerrejón engages with the government regarding particular issues that affect Cerrejón and surrounding communities. For example, during times of union negotiations, such as from October 2008 to January 2009, union leaders reported to Cerrejón that they perceived themselves as being at a higher risk for violent attacks or assassination by paramilitaries. In response to these types of concerns, Cerrejón communicates with the appropriate governmental officials to advocate for stronger protective measures for union leaders during this time. At the multilateral level, Cerrejón engages with the government through the Colombian Voluntary Principles in country process as a participant in the Mining and Energy Human Rights Committee. Included on the committee are representatives from the Ministry of Foreign Affairs, the Attorney General's Office, the Vice-President's Office and various investigative offices. The committee discusses broader policy issues, such as the promotion of dialogue with NGOs or the dissemination of information concerning the VPs. This dialogue is geared towards establishing more long-term structural impacts on public and private security forces (Guaqueta, 2009; Personal Communication).

During stakeholder consultations with the Colombian government, both at the bilateral and multilateral level, Cerrejón attempts to encourage the government to abide by international human rights law, and to assure that the human rights of local

communities are safeguarded. This is done both implicitly and explicitly. The underlying message is that while the company acknowledges the progress that has been made by the Colombian government to positively change the behaviour of the state forces, the government needs to continue to improve the human rights record of the state forces and to work with the company to assure that these improvements continue (Guaqueta, 2009; Personal Communication).

Cerrejon has extensive consultation with community stakeholders, although this consultation has not necessarily been focused on security. Cerrejon employees are involved in stakeholder discussion on a weekly basis regarding a variety of issues, including resettlement, water safety, employment opportunities and environmental concerns. During these consultations, community members are able to raise concerns regarding various issues, although this is rare as the majority of Cerrejon staff is not engaging community members regarding security issues. On matters of security, community members who take part in human rights training with the company are able to express and discuss security issues during this training; however there has been no systematic effort to engage community stakeholders on these issues. The company is currently creating a more systematic method to gather information and explicitly ask community residents their opinions and concerns regarding the company's security policy and practices. This will be done both by using and promoting the use of mechanisms brought in by the VPs, such as risk assessments and human rights training workshops, as well as by including human rights and security concerns into the newly revised complaints and grievance mechanism. What is important for the company in this aspect is to assure that communities are made aware that these mechanisms exist and are available for them, in order to assure that Cerrejon is capturing the relevant information regarding community stakeholder perceptions (Guaqueta, 2009; Personal Communication).

Cerrejon has frequent consultation with International Alert, a NGO participant of the VPs, following the company's request in 2005. International Alert, in partnership with Fundacion Ideas Para La Paz, has been working with Cerrejon on issues of implementation and assessment of the VPs. Fundacion Ideas Para La Paz has also been involved in

significant efforts to build local NGO capacity in order for them to fulfill a greater role in terms of consultation with companies regarding the VPs and security practices. While these efforts were initially challenging as the majority of local and national NGOs did not have any knowledge of the VPs, Fundacion Ideas Para La Paz has been able to disseminate information regarding the VPs to various NGOs. Most recently, Cerrejon has engaged in opening dialogue between the company and these local and national NGOs regarding various issues, including the VPs (Guaqueta, 2009; Personal Communication).

According to William Godnick, Senior Advisor for Latin America for International Alert, the NGO provides assistance to Cerrejon regarding various issues that relate to the VPs, human rights and security. They include understanding human rights in practice, conflict sensitivity and analysis, internal inter-departmental dialogue on human rights and conflict and the interaction of local economic, social and political dynamics with issues of security, conflict and human rights (Godnick, 2009: Personal Communication).

In 2007, a joint social review was commissioned by the shareholders and managers of Cerrejon. "The independent review panel was chaired by Dr John Harker, President of Cape Breton University in Canada and included Nick Killick of conflict prevention NGO, International Alert; Salomón Kalmanovitz, Dean of Economics and Business Administration at Jorge Tadeo Lozano University in Colombia and Elena Serrano of the Chilean NGO, Casa de la Paz Foundation" (BHP Billiton, 2008: 155). The objective of the review was to identify key areas of priority or concern, assess Cerrejon's programs and systems, and to highlight good performance demonstrated at the mine. The panel was assisted by the Social Capital Group of Peru when conducting field research and a wide range of stakeholders were consulted in order to produce a set of recommendations for Cerrejon, as well as areas of good practice. The report found that while Cerrejon had made substantial effort in training its personnel and other stakeholders in human rights, there remained some areas that required improvement. Many of the required improvements seem to be centered on two issues. The first is creating a corporate culture that promotes transparency and trust between the company and its stakeholders, particularly surrounding communities. The report states that "Cerrejon has to build its own corporate culture and image in its own

interest and, it would appear, the interests of local communities in La Guajira both affected by and dependent on socially responsible behaviour by the dominant entity which is Cerrejon” (Cerrejon Independent Review, 2008; 11).

The second issue concerns the establishment of standards, reporting mechanisms, feedback mechanisms and yardsticks for which performance can be measured. The report states that:

Cerrejon should take advantage of the process currently underway in Colombia (and in which it has been involved) to develop clear indicators for implementation of the Voluntary Principles. Piloting and refining these indicators will provide a proper mechanism for recording, monitoring and addressing alleged violations. It should also provide a system for evaluating the results of its extensive human rights training programme. (Cerrejon Independent Review, 2008; 10)

It also states that the company should develop a more transparent complaint mechanism and engage more with communities on security issues. According to the company, both issues are currently being addressed (Cerrejon Independent Review, 2008; 10).

In 2004, Cerrejon began its human rights training program. The program initially focused on training public security forces, which included 592 members of the Colombian navy, army and police forces. “Specifically these were: three Army battalions (the Gustavo Matamoros Armoured Group, the Juan José Rondón Armoured Cavalry Group and the Cartagena Infantry Battalion); the Navy Coast Guard Command at Puerto Bolívar; and the police stations located at the various municipalities around Cerrejón” (BHP Billiton, 2006: 517). Many public forces personnel went on to transfer and apply this training to their fellow colleagues (Independent Social Responsibility Report, 2008: 39). In 2005, the program expanded to include 486 other stakeholders such as private security, company personnel, civil and government authorities, and community members (BHP Billiton, 2006: 517). In 2006, the program trained another 2102 people from various positions.

The initial training was conducted by the Costa Rican Human Rights Training, Qualification and Analysis Centre. The second phase was conducted by the Colombia Red Cross and the International Committee of the Red Cross (BHP Billiton, 2006: 517), and eventually Fundacion Ideas Para La Paz also joined the process (BHP Billiton, 2007: 263). A participatory learning approach was taken through the use of drills, games, cases and exercises that build awareness, in order to prepare public forces to react to situations while respecting human rights, international humanitarian law and the Colombian judiciary system. The program attempts to put trainees in situations that are similar to those that they will encounter, in order to optimize the impact of human rights training on their decision making. The training provided also puts emphasis on respecting the rights of women and the Wayuu ethnic population, a group which has historically been a vulnerable population in Colombia (BHP Billiton, 2006: 518).

The outcome of this training appeared for the most part to have been successful according to the company, external individuals who underwent training, and the Independent Review Panel. A higher level of trust between community members and public forces has been evident, along with a general change in attitude demonstrated by the public forces. The leader of the Jurimakal community was quoted as saying; "The change in the Armed Forces is noticeable: in their friendship, in the peace. We got to know them better, now we talk to them when they arrive at the hamlets. Before the implementation of the human rights program, they did not ask permission to enter, they walked in without any respect, they did not respect any authority" (BHP Billiton, 2006: 519).

Members of the public forces also spoke in a positive manner regarding the training which they participated in. A soldier from the Gustavo Matamoros Armoured Group commented that,

[m]any times we are not prepared for situations we must face. The training in International Humanitarian Laws has served us a lot because we were taught many things we did not know before, now we know how to treat people, we now have other attitudes, we seek to treat people as must be done. (BHP Billiton, 2006: 520)

Further testimonies in an El Tiempo newspaper article spoke of the changed relationship between the Colombian army and the people of surrounding communities, stating that “A really great change has occurred thanks to the Human Rights Program, especially in the treatment they give us and from us towards them” (El Tiempo, 2006). Research conducted by the Independent Social Responsibility Review also indicated that for the most part the training in human rights has been successful. The review found that “most La Guajirans, on balance, feel the benefit of the enhanced security situation in the region” (Independent Social Responsibility Review, 2008: 40).

Extensive human rights training has continued since the initial training sessions began, with new employees receiving training that includes human rights, as well as other employees receiving refreshment on Cerrejon policies on human rights. In 2005, 14 administrative level staff, along with 47 employees from the supervision and operating levels, attended a seminar hosted by the delegate of the International Committee of the Red Cross from the Valledupar office. The seminar focused on issues of human rights and international humanitarian law (Cerrejon Report, 2005).

In 2006, Cerrejon furthered its commitment to human rights training when it signed a contract with the Ministry of National Defence and the Colombia Red Cross that led to training for employees and other interested parties, such as the armed forces and district attorneys. Approximately 2102 individuals received human rights training, including 148 indigenous people, 403 employees, 832 security personnel and 704 members of the armed forces. This process was organized by Cerrejon’s Human Rights Coordination. The courses included information regarding International Humanitarian Law, the VPs and human rights in general. A diploma programme was also created which provides training for employees at the Public Affairs Department Protection Programme (Cerrejon Report, 2006).

While there has been progress made on the implementation of the VPs, there are still some challenges that are highlighted by NGO participants. One of the challenges is the culture of secrecy that exists in company security departments, a challenge that is not unique to BHP Billiton’s operations. Because human rights have previously been a taboo issue in Colombia, it is often difficult and time consuming to establish a relationship of trust

between International Alert and company staff (Godnick, 2009; Personal Communication). International Alert has also faced other challenges while working with Cerrejon, including differing levels of commitment to the VPs in various departments of the company, and the “inability of companies to question the sustainability of business model and general economic rules of [the] country” (Godnick, 2009; Personal Communication).

At Cerro Matoso, BHP Billiton’s other operation in Colombia, there is a very limited amount of accessible information, especially in comparison with the abundance of information for Cerrejon. The information that was available indicated that Cerro Matoso engages in consultation and collaborative efforts with various local civil society organizations in areas surrounding its operation. These include Fundacion San Isidro, Fundacion Educativa Montelibano and Fundacion Panzenu. These organizations facilitate the administration of social services, including education and healthcare, as well as programmes that aim to strengthen the local economy (Cerro Matoso, n.d.: Power Point Presentation). It is not clear whether the development oriented nature of civil society organizations with which Cerro Matoso engages with includes human rights and security issues.

Cerro Matoso also consults with the Colombian government on a regular basis. According to the 2008 Sustainability Report, the company consults with various levels of the local government, which includes local mayors, governors, and municipal council members. While these consultations take place on a monthly basis, the content of meetings has not been accessible (BHP Billiton, 2008: 138).

Analysis of BHP Billiton’s Implementation of the VPs

There have been some noticeable differences in BHP Billiton’s policies and practices since the company adopted the VPs in 2003. The company has added a human rights component to their HSEC standards, and has also increased the reporting that the company provides in terms of human rights and corporate social responsibility in general. The company has even begun providing independent reports for some of its operations, such as Cerrejon. To engage in greater due diligence, BHP Billiton has expanded its risk assessment process to include a human rights self-assessment toolkit. The company has also

implanted a screening process on the previous social engagement records of its contractors and suppliers. The human rights training program at BHP Billiton has also been expanded, and has included online databases to teach best practices in human rights for the extractive sector, human rights manuals for managers, and human rights presentations for employees.

However, there are many aspects of the VPs that the company has not implemented completely. For example, the company lacks a specific human rights policy or security policy, a key element of the VPs. The findings for BHP Billiton's operations in Colombia also demonstrate an inconsistent application of the VPs to company policy and practice. The company's two operations in Colombia both demonstrate drastically different levels of access to information in terms of their implementation of the VPs. On the one hand, Cerrejon has demonstrated that it has embraced the VPs and has developed a highly recognized human rights training program that has been extended externally to include the armed forces and other community members. The training program has received positive feedback from various stakeholders. The company has also brought in outside stakeholders to conduct research on the company's efforts on implementing their human rights training program, and has responded to these reports with efforts to address and implement the recommendations set out by the committee that created the report. The VPs have also guided Cerrejon to adapt many of the systems that were already present, for example a complaints mechanism, to better incorporate a human rights element into them.

Yet, it is difficult to assess the implementation of the VPs at BHP Billiton's second operation in Colombia, the Cerro Matoso nickel mine, because of the lack of information available on the mine. While Cerrejon has a website that posts the company's policies and relevant news regarding their human rights training program, Cerro Matoso does not. Cerrejon also publishes annual corporate responsibility reports, while Cerro Matoso has only published two, the last one having been released in 2003. The amount of attention received by Cerrejon's implementation efforts of the VPs in BHP Billiton's CSR reports is also much greater than that of Cerro Matoso, with very little mention of Cerro Matoso in

any of the reports. Most of BHP Billiton's mention of Cerro Matoso in their annual Sustainability report discusses Cerro Matoso's social contributions to surrounding communities, along with any relevant community relocations. While these are vital aspects to Cerro Matoso's social programming, and assists in creating a better relationship with local communities, there is no way of knowing whether Cerro Matoso has implemented effective mechanisms to safeguard human rights.

One explanation for the difference in available information for both Cerrejon and Cerro Matoso may be the type of operator that the mines have. Cerrejon is managed independently, and only 33.3% of the mine is owned by BHP Billiton. Cerro Matoso however is 99.4% owned by Cerro Matoso. The push for transparency and greater implementation of the VPs may therefore come from Cerrejon's independent manager as opposed to originating from BHP Billiton or the other companies that own the mine.

CHAPTER 4: OCCIDENTAL PETROLEUM

Occidental Petroleum is an oil and gas exploration and production company that was founded in 1920, and is based in California, United States. The company operates internationally, with interests in four different continents. Occidental Petroleum is the fourth largest oil and gas producer in the United States, and its other main regions of interest are the Middle East, North Africa and Latin America. The company employs over 10,000 employees in these regions, and boasted a net income of \$682 million for the second quarter in 2009 (Occidental Petroleum, "Occidental Petroleum Announces Net Income", 2009).

Occidental Petroleum has faced many challenges related to human rights since it began operating in Colombia, many of which stem from the ongoing conflict between the FARC, the ELN, paramilitary groups and the government. For example, in the mid 1980s, the ELN attacked the Cano-Limon pipeline and kidnapped several company employees. Occidental Petroleum, along with its partner Mannesman, was forced to pay a large ransom in order to guarantee the safe return of the employees. Some analysts claim however that Occidental Petroleum has continued to provide guerrilla groups with extortion payments in order to protect their operations (Pearce, 2004; 16).

Occidental Petroleum has a long list of allegations of human rights violations in Colombia. One of the most high-profile incidents occurred in the small village of Santo Domingo in 1998, where the Colombian military conducted an air strike that killed 18 civilians. There are allegations that the Colombian military was provided with key strategic information from AirScan, a private security company hired by Occidental Petroleum to protect their operations. It is also alleged that Occidental Petroleum "provided crucial assistance to the operation. It supplied, directly or through contractors, troop transportation, planning facilities and fuel to Colombian military aircraft, including the helicopter crew accused of dropping the bomb" (Miller, 2002). Occidental Petroleum denies any responsibility for the attacks that took place in Santo Domingo, and claim that

they do not provide any assistance to the Colombian military that may result in the death of civilians (Rohter, 2008).

Other incidents have left Occidental facing allegations of involvement in human rights violations. In 2000, Occidental reportedly called on Colombian authorities to respond to a road block set up by U'wa protestors in order to block entrance into the drilling operation. Although the protest was non-violent, three children were killed in the incident. While Occidental was not directly responsible for the deaths, it was their relationship with the Colombian military that created the situation which led to them (Montero & Whalen, 2002).

Since this incident, the company continues to receive allegations of ties to deadly paramilitary groups. On July 22nd and 23rd of 2008, a Popular People's Tribunal, known as the Tribunal Permanente de los Pueblos (TPP)², was held in order to judge Occidental Petroleum, along with other multinational companies, for their alleged involvement in the persecution and murders of several trade unionists and community activists. Occidental Petroleum has been specifically tied to the 18th Brigade of the Colombian army, which was responsible for a number of atrocities that included the murders of three Colombian union leaders (United Steel Workers, 2008). In July 2008, local and international organizations gathered at the People's Permanent Tribunal in Bogota to hear the verdict regarding accusations of human rights violations brought against dozens of multinational corporations operating in Colombia. In the 41 page document containing the verdict of the tribunal, "Occidental Petroleum was named as a particular beneficiary of the activities of the Colombian army in the regions of their operations" (Paley, 2008). The scope of the allegations differed among the companies included in the document, with Occidental Petroleum being one of three foreign oil companies to have had allegations brought against it (Higginbottom, 2008: 10).

² "The Permanent Peoples' Tribunal is an international independent tribunal that examines and judges complaints regarding violations of human rights that have been submitted by the victims. The Tribunal was founded in June 1979 in Italy by legal experts, writers and other intellectuals. It followed the Bertrand Russell International War Crimes Tribunal, which held two sessions in 1967 to expose war crimes committed against the Vietnamese people". (<http://www.pasc.ca/spip.php?article376>)

Occidental Petroleum joined the VPs in 2003. Since becoming a member, Occidental Petroleum has been active in promoting the VPs for companies in the extractive industries operating in Colombia through an initiative led by the Colombian government. The initiative, known as the National Committee on the Implementation of the Voluntary Principles, is striving for industry-wide participation in the VPs, as well as for increased contribution by reputable NGOs. As a member of the National Committee, Occidental Petroleum is responsible for reviewing the progress of this initiative with the input of local representatives of participating governments and companies, and the Colombian Oil Industry Association (ACP). “These efforts have had such widespread impact that Colombia is now recognized by many as a showcase in demonstrating progress and commitment to the Voluntary Principles” (Occidental Petroleum, 2006: 25).

Occidental Petroleum Operations in Colombia

Occidental Petroleum has been an active investor in Colombia for over four decades, and the company is now engaged in two operations at oil fields located in the northeast region of Colombia. The first, located in the Llanos Norte Basin of Arauca province, is the Cano Limon oil field in which Occidental Petroleum owns in equal parts with Ecopetrol, the Colombian national oil company. Oil from Cano Limon is transported to Covenas, a city located on the north western coast, through a pipeline owned by Ecopetrol. The second operation is a partnership between Occidental Petroleum subsidiary Occidental Andina and Ecopetrol in the La Circa-Infantas (LCI) oil field. While Ecopetrol is the operator of La Circa-Infantas, Occidental Petroleum provides the necessary funding (Occidental Petroleum, 2009; Latin America - Colombia).

The Cano Limon oil field has been highly impacted by the security situation in Arauca province, a region that experiences one of the highest levels of violence (Weinberg, 2005). The province, along with Casanare province and the region of Putumayo, contains a large portion of Colombia’s oil resources, and has therefore been a focal point of the war in Colombia. US forces have a significant presence in this area, mainly to protect Occidental Petroleum’s operations (Leech, 2004: 40). There is also a significant presence of Colombian paramilitaries in the area of Arauca. The branch of the AUC paramilitary present in the

area, the Arauca Vanquishers Bloc, has been linked to numerous murders in the area. The paramilitaries not only target members of the FARC and ELN, but will also target civilians who are suspected of being leftist sympathizers. There have been allegations of close ties and collaboration between the Colombian state forces stationed in the area and the paramilitary unit (Leech, 2004: 43).

The presence of the US and Colombian military, as well as paramilitary groups, have not deterred the FARC and ELN forces in the region. They have continued to carry out attacks in Arauca, targeting military checkpoints and patrols. They have injured many civilians in their attack, and have also forced many civilians to carry out bombings (Leech, 2004: 46).

Occidental Petroleum's operations in Colombia have been the target of numerous attacks since the company began operating in the country. Since 1986, the pipeline connecting Cano Limon to the port city of Covenas has been attacked over 900 times. Attacks are most often carried out by members of the FARC and ELN. According to testimony given by a member of the FARC, bombing the pipeline is a 'simple operation'. Less than a dozen men with shovels and dynamite walk out into the field, burying a hole near the pipeline that is approximately six feet under the ground. Occasionally they are spotted by a Skymaster, a type of airplane that is funded by Occidental Petroleum, however the loud noise given off by the plane allows for the perpetrators to throw the dynamite and hide under some nearby trees (Dudley, 2002: 29).

Occidental maintains a relationship with the Colombian military. The company provides assistance to the state's armed forces both financially and materially, including the provision of equipment, uniforms and food (Dudly, 2002: 30). In the company's human rights policy, it is stated that Occidental Petroleum "will seek to include in contracts with public entities for the provision of security services with respect to Occidental's Foreign Activities the acknowledgement that the host Foreign Government is committed to the United Nations Code of Conduct for Law Enforcement Officials, as applied in the Voluntary Principles on Security and Human Rights and to the ILO Declaration on Fundamental Principles and Rights at Work" (Occidental Petroleum, 2009: human rights policy).

The company has also provided financial support for the building of an army camp where soldiers can reside when they are in the process of traveling from one area to another. This addressed a risk that was being posed for local farmers and community members who had previously been providing accommodation to the soldiers, as they were seen by guerrilla members to be government supporters. The camp is also used as an interim place for army members to stay while they are between missions (Orsini, 2009; Personal Communication).

Furthermore, the company finances what is known as 'integration festivals'. These festivals are a strategy that the army has engaged in to build better relationships between army personnel and communities, as well as to change any negative perceptions that community members may have towards the armed forces. These festivities include gifts, food, medical services, and other activities or items that may assist in fostering a better relationship (Orsini, 2009; Personal Communication).

The details of the agreements with public security forces, managed by the ANH and Ecopetrol³, have remained confidential. However, it was recently decided by the National Committee that certain segments of these agreements will be made public, at the request of Occidental Petroleum and other members of the National Committee. Of the three sections that make up these agreements, the preamble and the general guidelines sections will be made public, while the annexes, which outline the amounts of payments being transferred and logistical information, will remain confidential. Included in the sections to be made public are a number of clauses on issues such as object of the agreement, restrictions on the use of supports (in kind and non lethal), validity, causes for termination, human rights and international humanitarian law, coordination, confidentiality and reporting (Orsini, 2009; Personal Communication).

Despite the fact that Ecopetrol signs the agreement with the Ministry of Defence, Occidental Petroleum is responsible for executing and monitoring the agreements.

³ In Colombia, the state oil company, Ecopetrol, owns all oil operations. Other oil companies operating in the area are considered to be partners of Ecopetrol. Agreements held with the Ministry of Defence are therefore signed by Ecopetrol on behalf of the companies that are operating in Colombia.

Monthly reports are provided that detail the amount of money that is allocated to the army through the security agreement. The company has also hired an external company to be responsible for tracking the financial transfers that are made. The implementation of the VPs has also assisted in monitoring these agreements, as the indicators that the company is using to conduct its risk assessment requires that the company monitor on a monthly basis how the transfer of funds is being used by the army, in order to assure that they are not being used to commit human rights violations. There are also monthly meetings with the local military commander that the company directly supports regarding issues such as the VPs, human rights complaints of Occidental Petroleum personnel or complaints against military personnel (Orsini, 2009; Personal Communications).

In a report released in 2004, Amnesty International alleged that Occidental had lobbied the US government for further assistance to the Colombian government, both financial and military, in order to provide more protection for its operations. The report also highlights that the company is involved with the Colombian military, providing both financial and material assistance in return for protection of company operations. Amnesty International also alleges that this assistance has included protection by the XVIII Brigade, a segment of the Colombian army that has had allegations of intimidation, both of union leaders and civil society members (Amnesty International, 2005).

In response to these allegations, Occidental noted that AI had never been to their operations in Colombia. Lawrence Meriage, Occidental's vice-president of communications and public affairs, admitted that the company relies on the Colombian military for protection, but "vigorously denied any charges of impropriety in relation to human rights in the country" (Rose, 2004). The company therefore invited Amnesty International to investigate their allegations in Colombia. AI denied this invitation for the time being, requesting that Occidental respond to several questions and issues that AI has raised before they would visit the site (Rose, 2004).

In addition to receiving protection from the Colombian army, Occidental Petroleum also employs private security contractors. The presence of private security contractors is however limited, as the number of private security personnel is limited and the majority of

them are unarmed. Those that are armed are used as escorts for company employees in Bogota, and they number as little as 5 personnel (Orsini, 2009; Personal Communication).

Occidental Petroleum conducts human rights screenings for all security contractors in order to assess whether these companies, or any of their personnel, have been involved in past human rights or criminal violations (Occidental Petroleum, 2004: 4) Employees of the private security contractors receive human rights training, as well as specific training that focuses on the VPs.

Occidental Petroleum's Human Rights Policies and Procedures

Occidental Petroleum adopted its human rights policy in 2004. The establishment of this policy was the result of dialogue sessions with the Interfaith Centre on Corporate Responsibility⁴ (Occidental Petroleum, 2004: 1). "Responsibility for implementing the policy falls within each Occidental Petroleum business unit, and the Corporate Governance, Nominating and Social Responsibility Committee of Occidental Petroleum's Board of Directors monitors compliance" (Occidental Petroleum, 2007: 27). The policy focuses on six areas: Commitments to Stakeholders; Social Impact Assessment; Foreign Contracts; Hiring, Communication and Training on Human Rights; Enforcement; Verification and Transparency. Occidental Petroleum managers are responsible for assuring that all employees have been briefed and are knowledgeable about Occidental Petroleum's human rights policy (Occidental Petroleum, 2007: 11).

The company's human rights policy is the most comprehensive and detailed of the three companies examined. The policy provides individual commitments to different stakeholders, as well as a commitment to the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the Voluntary Principles on Security and Human Rights and the Global Sullivan Principles. It also includes more specific and practical steps that will be taken by the company to avoid human rights violations, such as the examination of past records of new employees prior to hiring, an orientation for new employees regarding the human rights policy within the first six months of being

⁴ The Interfaith Center on Corporate Responsibility is a faith-based socially responsible investment group.

hired, the requirement of human rights training for private security providers, and a required commitment from foreign security providers for various services, including the VPs (Occidental Petroleum Human Rights Policy). The policy has been praised by Doris Gormley, human rights activist and representative of the Interfaith Centre on Corporate Responsibility. She stated that:

Occidental's Human Rights policy is one of the stronger company policies on record. It positions human rights as a vital component in the company's business decisions. The challenge now is to implement the policy on the ground in difficult environments like Colombia and to devise an objective process to measure and verify policy compliance in all company operations. As stockholders, we are confident that Occidental will bring the same energy and commitment to this work as it has demonstrated during policy development. (Occidental Petroleum, 2004; 5)

Occidental Petroleum's Human Rights Policy has been incorporated into the company's Code of Business Conduct. The Code of Business Conduct was created in 1997, and outlines Occidental Petroleum's ethics, policies and procedures. The code demands that all employees respect not only the company's regulations, but also all applicable laws. Employees are encouraged to report any violations or suspected violations of the code to the Board of Directors' Audit Committee, the body charged with overseeing the code (Occidental Petroleum, 2004: 8). A human rights section has been added to the code, a significant change being that human rights were not mentioned in the original version of the code. In the new human rights section, Occidental Petroleum commits to supporting human rights and to considering the interests of various stakeholders when engaging in its operations, as well as to encouraging its partners and contractors to do the same. The company also states that it will conduct social impact assessments prior to engaging in operations on foreign territory, and will include community engagement in these assessments. Also included in the Code of Conduct is a discussion of Occidental Petroleum's policy of including human rights provisions in its contractual agreements with contractors and suppliers, which allows Occidental Petroleum to communicate its

expectations for ethical conduct. However, there are some exceptions to this, and not all contracts have included these provisions (Occidental Petroleum, 2004: 4).

A 'zero tolerance' policy for violations of the code has also been established for the company (Occidental Petroleum, 2006: 27). The policy has been implemented, as there have been incidents where employees have had infractions that have led to a termination of employment (Orsini, 2009; Personal Communication). Yet, the company maintains that it undertakes a preventive strategy when it comes to the code, and attempts to provide their employees with appropriate training as to avoid any infractions (Orsini, 2009; Personal Communication).

Aside from its human rights policy and the Business Code of Conduct, in 2007, Occidental Petroleum also implemented human rights and the VPs into their Health, Environment and Safety (HES) policies and procedures. "The revised standards establish the requirements in regard to security risks, training, engagement of stakeholders and related matters" (Occidental Petroleum, 2007: 9). The company has also taken efforts to expand the capacity of its employees to implement these human rights policies. In 2005, Occidental Petroleum sent personnel from its Colombia operations, along with personnel from other Latin American countries, to Bogota in order to participate in a Human Rights Policy Implementation Workshop (Occidental Petroleum, 2005: 6).

In Colombia, Occidental Petroleum engaged in a massive communication strategy in order to promote awareness and comprehension of the company's human rights policy. For example, at the initial stages of the communication strategy, fieldwork was conducted in order to discuss the various policies that were related to human rights. Occidental Petroleum has now made all of its employees aware of the human rights policy, as well as the Business Code of Conduct, although a thorough knowledge of each component does not exist for every employee. They are however made clear regarding the company's position on human rights. The human rights training that the company conducts for both its employees and its contractors has also assisted in promoting all of Occidental Petroleum's human rights policies (Orsini, 2009; Personal Communication).

To raise awareness about its human rights policies outside of the company, Occidental Petroleum provides copies of its human rights policy to members of the Colombian army. This includes both commanders and soldiers. By disseminating the human rights policy, Occidental Petroleum makes members of the army aware of both the company's policy towards human rights, as well as a form of training that the company provides them. This training is not considered to be formal training, as this is not the responsibility of the company. What these sessions serve to accomplish is to encourage sensibility over human rights issues, as well as discuss the impact that the armed forces can have on the company and the impact that the company can have on the armed forces. This assists to create awareness and understanding regarding the company's position. It also addresses a challenge that the company sometimes has when it is not always fully aligned with Colombian army in terms of how they understand the situation. For example, some members of the army believe that the company is there for a military project, which is not the case. Another example is the external perception that the army members who are responsible for protecting Occidental Petroleum's operations are in fact Occidental Petroleum's army, which is again not the case (Orsini, 2009; Personal Communication).

Occidental's subsidiary in Colombia has created a Legal and External Affairs Vice Presidency, which comprises the following elements; social responsibility and community affairs (including promotion of human rights), legal department, governmental affairs, communications and security. The Legal and External Affairs Vice Presidency was created three years ago in order to increase and facilitate communication among the various components who were working on issues that overlapped between the different departments (Orsini, 2009; Personal Communication).

A complaints mechanism is embodied internally in Occidental Petroleum's human rights policy, as it states the following:

If an Employee witnesses or has knowledge of any incidents with respect to Occidental's operations involving a violation of this Human Rights Policy, that Employee is required to report the alleged incident to either the (A) Legal Manager in the local office, (B) Compliance Officer, (C) Chief Compliance Officer or (D) any

member of the Corporate Compliance Committee. In addition, Employees may report suspected violations by calling Occidental's Compliance line. Anonymity will be protected. No discriminatory or disciplinary action will be taken against Employees who make bona fide reports regarding suspected violations of this Human Rights Policy for the reason the Employee has made such report. (Occidental Petroleum, "Human Rights Policy", 2004)

For those outside the company, a complaints mechanism exists in the form of a claims tracking system. This system comprises various different issues, including human rights. The company has developed a procedure to investigate such complaints. For example, the company had received some complaints from local farmers that there were army personnel trespassing on their property. The written complaints were transferred to the army personnel responsible for handling this issue, and the company made the local farmers aware that they had done so in order to assure them that the issue is being addressed (Orsini, 2009; Personal Communication).

The company also began reporting human rights and international humanitarian law abuses on their areas of influence. These reports encompass categories, each with *their own procedures to address them*. An example includes forced displacement, a very common situation in Colombia, especially in Arauca. The procedure for addressing this issue is attempting to incorporate related bodies, such as the National Ombudsman's Office and United Nation's Refugee Office. This allows the company to be more aware of how to proceed when facing allegations or complaints of forced displacement. The process of developing the categories in the company's areas of influence is still in progress (Orsini, 2009; Personal Communication).

Occidental Petroleum conducts risk assessments at all of its non-US locations, with a comprehensive risk assessment having taken place in Colombia in 2006. The risk assessments examine social and economic risks, as well as the potential for violence in the area surrounding the operations. As part of the risk assessment, Occidental Petroleum's security contractors undergo human rights screenings in order to assess whether these companies, or any of their personnel, have been involved in human rights or criminal

violations (Occidental Petroleum, 2004: 4). Initially, the risk assessment began in La Cira oil field, guided by a new toolkit created by International Alert⁵: *Conflict-sensitive business practice: Guidance for extractive industries (CSBP)*. The toolkit “allows [a company] to apply two-way risk and impact analysis with a specific, but not exclusive, focus on issues of security and human rights” (Occidental Petroleum, 2006: 26). The CSBP was created based on extensive fieldwork and stakeholder consultations conducted by International Alert personnel. Occidental Petroleum’s use of the toolkit was considered a test-pilot case, and allowed Occidental Petroleum to gain valuable experience and knowledge regarding risk assessment methodology (Orsini, 2009; Personal Communication).

The toolkit was implemented in various phases over a period of two years (*GEMI & Environmental Defense Fund, 2008: 9*). Occidental Petroleum employees at all levels were briefed regarding CSBP, and underwent training through various workshops. They also conducted interviews and extensive reviews of the project documents, and relevant social and economic information of the region. International Alert and Fundacion Ideas para la Paz assisted with the training and supervision of project teams that were charged with conducting research. The majority of research comprised of fieldwork that gathered information from a variety of stakeholders, including company managers, field workers, and local community members, on the social, security and economic impacts of Occidental Petroleum operations at La Cira (IPIECA, “Operating” 2008; 28). This information was used to conduct an overall analysis of risk at the site, as well as recommendations on how the company can improve its efforts. The process also allowed for Occidental Petroleum to gain valuable experience that can be used for current and future stakeholder consultations regarding a variety of issues, including implementation of the VPs.

Since having followed the matrix developed in assistance with International Alert, Occidental Petroleum has made changes to their risk assessment methodology. The company has also changed the way in which it defines risks. The company now sees risk as the sum of vulnerabilities and threats. Vulnerabilities are things that the company can

⁵ International Alert is a non-profit organisation that focuses on conflict-resolution and peace building.
<http://www.international-alert.org/>

address, while threats are something that is out of the control of the company. The company finds this useful in terms of determining what the company needs to address in order to have due diligence (Orsini, 2009; Personal Communication).

Risks that are identified in Occidental Petroleum's risk assessment are prioritized by the company, with critical risks being the only risks that are selected for action. This is due to the high volume and broad range in severity of potential risks that are often identified. The company also believes that risk mitigation is not the sole responsibility of the company, and that the Colombian government should also be responsible for addressing potential risks. An action plan is created for all the critical risks that the company identifies, including indicators and targets for completion. A follow-up is also conducted every two months for each critical risk (Orsini, 2009; Personal Communication). Another way that the company seeks to better address risks that are identified during risk assessments is through the emergency response system that was developed by the company in partner with Ecopetrol (Occidental Petroleum, 2008).

In 2008, Occidental Petroleum gathered important feedback from the Colombian government, communities and other stakeholders regarding the risk assessments that the company conducts. An updated risk assessment of the Llanos Norte Basin also took place with the assistance of the Centre for the Sustainability of Strategic Sectors, using the CSBP toolkit. The company also took the recommendations it received from International Alert and Fundacion Ideas Para La Paz for its La Cira-Infantas risk assessment, and began to implement them (Occidental Petroleum, 2008; 3).

The risk assessment process has been labelled as one of the most beneficial elements of the VPs by Occidental Petroleum Colombia's Social Responsibility Coordinator Yadaira Orsini. The process has assisted the company in positioning human rights within its corporate structure, as well as in creating a human rights framework. It has also changed the perception of risk for the company, and has enabled the company to not only examine the impact that potential risks may have on the company, but also how the company can impact surrounding communities (Orsini, 2009; Personal Communication).

Occidental Petroleum consults with the Colombian government via the Mining and Energy Committee on Security and Human Rights. This has at times been challenging due to lack of resources and funding from the Colombian government. For example, the Committee requires a representative from the Vice-President's office to attend all the meetings for the Committee however due to a lack of resources there is yet to be someone assigned to this position. The company also faces challenges when attempting to create positive relationships with members of the Army, due to high rotation of army personnel. When the company is able to form a significant and beneficial relationship with an important member of the army, this person is rotated into a new position and the company is forced to rebuild this relationship with a new individual (Orsini, 2009: Personal Communication).

There have been some key allies that the company has found in the Colombian government that have been essential in promoting dialogue regarding security and human rights. This has included the Vice-Minister of Defence, who has been involved in creating a Human Rights and International Humanitarian Law policy. Occidental Petroleum, along with other companies belonging to the Committee, was able to successfully advocate for the inclusion of the VPs as one of the guidelines for the operations of security forces (Orsini, 2009; Personal Communication).

Occidental Petroleum supports the Colombia Civil Sector Initiative, which is a partnership between Colombian universities and NGOs that began in 2002. The initiative provides support, both through resources and training, to the many organizations implementing peace and development programs. The initiative has provided a forum for the non-profit sector and academia to engage in relevant discussions regarding peace, conflict resolution and human rights. It has also brought together business and social leaders, allowing them to benefit from their engagement in dialogue with members of the initiative (Occidental Petroleum, 2004; 16).

Occidental Petroleum has also collaborated with Fundacion Ideas Para la Paz. Together, they created a risk and impact matrix to be used at its operations in the Canon

Limon Field. This organization will also assist Occidental Petroleum when conducting risk assessments for its new operations (Occidental Petroleum, 2005: 7).

Occidental Petroleum, along with its partner in La Cira, Ecopetrol, collaborated with International Alert and Fundacion Ideas para la Paz to implement the risk assessment toolkit that has been created by International Alert. The collaboration was mutually beneficial for all parties, as both NGOs were able to test-pilot the new toolkit, and both companies were able to gain valuable experience at conducting risk assessments. The project began with a meeting held with Occidental Petroleum and Ecopetrol at the head office of International Alert in London. This meeting provided the opportunity for the three parties to discuss different expectations, as well as their commitment to transparency, independence and confidentiality. The parties settled on a short term agreement, with the possibility of extension should they generate a good working relationship and a high level of trust. At this point, Fundacion Ideas Para la Paz also joined the parties, as a local partner to International Alert. The six month agreement was eventually extended, and the various parties continue to work together in order to implement the toolkit. International Alert was instrumental in this program, as it assisted the company in conducting workshops that explained to various employees the importance of including human rights issues in risk assessments. This was particularly important as many employees have a background in engineering, business and the sciences, and they are not accustomed to looking beyond basic social and safety analysis (Orsini, 2009; Personal Communication).

Following the first implementation of the toolkit, International Alert assisted Occidental Petroleum in conducting follow up training sessions in order to discuss stakeholder consultations. These sessions discussed how the information that was found in the risk assessment can be used to engage relevant stakeholders. These follow up sessions also included assistance in how to properly express Occidental Petroleum's commitments to human rights during stakeholder dialogue, how these commitments should be worded, as well as in decision-making regarding some of the issues that were uncovered in the risk assessment (Orsini, 2009: Personal Communication).

Following the initial pilot of the toolkit, Occidental Petroleum Colombia has made some changes to the risk assessment methodology, as well as to the way in which the assessment is carried out. The company has continued to consult with International Alert throughout making these changes. The changes saw the risk assessment matrix become more simplified and better adapted to the personnel at Occidental Petroleum Colombia. One concern that was taken into consideration while making these changes was the fact that many of the employees at the operations were operating on a technical level, and therefore the matrix had to be adapted in order for them to better understand the various human rights and security elements of a risk assessment (Orsini, 2009: Personal Communication).

The toolkit and methods used have been used for other operations in Colombia, and the model used for this engagement has been used for other projects as well (GEMI & Environmental Defense Fund, 2008: 9). The collaboration amongst the four stakeholders has also been used as an example and case study in various cases, including in the GEMI & Environmental *Guide to Successful NGO Partnership* and the IPIECA's report on *Human Rights and Ethics in the Oil and Gas Industry* (GEMI & Environmental Defense Fund, 2008; IPIECA, "Human Rights" 2008).

Aside from the consultative relationship that Occidental Petroleum Colombia holds with International Alert, the company does not engage in any other consultative relationships with other NGO members of the VPs. Occidental Petroleum Colombia does however monitor and consult the various reports that are created by some of the NGO members, such as Human Rights Watch. One example of this is a report on security agreements in the extractive industries which provided recommendations from which the company has made adaptations. The company had at one point entered into preliminary conversations with Pax Christi⁶, however a more meaningful relationship was not

⁶ "Pax Christi International is a non-profit, non-governmental Catholic peace movement working on a global scale on a wide variety of issues in the fields of human rights, human security, disarmament and demilitarisation, just world order and religion and violent conflict" ([www.http://www.paxchristi.net/international/eng/index.php](http://www.paxchristi.net/international/eng/index.php)).

developed due to differences in opinions regarding how the VPs should be implemented (Orsini, 2009; Personal Communication).

In 2007, Occidental Petroleum organized a workshop in collaboration with two other major oil companies and *Business for Social Responsibility*. The workshop was held to promote the VPs, and included non-members in the extractive industries, project contractors and security companies (Occidental Petroleum, 2007: 29).

The VPs have changed the way that Occidental Petroleum Colombia views its stakeholders, increasing stakeholder engagement, particularly with NGOs. This is mainly because the VPs provide a starting point for discussion with relevant NGOs. The commitment to the VPs demonstrates that the company is committed to addressing *important human rights issues, something that provides a common ground off of which to build a meaningful relationship with civil society organizations* (Orsini, 2009; Personal Communication).

Occidental Petroleum began training its personnel in Colombia in 2004 (Occidental Petroleum, 2004: 4). Training is provided to all employees, with mandatory human rights training being required for security employees and contractors. Some employees receive additional training in specific areas that is required for their position. The company also requires human rights training for select companies with which it holds agreements (Occidental Petroleum, 2004: 4). For example, in 2007, Occidental Petroleum security contractors received special training that focused on the VPs. It is the responsibility of Occidental Petroleum managers and officers to assure that all employees have been briefed and updated regarding Occidental Petroleum's human rights policies and those employees receive the necessary human rights training for their position (Occidental Petroleum, 2008: 8). The human rights training provides an in depth review of Occidental Petroleum's human rights policy, and familiarizes employees with the Universal Declaration on Human Rights and the VPs. Training in human rights also provides employees with the opportunity to discuss their actual experiences in the field (Occidental Petroleum, 2005: 6).

Occidental Petroleum has implemented a specific electronic human rights training program in Colombia. This training program has been modified to reflect Colombian

culture, and has been translated into Spanish in order to be accessible to all employees. The program includes “case discussions, examples from extractive industries and illustrations of good practices, and are available to all employees through our internal Human Rights Web Site” (Occidental Petroleum, 2005: 24).

In the company’s latest 2008 report, it is stated that 92% of Occidental Petroleum employees in Colombia have had specific training on human rights and the VPs, along with 95% of Occidental Petroleum’s contractors. Private security employees have also received human rights training, and Occidental Petroleum Colombia’s security employees have also attended workshops designed to inform them of the VPs. Public security forces that are responsible for protecting Occidental Petroleum operations in Colombia have also received training on human rights and the VPs. These workshops included discussions on human rights issues as well as case studies on security and human rights (Occidental Petroleum, 2008).

Occidental Petroleum began producing its CSR report in 2003, an event that corresponds with the company joining the VPs. The first report centered on how the company was helping the communities surrounding their operations, particularly in terms of education, health and the environment, as well as on labour and employee issues. The attention allocated to human rights in this first report was however limited to the mentioning of the company’s commitment to the VPs and the Global Sullivan Principles. In 2004, the company increased the amount of content on human rights, including information regarding social impact assessments, training, hiring, human rights collaboration and contract provisions. Another increase occurred in 2007 and 2008, where the company provided more specific information regarding its human rights activities.

The success that Occidental Petroleum has had in implementing the VPs in Colombia has also come with certain challenges, many of which the company is still attempting to address. At the internal level, it has been difficult to make some employees aware of the importance of human rights in the company’s operations. This is particularly due to the backgrounds of the employees, which is more centered on engineering, logistics and business. Therefore, there had previously been a greater operational focus, one that

excluded any social elements, especially human rights. There has been some improvement in this regard, and the risk assessment process has been crucial in engaging employees who previously focused on operational aspects on social issues, including security and human rights. The process has assisted in raising awareness as to why security and human rights issues are crucial to Occidental Petroleum's operations (Orsini, 2009; Personal Communication).

There is a noticeable difference in implementation that is evident between both of Occidental Petroleum's operations in Colombia. The implementation of the VPs and work in the area of human rights has been slower at La Cira-Infantas because Ecopetrol has a larger stake in this operation. The company therefore has to have more activities, policies and procedures approved than at their operations in Arauca. The company has also been operating in Arauca for much longer than it has in La Cira-Infantas, with operations at La Cira-Infantas having commenced approximately 4 years ago while the company's operations in Arauca have been ongoing for 25 years. This is not to say that implementation is not occurring in La Cira-Infantas, as the same changes are taking place, only at a slower rate (Orsini, 2009; Personal communication).

At the external level, there is some difficulty with engaging stakeholders, particularly at the state level. This can be attributed to two reasons: a difference in priority and a lack of resources. While the Colombian government has shown improvement in its commitment towards human rights, it is not always prioritized as high as the company would like. The government also has a lack of resources, including time and funding, which means that there is not always a representative from the government available for important meetings with the National committee. This means that the company cannot engage in the continuous direct dialogue that it would like. A high turnover rate in the Colombian army also makes it difficult for the company to create meaningful relationships with important officials in the army, because once those relationships begin to form, that individual is often transferred to a new position. The company does maintain however that the Vice-Minister of Defense has been a key ally for the company in terms of its relationship with the Colombian armed forces (Orsini, 2009; Personal Communication).

Further challenges with the Colombian government include a negative bias felt by the company from a main state institution, the National Ombudsman Office. This stems mostly from Occidental Petroleum's role in the 1999 bombing of Santo Domingo. This institution's perceived prejudice against the company has prevented Occidental Petroleum from building a solid relationship with the National Ombudsman's Office. The company has been working on overcoming this prejudice in order to create a more meaningful relationship, and while there is much more work to be done, some progress has been made (Orsini, 2009; Personal Communication).

In terms of challenges with the VPs themselves, the company has found that there are some grey areas. The company finds that there are some scenarios that arise when operating in states experiencing conflict or experiencing security issues where the VPs provide limited guidance. For example, the VPs ask that companies perform background checks on public security forces responsible for protecting their operations. Yet, there is no direction on the steps to be taken if it is found that members of the armed forces have in fact been involved in human rights violations. While the company has not yet found itself in this scenario, there are others that have. The company must therefore balance its need for due diligence with maintaining a good relationship with the army, as companies could not operate without them (Orsini, 2009; Personal Communication).

Another example of a grey area that the company has found is regarding the issue of complaints. The company has found it difficult to define what is considered a credible threat. If the company were to receive complaint alleging human rights violations by the army, it is difficult for the company to determine whether this complaint is legitimate, or if the individual launching the complaint is a guerrilla sympathizer. The company has attempted to define what is meant by credible, and the National Committee has used the definition of what is considered credible by a judicial authority. Yet, a problem can arise when using this to define credibility in cases where there are consistent complaints by community members where a judicial authority has not been involved (Orsini, 2009; Personal Communication).

Analysis of Occidental Petroleum's Implementation of the VPs

The findings for Occidental Petroleum indicate that the company has taken steps toward implementing the VPs into their corporate policies and procedures. This has been done in several ways, most notably through the adoption of a specific human rights policy that is aligned with the VPs, from which the company bases many of its activities related to human rights. The company has also added a human rights element to their Business Code of Conduct and their HES policy procedures.

In terms of changing company practice, there is evidence that Occidental Petroleum has begun to change how the company operates in Colombia since having adopted the VPs. While some of these changes, such as the creation of the Legal and External Affairs Vice Presidency, are not linked directly to the VPs, there are certain changes that indicate a stronger influence from the VPs. These have included human rights training for company employees, with specific training for security personnel, as well as risk assessments, which have involved various external stakeholders such as Fundacion Ideas Para La Paz and International Alert.

In addition, Occidental Petroleum has increased its consultation efforts with International Alert and Fundacion Ideas Para La Paz. This relationship, particularly through the implementation of the risk assessment methodology, was created at the request of Occidental, which also provide evidence that the company is serious about the implementation of the VPs. This relationship between Occidental Petroleum and International Alert and Fundacion Ideas Para La Paz allows the company to demonstrate a higher level of due diligence, and the company's willingness to work with these NGOs indicates that it is attempting to effectively implement the VPs and to make its operations more transparent. The company has also promoted the VPs, particularly through its membership in the Colombia National Committee.

Many of Occidental Petroleum's activities in the area of human rights and security coincide with the company's adoption of the VPs. This is true of the company's implementation of its human rights training program, the adoption of its human rights policy, the incorporation of human rights into its HSEC management system and Business

Code of Conduct, and the company's engagement with International Alert and Fundacion Ideas Para La Paz. As these activities have all been conducted in the spirit of the VPs, there is strong indication that the company has used the VPs as a tool for implementing greater human rights programming into their Colombia operations.

CHAPTER 5: TALISMAN ENERGY

Talisman Energy is an independent oil and gas company that is based in Calgary, Alberta. The company was established in 1992, and currently holds interests all over the world. The company posted a net income of \$63 million during the second quarter of 2009.

In the past decade, Talisman was involved in a high profile human rights scandal related to their operations in the Sudan. In a January 2000 report, written by John Harker for the Canadian Minister of Foreign Affairs, evidence was provided that implicated Talisman in severe human rights violations through their assistance to the Sudanese military. It was alleged that Sudanese military officials were provided with key logistical information that assisted them in their assault on non-Muslim populations that resided in the area of oil operations (Harker, 2000). More precisely, as cited in a US District Court document in the Southern District of New York regarding the Sudanese Presbyterian Church complaint launched against Talisman Energy under the Alien Tort Claims Act (ATCA), the plaintiffs sought

to hold Talisman liable for having conspired with or aided the Government in committing three crimes recognized under international law: genocide, crimes against humanity, and war crimes. The crime against humanity that is at stake is the widespread and systematic forcible transfer of a civilian population. The war crime is the targeted attacks by the military on civilians. (US District Court Southern District of New York, 2006)

The negative attention that Talisman received from various media outlets and NGOs eventually led the company to sell its shareholdings in the Sudan (Roner, 2005).

While the allegations against Talisman were numerous and received intense media coverage, the company denies the allegations brought against it, and continues to maintain that the company's presence in Sudan was beneficial to the communities residing in the surrounding areas of the company's operation (Roner, 2005). In 2001, a Talisman spokesman addressing a lawsuit brought against the company that stemmed from its

operations in Sudan was quoted as saying ““We have been actively promoting respect for human rights in Sudan, and an end to the war. We are therefore disappointed at this move. Sudan can be helped by foreign investment and we think we have been doing good things there” (Alden & Warn, 2001).

Talisman began incorporating the VPs into its practices and policies in 2001, although the company was not an official member. The company had originally requested to become a member of the VPs upon their creation, however was denied due to concerns regarding its operations in the Sudan (Ramzi, 2009: Personal Communication). Also, the VPs would initially only allow those companies whose home state was a member of the VPs to become signatories, making Talisman ineligible to join. Upon the removal of this criterion, Talisman was able to join as an official member in January 2008 (Maddams, 2009; Personal Communication).

According to Doug Maddams, Talisman’s Latin America Advisor for Corporate Responsibility and Government Affairs, the decision to incorporate the VPs in company policy and practice coincided with the criticism the company received regarding its experience in the Sudan in the late 1990s, and its engagement in Colombia in 2001. This was the first time Talisman had engaged in operations in countries that exposed the company to human rights and security issues, as well as problematic issues with the public forces of countries in which it was operating. The company was seeking an international initiative that was credible, respected and independent. Following research conducted by Reg Manhas, Talisman’s Vice President of Corporate Responsibility and Government Affairs, security advisors, senior management and the company’s legal department, the VPs were found to be the initiative that Talisman had envisioned (Maddams, 2009; Personal communication).

The first mention of the VPs in Talisman’s corporate social responsibility reports came in the first report released in 2000 which claimed that the company reviewed the VPs while developing a framework for the provision of security and recognizing its responsibility to protect human rights (Talisman, 2000: 14). The following year, the company based its security policy of the VPs (Talisman, 2001: 38), and in 2003 Talisman

reported that it had “established formal security arrangements with our coventurers in Colombia in the spirit of the Voluntary Principles on Security and Human Rights (Talisman, 2003: 2).

Also influencing the company’s decision to adhere to the VPs was the nature of the operations of prominent members of the VPs. Many of the corporate members of the VPs were operating in countries that identified similar issues that Talisman was experiencing with their operations in the Sudan and Colombia. That the members of the VPs were experiencing similar challenges as Talisman allowed the company to recognize that the VPs would provide a valuable forum to discuss these issues openly and share best practices (Maddams, 2009; personal communication).

Talisman has been active in encouraging other companies and stakeholders to implement the VPs into their own policies and procedures. This has been done while negotiating contracts and agreements with partners and contractors, as well as while attending various forums where peer companies are present. For example, in October 2007, Talisman attended the XII Colombian Oil and Gas Congress. Reg Manhas represented the company by participating as the event keynote speaker, discussing the company’s experience with security and human rights in Colombia, as well as promoting and encouraging the implementation of the VPs (Talisman, 2007; 23). The presentation also advocated for companies to increase their due diligence by considering factors such as: “Human rights record/reputation of country, capacity/policies/practices/reputation of partners, perspectives/positions of NGOs, perspective/positions of Canadian/US governments, Ability of Company to mitigate risks”.

When asked how the VPs are used to fulfill his responsibilities as the international security manager for Talisman, Mark Reading spoke of the usefulness of the VPs for standard setting and policy making. This is not limited to internal company policies, but extends to the standards that are set for the relationship between the company and its partners, contractors and other stakeholders. The VPs bring a minimum set of standards that the company includes in various agreements and contracts to communicate what the

company expects from these various parties (Mark Reading, 2009; Personal Communication).

Talisman Operations in Colombia

A subsidiary of Talisman currently has several interests in Colombia, with the company holding interests in 11 blocks in total. Talisman (Colombia) Oil & Gas Ltd. owns “a 30% non-operated interest in the Mundo Nuevo Block, a 67% non-operated interest in the Tangara Block, and a 30% non-operated interest in the Niscota Block”; all located in the Llanos foothills in Eastern Colombia. The subsidiary also holds a 50% non-operated exploration interest in the El Porton, Los Ocarros and El Eden blocks in the Llanos Basin. In 2008, Talisman entered into a partnership with Ecopetrol. The two companies held the highest bid for the block EPC 8, an area of approximately 2.39 million hectares. Talisman is the operator of the block; however both companies hold equal participation in the operation (Rigzone.com, 2008). This marked the first time that Talisman has held an operator status at any of its operations in Colombia. The company was also awarded a 100% working interest in block CPO-9, which the company is also operator (Talisman, “Annual Information Report”, 2008: 4).

In Block 8, where Talisman has newly acquired an operational role, both guerrilla members and paramilitary members are present. Talisman has engaged in due diligence practices in order to manage the risks that are associated with this presence. To date, there have been no incidents of attacks on personnel or operations (Reading, 2009).

At the present time, Talisman holds a contract with the private security company ISVI. ISVI provides services in Bogota and in the operated blocks, and has been with Talisman since 2001. The security company is mainly used for information and planning purposes, and does not act as an alternative to security provided for by the army. ISVI was required to adopt Talisman’s Security Policy, in order to assure that they follow procedures and policies that meet Talisman’s standards (Talisman, 2001: 38).

Security and protection for Talisman’s personnel and operations in Colombia is provided for by the Colombian army, who reports to the Ministry of Defense. The company has conducted a third party independent analysis in order to practice due

diligence in terms of public security forces in Colombia. The cooperation agreements, which are also known as *convenios*, are held between Talisman and the ANH, who in turn enters into collaboration agreements with the Colombian army. The *convenios* were entered into in 2009 following the company's change in role as operator and are managed by the Agencia Nacional de Hidrocarburos (ANH). The ANH is the regulatory body and administrative unit for the Ministry of Mines, and is responsible for promoting the optimal use of oil in Colombia, and for assuring that the interests of society, the state and industry are taken into consideration and addressed (ANH, 2009). The terms of the agreements see a transfer of assistance from Talisman in return for protection by the Colombian army. The company maintains that all assistance is provided in-kind (no cash payments) to the Colombian army and is non-lethal and for defence purposes only. Some examples are material goods, such as fuel or accommodation (Reading, 2009). The *convenios* are overseen by a group of notaries known as fiduciary trustees, in order to assure that the terms of the *convenios* are being met (Reading, 2009).

The current *convenios* between Talisman and the ANH contain relevant mention of human rights, as they are based on the VPs (Reading, 2009). Prior to entering into the role of operator, Talisman did not hold any *convenios* with the ANH, however the company did advocate for the inclusion of the VPs into the *convenios* established by their partners. This was done through the company's security manager and the corporate responsibility department, who worked closely with the ANH and the ACP (Association of Colombian Petroleum Producers) to ensure that the *convenios* were closely aligned with the VPs. The company also insisted on clauses and sub committees on above ground risks, which included security. This meant that there was a regular reporting requirement for the partner operating the site, which enabled Talisman to discuss relevant security and human rights issues with the operator (Maddams, 2009).

Talisman's Human Rights Policies and Procedures

Talisman has two main policies that relate to the security and human rights aspects of their operations. The first policy is the Policy on Business Conduct and Ethics (PBCE). The PBCE was created in 1992, and has been updated several times since its inception. It is

designed to guide all Talisman employees on the ethical standards that the company is committed to upholding. The scope of the PBCE is very broad in terms of the areas which it may be applied. It includes various aspects, such as employee conduct, personal conduct, health and safety, and the environment. The PBCE was reviewed in 2003, and updates were made to include principles on human rights and community relations. Human rights is now an important component of the PBCE, and includes sections on the company's support for the UN Declaration on Human Rights, the commitment to review human rights issues and their relationship to company operations, address human rights concerns within the company's sphere of influence, and to respect the diverse cultures and perspectives of indigenous peoples. For example, it states that "Talisman will promote adherence to and respect for human rights principles in our areas of operation and will not be complicit in human rights abuses" (Talisman, PBCE; 2009). The company has also implemented a compliance program for their Policy on Business Code of Ethics. This program ensures that the policy is monitored and that violations of the policy are reported (Talisman, 2003: 13).

Talisman has also adopted a Security Policy in order to more accurately guide its security department and personnel on creating a safe environment for Talisman employees and the populations surrounding its operations. This policy was developed in 2004 using the VPs, and also includes a direct commitment to the VPs. The policy also provides a commitment to make contractors and third parties aware of the policy and to assure that they comply with it, to conduct risk assessments that include human rights reviews and consultation with local communities, and to promote awareness of the responsibility of company personnel to respect human rights (Talisman, 2001: 38).

A third way in which Talisman incorporates human rights and the VPs into its policies is through its Joint Operating Agreements (JOA), which are contractual agreements held between Talisman and its partners. According to Talisman's JOA guidelines, the company attempts to include a commitment to its security policy or to the VPs in all of its new international agreements. The company maintains that the most robust language regarding human rights and the VPs is sought in order to increase the due diligence of the partner with which Talisman is working with, and therefore all JOAs have a different level

of human rights and VP language. For example, Talisman's 2006 JOA with co-venturers for the Niscota Block included both an actual commitment to Talisman's Security Policy and the VPs (Talisman, 2006: 11).

Talisman's risk assessment process in Colombia is ongoing, and the nature of risk assessment changes as the company's business activities change. These risk assessments have been conducted since Talisman first became involved as a non-operator in Colombia in 2001, and it is important to note that this assessment was conducted prior to the company engaging with the VPs in any form. This assessment not only included a background of the history and socio-political situation of Colombia, but also of the various stakeholders involved. The company also conducted a human rights review and partner due diligence process for their operations located in the Mundo Nuevo and Tangara blocks (Talisman, 2001: 37).

Talisman's new role as operator of the CPE Block 8 in Colombia has provided further impetus for the company to conduct additional risk assessments according to the VPs. Prior to making its successful bid on the CPE Block 8 in the Greater Llanos Basin, Talisman, like many other companies, conducted a risk assessment of its new potential operation in Colombia. Aside from business concerns, the company also investigated potential security, political, social, legal and environmental risks that may arise through the operations in Blocks which they want to make a bid. Other companies operating in the country were consulted, although many of these consultations were held in confidence as they included discussion of sensitive security situations. This initial risk assessment was conducted without detailed groundwork as the company was unsure of whether or not the bids it was making would be successful. The assessment identified several above ground risks that related to the security situation in Colombia. Talisman overlaid these risks onto their business plan and examined what the company's mitigation strategies would be. The information gathered through risk assessments is then presented to all levels of management and the CEO of the company (Maddams, 2009: Personal communication).

Upon being awarded operated interests in Blocks CPE 8 and CPO 9, the company then commenced a more detailed and in depth risk assessment that built on its prior

assessments. These assessments are an ongoing process, as Talisman has implemented a stage gate mitigation process for its operations in Colombia. This approach calls for thorough analysis of human rights and the security situation in relation to engaging in the next business activity or gate, along with other risk and impact analysis. There are three gates established in this system; 1) environmental and social baseline study, 2) seismic program, and 3) drilling stage. The environmental and social baseline study consists of an Environmental Impact Assessment (EIA) which is conducted by a licensed organization Auditoria Ambiental that conducts these types of studies for companies in the extractive industries. Included in the assessment are the potential impacts of the activities that the company will be carrying out, along with mitigation strategies to minimize these impacts, and a study on the environment and social baseline. The company is not able to continue onto the next phase prior to conducting the EIA. Once the EIA has been conducted, a report is provided to the government for approval which allows the company to enter into the next stage (Maddams, 2009; Personal Communication).

Also included in the preliminary assessment is a security plan which takes into consideration the areas of corporate social responsibility and human rights. This plan is presented for approval to the Vice President of Corporate Responsibility and Government Affairs. Some examples of the various metrics that must be met include security and safety standards, and community consultation. While a security assessment is not conducted upon the beginning of each new activity or entry into the field, there is ongoing dialogue between members of the corporate social responsibility division working in Colombia and the Vice President of Corporate Responsibility and Government Affairs regarding security issues that arise in each phase. At the end of 2008, the company was at the first gate of the stage gate system, and in the process of conducting its preliminary security analysis (Talisman, 2008: 30).

The risk assessment process has been labelled as critical within the larger overall assessment that Talisman conducts for its potential operations. The company attempts to make their risk assessments independent by seeking the assistance from organizations and consultants outside the company, all while maintaining a certain level of confidentiality.

Ian Bragg, senior researcher at Michael Jantzi Research Associates, noted that “the company seems to be “embedding and improving” risk assessment (Roner, 2005). This is significant as Bragg had once criticized Talisman, stating in 2002 that "Talisman has not proved itself capable or willing to deal effectively with human rights issues in Sudan," MJRA Senior Research Associate Ian Bragg told SocialFunds.com. "And there are many such issues in Colombia” (Baue, 2002).

Talisman has engaged with the Centre for Strategic and International Studies in Washington DC and the International Peace Academy on various issues related to human rights, peace and security in Colombia. In 2001, Talisman joined the task force on Colombia at the Centre for Strategic and International Studies in Washington DC. The task force was a two year project, and included workshops to promote discussion regarding a range of topics that included: peace, narcotics, human rights, social reform and regional diplomacy (Talisman, 2001: 37). Talisman attended briefings on human rights in Colombia at this centre, as well as at Amnesty International in Calgary (Talisman, 2001: 38). In 2002, Talisman also participated in the International Peace Academy’s Economic Agendas in Civil Wars Project. As a member of the private sector working group, Talisman engaged in dialogue regarding the role of the private sector in civil wars, and the ability of the private sector to engage in conflict prevention and resolution (Talisman, 2002: 9).

Talisman has reported that the company engages in regular consultations with the governments of Colombia, Canada and the United States, as well as other companies in the extractive industries and key NGOs. These consultations, taking place both in Colombia and in North America, allow Talisman to engage in dialogue regarding pressing issues, including human rights, security concerns and community engagement. These consultations not only allow Talisman to learn from others and share best practices, it also allows the company to promote the VPs and advocate for greater due diligence on the part of all stakeholders in the area of human rights (Maddams, 2009; Personal Communication).

The company maintains that it engages the Colombian government on issues of security and human rights, and encourages the government to better its human rights record. For example, in 2005 senior employees at Talisman travelled to Colombia to meet

with the ACP, Ecopetrol, Canadian and US Embassies, and representatives from the Office of the Vice-president of Colombia. Talisman used this opportunity to advocate for the implementation of the VPs by these stakeholders, and to better grasp the efforts made by the Colombian government to consult with indigenous people in the Mundo Nuevo block regarding oil and gas activities (Talisman, 2005: 11).

However, the company does admit that there are limitations when engaging a sovereign state on issues of human rights and security, and that there is only so much the company can do. Talisman has found that by acting collectively, for example via their relationship with the ACP, the company is able to have a greater impact (Maddams, 2009: Personal Communication). In its 2003 social responsibility report, Alejandro Martinez Villegas was quoted as saying that

[i]t is very important for the petroleum industry in Colombia to work together in relation to the situation on human rights, specifically as it relates to the provision of security. Talisman's efforts, through the ACP, engaged the whole Colombian oil and gas industry, allowing us to mutually share our concerns and identify new initiatives to improve performance in this area (Talisman, 2003: 12)

The ACP has been significantly involved in establishing the National Committee for the implementation of the VPs in Colombia, which has allowed for greater awareness of the VPs in Colombia and greater involvement by the Colombian government (Martinez-Villegas, 2005).

In terms of community consultation, this aspect has thus far been limited due to Talisman's previous role as a non-operator. The responsibility of consulting with communities remains with the project operator. Talisman attempts to ensure there is ongoing consultation through agreements made with their partners. The company also advocated for the creation of the social and environmental sub-committees that requires reports and updates provided to the partners of the operation. This allows Talisman the opportunity for various issues and concerns to be addressed with the operator of the projects. Now that Talisman has taken on an operating role in Colombia, the company is in

the process of conducting stakeholder consultations regarding various environmental and social issues (Maddams, 2009; Personal Communication).

Thus far, Talisman's engagement in consultation with NGOs in Colombia has also been limited. The company maintains that this has also been due to the company's non-operated interests in Colombia. It is another aspect that Talisman is in the process of incorporating into their new role as an operator. There have been other stakeholders in Colombia with which the company has had significant consultation, including the ACP. For example, in 2003 Talisman's Senior Manager of Legal and Associate General Counsel and Manager of Corporate Responsibility presented at a meeting held in Colombia for the Association of Colombian Oil Producers (ACP). Those attending the meetings included other foreign oil companies operating in Colombia, Ecopetrol, the Ministry of Defense and the Presidential Office for Hydrocarbons. The presentation, entitled *Enhancing Investor Confidence in the Provision of Public Security for Oil Operations in Colombia*, focused on human rights and providing security for oil operations in Colombia in a manner that addressed the increasing pressure on companies by investors to avoid any reputational or financial damage that may arise from any complicity in human rights violations. The presentation "highlighted codes and principles that [they] consider to be international best practice in the area of human rights and security, including the *U.N. Code of Conduct for Law Enforcement Officials*, the *U.N. Basic Principles on the Use of Force and Firearms* and the *Voluntary Principles on Security and Human Rights*" (Talisman, 2003: 12).

In addition, Talisman encouraged other companies in the extractive industry to incorporate the VPs into their security arrangements (Talisman, 2003: 13). More specifically, the presentation stated that companies should

[i]mplement a contractual structure for security which ensures that: 1) Security for oil operations is in fulfillment of the Government's constitutional obligation, 2) The Government commits to provide security in accordance with the provisions of the Code and Principles and ideally with the IVPs, 3) Operator does not supervise the operational aspects of security, and 4) Operator has the right to monitor the

conduct of security operations and communicate its expectations. (Bell & Manhas, 2003)

Talisman participated in a 2003 research project conducted by the Collaborative for Development Action (CDA). This research project was sponsored by the Canadian Department of Foreign Affairs and International Trade (DFAIT), and it reported on the practices of companies that were operating in Colombia. The findings were meant to provide DFAIT with information on how companies can most responsibly and positively invest in Colombia (Talisman, 2004: 9).

In 2005, Talisman participated in a two day consultation meeting held by John Ruggie, *the Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises*. Others attending the meeting included select peer companies in the extractive industries, international NGOs, academics, and other experts in the field of business and human rights. The consultation focused on issues surrounding Ruggie's mandate, which is "to identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights" (Talisman, 2005: 10).

According to Talisman, the level of consultation with various stakeholders has increased since the company joined the VPs. Yet, it was the company's change in business activities that led to this increase as opposed to the actual membership with the VPs. This change in business opportunities has included both Talismans' interests in countries experiencing instability, as well as their new role as operator in Colombia. The VPs however have assisted Talisman in the process of engaging with stakeholders as it provides a valuable networking experience for its members. Each member of the VPs produces a report to the secretariat of the VPs, with these reports being distributed to all other members. These reports include challenges, implementation of the VPs, and future endeavours for implementation. Talisman has indicated that these reports are useful to the company, as it is able to learn from the activities of other companies and use these reports as a benchmark for their own implementation of the VPs (Potocki, 2009; Personal Communication).

In 2005, Talisman created an Online Ethics Awareness Program that became mandatory for all its full and part-time employees and consultants. The e-learning tool is designed to provide employees with important knowledge and expected behaviour regarding the company's Policy on Business Conduct and Ethics, including human rights. The program also outlines a variety of tools that are available to employees should they be faced with ethical dilemmas. According to Talisman's 2005 CSR Report, the "training has played a critical role in developing a corporate approach to dealing with ethical issues across the Company's global operations" (Talisman, 2005: 19). An electronic monitoring system was implemented in order to assure that all employees had complied with this mandatory requirement (Talisman, 2005: 19).

Also in 2005, Talisman created a security manual for its managers, including those in Colombia. The manual contains Talisman's security policies, along with different protocols on how to address a variety of security situations that may arise. Some examples of such situations include evacuations of Talisman operations, or threats made against company property and personnel (Talisman, 2005: 10).

Human rights training was provided for select Talisman employees, including the current Manager of Global Security, at the Pearson Peacekeeping Center in 2003. The course involved a week long training session in Ottawa where participants engaged in various simulation exercises on how to respond to various security and human rights issues that might be encountered. While this training was seen as being very valuable for Talisman employees, the Center is no longer offering the type of courses that the company is looking for (Potocki, 2009; Personal Communication).

Aside from the human rights component of the online ethics training and the initial security course at the Lester Pearson Peacekeeping Center, Talisman does not conduct specific human rights training for its personnel in Colombia. A more specific human rights training framework is currently being designed and finalized. As part of this framework, the company plans on offering training for security managers and other relevant employees at a recognized university that offers special human rights courses designed for these particular situations and that are similar to those courses offered at the Lester

Pearson Peacekeeping Center. For example, the company had registered several employees from its Kurdistan operations in a human rights course at Aberdeen University; however the course was cancelled due to low registration (Potocki, 2009; Personal Communication).

Talisman began producing corporate responsibility reports in 2000. The initial report centered on their operations in the Sudan, the second report released in 2001 included Colombia. In 2002, Talisman expanded the scope of its social responsibility report in the spirit of the Global Reporting initiative (GRI) and included other geographical areas of its principal operations. The content of this report provided significant focus on Talisman's operations in Colombia, as the country raises concerns regarding security and human rights (Talisman, 2002).

In 2003, Talisman began including comments that the company receives both from its feedback cards included in the previous corporate responsibility report and from other stakeholders. This demonstrates that the company not only evaluates the feedback cards that it receives, but that it also takes them into consideration for the following report. It also demonstrates the ability of the company to address criticisms in a transparent manner, as many of the comments received highlight the shortcomings of the reports. For example, in a memo from the Sheldon Chumir Foundation for Ethics in Leadership, Nicole Bernhardt wrote "You say that Talisman is engaged with local communities in conversations on human rights issues, but you fail to specify which human rights issues are of particular concern for Talisman and how these issues are being addressed" (Talisman, 2006; 10).

Talisman was praised for its social reporting and use of outside auditing assurance from PriceWaterHouseCoopers by Ian Bragg, a senior researcher at Michael Jantzi Research Associates. "Overall, I would say it is an example of excellent reporting," Bragg says. "They are certainly one of the strongest social reporters in Canada" (Roner, 2005). The 2006 report also received positive recognition in an Ethical Corporation article, in which it is stated that "the company's greatest strength is its willingness to confront unpleasant issues head-on" (Dobkowski-Joy, 2007).

One of the challenges in implementing the VPs identified by Talisman is the awareness level of other stakeholders regarding what the VPs are about. As contractors and partners had already established certain procedures and manner of conducting business, it was difficult to encourage and advocate for change in various areas. For example, many companies in the past have allegedly provided ammunition to the public forces of Colombia in return for protection and other services. As this had become part of company practice, it was not always evident to these companies that these actions could pose a security risk and lead to potential accusations of human rights violations. As the VPs continue to expand and become better known, this is becoming less of a challenge (Reading, 2009; Personal Communication).

The company also finds that the VPs lack clarity in defining what they are. This has led to some vagueness and ambiguity for stakeholders who are not yet members of the VPs. While membership in the VPs provides stakeholders with a better understanding of the initiative, it makes it more difficult to promote them to those who have not yet become members (Reading, 2009; Personal Communication).

Analysis of Talisman Energy's Implementation of the VPs

The research findings for Talisman indicate that the company has made significant efforts to implement the VPs, even prior to becoming an official member. This is evident by the incorporation of the VPs into various aspects of company policy and standards, as well as the company's initiative in expanding the spirit of the VPs into external contracts and procedures. Talisman has also demonstrated due diligence in engaging in operations where there are higher risks of human rights violations. The company maintains that due diligence had been taken in other risky areas prior to joining the VPs, such as in the Sudan, but that the VPs have enabled Talisman to strengthen its ability to conduct risk assessments and to embody important human rights concerns into their daily interactions with various stakeholders. In addition to the changes that Talisman has implemented into its policies and procedures, the company has also improved in terms of reporting and transparency in the areas of security and human rights, receiving positive recognition for its annual sustainability reports.

Talisman offers a particularly interesting case because the company began implementing and following the VPs prior to officially joining the initiative. The company was originally denied membership with the VPs both because of the concerns over its operations in the Sudan and its home government had not yet become a member. Despite this, Talisman continued to apply the VPs to its company policies and procedures. This was mainly due to the fact that Talisman was beginning to engage in operations that were located in high-risk areas, such as Colombia. The company was looking for an initiative that was reputable, international and that included membership that was operating in similar situations (Maddams, 2009: Personal Communication).

While the issues that Talisman experienced in the Sudan undoubtedly had an impact on the company's decision to join the VPs, there were several other factors involved in this decision. For one, the new experience of operating in unstable countries, such as the Sudan and Colombia, created a need for an initiative that would provide the company with some structure and direction on how to address the human rights and security issues that go along with operating in such countries. While the company did not officially become a member at the time that it began operating in Colombia, it did begin implementing the VPs around this same time.

The company's commitment to acting in the spirit of the VPs also coincided closely with the development of Talisman's corporate responsibility department. Following the creation of this department, the company joined several CSR initiatives, including the Global Compact in 2004 and the EITI in 2005. The company has also received recognition for its corporate social responsibility efforts, and was listed in Jantzi-Maclean's top 50 most socially responsible corporations. This overall push towards becoming a more socially responsible company, corresponding with Talisman's experience in the Sudan and the beginning of the company's involvement in operating in conflict zones, was most likely an important factor in the company's decision to join the VPs.

The recent shift from non-operator to operator in Colombia will allow Talisman to better demonstrate both its implementation and compliance with the VPs. Although the

company advocated for the inclusion of the VPs into contracts, policies and procedures to its partners, as a non-operator the company claims that the final decisions over these matters remains with the operator. While the company has already begun to implement the VPs in their new operations, there remains much work to be done. For example, the company is yet to implement a thorough human rights training program as well as a consultative process with local communities. These are key elements of the VPs that the company would have to engage in, in order to fully implement the VPs. They are also key elements that will allow other aspects of Talisman's security program to fully implement the VPs. For example, the risk assessments completed by the company will more thoroughly identify relevant human rights and security issues once they incorporate necessary consultations that the company plans on conducting with local communities and NGOs. As the company is currently in the process of designing efforts on these areas, such as conducting more thorough on the ground assessments and engaging various universities for appropriate human rights training courses, the next year will shed more light on the company's engagement with the VPs.

PART III: FINDINGS AND CONCLUSIONS

The following section discusses how the case studies conducted relate to the VPs and the broader context of voluntary initiatives. The findings and conclusions are therefore addressed in two ways. The first set of conclusions addresses the specific question of the effectiveness of the VPs in generating positive changes in the company practices of three companies operating in Colombia, focusing on the stated hypotheses outlined in Part I. This set of conclusions is narrower in scope, and are therefore made with greater certainty. The second set of conclusions draw on the specific findings and seek to apply them to the larger debate about the effectiveness of voluntary initiatives. This set of conclusions are broader in scope, yet less definitive as the first set of conclusions cannot be used to generalize regarding the effectiveness of all voluntary initiatives. They can however provide some evidence regarding the effectiveness of voluntary codes, along with potential hypotheses to be further examined in this area.

CHAPTER 6: COMPANY IMPLEMENTATION IN COLOMBIA

The first hypothesis guiding this research stated that, in contrast to the prevailing notion that companies join voluntary initiatives as public relations exercises to boost their corporate image and result in minimal changes in company behaviour, the VPs were effective in providing guidance on how to respond to important challenges facing companies operating in conflict zones, and therefore would be integrated into company policy and practice. It was established that in order for the VPs to be considered 'effective', companies would need to demonstrate signs of the VPs having been incorporated into their policy and practice, including evidence of impact and risk assessment, human rights training for public and private security forces, monitoring mechanisms and comprehensive stakeholder consultations (International Alert, 2008). In terms of this application of the characterization of effectiveness, the three case studies analyzed indicate that the VPs have been effective in generating policy change to a certain degree, as all three companies are in fact incorporating the VPs into their policies, and to some extent into their practices. As Table 1 shows, the companies have demonstrated that they have made efforts in the majority of the areas that the indicators identify. For example, all three companies have either adopted a human rights policy or security policy, or have incorporated human rights into an existing policy. Also, both Occidental Petroleum and BHP Billiton (at Cerrejon) have implemented a procedure for conducting human rights training for their employees, while Talisman is in the process of doing so. A risk assessment procedure has been adopted by all three companies, as well as procedures for engaging in consultation with relevant stakeholders.

In addition, the feedback received by all three companies included statements that characterized the VPs as a tool. This is both in terms of developing a human rights framework, as well as for discussing best practices among key stakeholders in the field of human rights and the extractive industries. One common example demonstrated by both

Table 1. Summary of company implementation of the VPs in Colombia according to the International Alert Indicators.

International Alert Indicator		Talisman	Occidental	BHP Billiton *
Indicator 1	Evidence of Risk and Impact Assessment Conducted According to Internationally-Accepted Best-Practice	Yes	Yes	Yes
Indicator 2	Comprehensiveness of Stakeholder Consultations	In progress	Yes	Yes
Indicator 3	Strategic Responsiveness	Yes	Yes	Yes
Indicator 4	Evidence of Mainstreaming VPs in relationships with security forces	Yes	Yes	Yes
Indicator 5	General Evidence of Staff Training	In progress	Yes	Yes
Indicator 6	Evidence of Training for Public Security Forces	No	Yes	Yes
Indicator 7	Evidence of Training for Private Security Contractors	N/A	Yes	Yes
Indicator 8	Scrutiny of Human Rights Record of the Public and Private Security Providers	Yes	Yes	Yes
Indicator 9	Evidence of Monitoring Mechanisms	Yes	Yes	Yes
Indicator 10	Evidence of Record-keeping and Oversight of Equipment Transfers	Yes	Yes	Yes
Indicator 11	Evidence of reporting human rights abuses	N/A	N/A	N/A

*For the purposes of this table, BHP Billiton refers only to the company's operations at Cerrejon, as there was insufficient information to come to any preliminary conclusions regarding the company's activities at Cerro Matoso.

Occidental Petroleum and BHP Billiton is the use of the VPs and external stakeholder consultation with International Alert and Fundacion Ideas Para La Paz in creating a more thorough risk assessment procedure. Furthermore, as discussed with Talisman's Global

Security Manager, the VPs are a useful tool for standard setting and policy making, not only within the company, but also for external relationships with partners, contractors and governments. This common theme in company dialogue regarding the VPs, in combination with the demonstrated changes in policies and procedures regarding security and human rights, provides strong indication that the first hypothesis is true.

Yet, there is an important consideration to be made in terms of the application of the International Alert Indicators to this study. For the purpose of this research the International Alert Performance Indicators served as a guideline for selecting questions for the key informants that were interviewed. The indicators in their entirety were not used, as there were not enough resources that would have allowed all of the questions that the Indicators require to be asked. While the research conducted does provide some indication of the extent to which companies are implementing the VPs, as measured by the indicators, it does not go as in depth as what is required for a full analysis. As a result, the quality and effectiveness of the activities that meet these indicators cannot be fully assessed without a more robust collection of information.

It is also important to consider that all three companies have implemented the VPs to a certain degree, there is some variation. Both Occidental Petroleum and BHP Billiton (Cerrejon) demonstrate a similar model of implementation, while Talisman differs slightly. For example, both Occidental Petroleum and Cerrejon have been involved with International Alert and Fundacion Ideas Para la Paz, and both have tested the International Alert Indicators. They have also both been significantly involved in the Colombian National Committee. There are several factors that may explain this variation, for example it may be that Talisman's later arrival into the VPs has meant that the company is not as thoroughly integrated into the in-country process. Another possible explanation is that Talisman has recently entered into its role as operator, and therefore had not previously required the same type of engagement that Occidental Petroleum and Cerrejon have had.

There is also variation in terms of the attention designated to private and public security. There is some indication that private security is not as problematic as public

security. This is both due to the fact that the number of public security forces greatly outnumber the number of private security forces used by the companies, and that private security forces are not used for protection. Also, companies hold greater leverage with private security companies, who are held under contractual agreements that can be terminated should there be any involvement in human rights violations. In addition, in Colombia specifically, the problems with human rights violations have traditionally been associated with the public forces.

Furthermore, while all three companies demonstrate efforts and progress in implementing the VPs, they also demonstrate areas in which there is progress to be made. This can be demonstrated by several examples, including the variance in the human rights or security policies that have been developed by the three companies examined. Occidental Petroleum and Talisman have both adopted either a human rights policy or security policy that references and makes a clear commitment to the VPs, while BHP Billiton has not yet created a specific policy for addressing security and human rights violations, a recommendation included in the VP guidelines. In addition, there are several elements that are in progress, such as Cerrejon's revamping of its complaints mechanism, Occidental Petroleum's attempts to create greater human rights awareness for its employees, or Talisman's implementation of a human rights training programme. Furthermore, all three companies could increase their engagement with civil society organizations, both local and international, and should also continue their efforts to create a corporate culture that is mindful of human rights and security issues.

The research conducted also revealed that the VPs are not a particularly well known initiative, especially when compared to the more largely recognized Global Compact and GRI. This indicates that companies may not have much to gain in terms of generating positive recognition or public attention for having joined the VPs. This does not mean that the VPs are not considered to be a prominent initiative in the area of human rights and security in the extractive industries, but that much of the attention that the VPs have received thus far has been reserved for a small number of people in the field. This may

change in coming years as the initiative begins to garnish greater attention. For the meantime however, what this could potentially indicate is that those companies who are signing up for the VPs are less likely to be doing so solely to increase positive public relations.

The second hypothesis stated that the VPs will be more effectively integrated into company policy and practice in cases where the companies have been exposed to significant human rights scandals in the past. If this were the case, then it would be expected that Talisman would demonstrate a greater implementation of the VPs, followed by Occidental Petroleum and then BHP Billiton. However the evidence suggests that this is not necessarily the case. While Talisman has been implementing the VPs into its policies and practices, it does not demonstrate a higher level of implementation than Occidental Petroleum or BHP Billiton. This is not to say that the company hasn't taken steps to elaborate on policies and procedures in its social responsibility efforts, particularly in the area of human rights, but that it does not seem to be the case that it is more advanced than either Occidental Petroleum or BHP Billiton, companies that have experienced less *international criticism regarding a human rights scandal*. The company actually demonstrates a less developed implementation of the VPs in Colombia than the other two companies, however this is more likely due to the fact that the Talisman is a new operator in the country, and is therefore in the process of implementing more robust human rights due diligence activities, such as conducting human rights training and increasing consultations with relevant stakeholders, particularly with communities and civil society organizations.

While the research conducted has demonstrated that companies are implementing the VPs, and that a human rights scandal does not necessarily lead to greater implementation, it represents only a small glimpse of how the VPs have been used in a particular context by three specific companies. While the themes that have emerged from this research are important, and the conclusions regarding company implementation strong, there is a need for a broader study that includes more members of the VPs

operating in various countries. This would enable a better understanding of their implementation by all the members, as well as in different contexts. For example, it is necessary to understand how the VPs are working in countries that do not have the same level of support from the host government, a robust civil society, and strong engagement from the VPs secretariat, as is the case in Colombia. An assessment of company practice outside of Colombia by the three companies examined in this project would shed some light on the impact of the Colombia In-country process.

Further research would also be required in order to assess the degree to which implementation of the VPs affect company behaviour on the ground. Ideally, this research would involve field research in order to provide a more thorough analysis. One of the concerns or difficulties with implementing the VPs that has arisen is the ability for the policies and best practices determined by headquarters to reach the ground level. Many managers working on the ground at company operations have little experience dealing with human rights issues, as well as with balancing out these issues with company operations (Vogel, 2005: 145). This will shed light on whether the implementation of the VPs by companies stop at the policy level, or whether they are translating to meaningful changes on the ground. This will also provide insight on how effective the VPs have been at generating enough due diligence to avoid human rights violations.

Successes and Challenges with the VPs

Aside from providing some indication regarding the hypotheses set out, the research uncovered a variety of successes and challenges that companies have experienced with the implementation of the VPs, and has also highlighted challenges that the broader initiative has faced. It indicates that one of the most beneficial elements of the VPs thus far has been the manner in which the initiative provides a forum for discussion and sharing of experiences for its members. This is particularly important as the issue of security provision is inevitable for many companies working in conflict zones or unstable environments. Companies working in these situations who have experienced challenges related to human rights and security are able to share their experiences with other

companies who have either shared similar experiences or who are also entering into conflict zones or unstable environments. They encourage companies to become more engaged, and more aware about the consequences of their actions and the impact that they can have on conflict. Companies can therefore learn from each other and determine what best practices are when addressing particular situations.

A further benefit of the open forum format of the VPs is that it provides access to companies by civil society organizations that can often be more difficult to obtain when addressing companies individually (Bannerman, 2009: Personal Communication). NGOs often have a difficult time when individually addressing large companies regarding sensitive issues like human rights. NGOs are often only provided with little information from companies. The VPs provide a forum where NGOs can have greater access to information that is usually kept confidential from them, which provides them the better opportunity to advise them on such issues.

The in-country process that the VPs have established in Colombia has also proven to be extremely beneficial for not only companies in the extractive industry, but to the private sector in general. The experience of the process in Colombia has allowed for members of the VPs to learn some valuable lessons regarding in country processes, as well as identify some challenges that remain. It highlights the importance of government support and engagement with the VPs, even if not as an official member. The VPs and the in country process have also brought to the surface the issue of human rights in the extractive industries, an issue that was taboo in Colombia. It has also created a context under which companies can overcome this barrier to opening human rights dialogue.

The VPs have also highlighted the usefulness of company systems for addressing various issues. Many of the companies had various systems in place to deal with other areas of CSR, such as community relations, environmental concerns and safe labour practices; however few of these systems addressed, or adequately addressed human rights issues. The VPs have encouraged companies to add human rights concerns to these systems, and in a few cases companies have completely revamped their systems to be

more inclusive of and responsive to human rights concerns. This point was highlighted in a series of letters between Alexandra Guaqueta, Public Affairs Advisor at Cerrejon Coal, and Arvind Ganesan, Director of Business and Human Rights at Human Rights Watch. In her response, Alexandra Guaqueta wrote that “the beauty of companies is that they have management systems, standardised procedures, internal auditing and bonuses for meeting goals. If companies are genuine about the VPs, all this organisational machinery works in favour of serious implementation” (Guaqueta & Ganesan, 2008).

While these successes for the VPs provide some indication that the VPs are effective, it is important to acknowledge that there have been many challenges. First of all, the application of the VPs to company policy and practice has in some ways been inconsistent. While some companies have thrived in incorporating particular aspects of the VPs, others have been limited. BHP Billiton provides a good example of this, with the difference in reporting on VP implementation being evident between Cerrejon and Cerro Matoso. While the lack of information regarding Cerro Matoso’s implementation of the VPs does not necessarily indicate that the VPs are not being implemented at the mine, it does beg the question as to why this lack of information exists.

There have been particular challenges for some companies when working with different branches of the Colombian government. The topic of human rights is not always made a top priority, and consequently, while there remains interest and willingness to address important human rights issues, they are not always addressed in a timely manner. This is especially the case with the Colombian army, as it is often difficult to get in contact with the necessary individuals. In its second progress report following the Independent Review of its operations, Cerejon listed the difficulty in meeting relevant stakeholders as a challenge when test-piloting the IA indicators, particularly with the local battalion (Cerrejon, 2009: Second Progress Report). Yadaira Orsini has also maintained that this often poses a challenge when attempting to implement the VPs (Orsini, 2009: Personal Communication).

There have also been some concerns expressed regarding the VPs in general. There have been some mixed views regarding the vague nature of the VPs. The research

indicated that there are two ways in which this can be interpreted; either that the vagueness of the VPs is favourable because it allows companies to mould them to the way in which they operate, or that the vagueness leaves grey areas in which companies may not be provided with the guidance they need. For example, Talisman indicated that the fact that all companies operate differently has meant that the VPs are malleable to every company's management systems and standards (Potocki, 2009: Personal Communication). However, Yadaira Orsini, Social Responsibility Coordinator at Occidental Colombia indicated that there are some areas where the VPs do not advise companies on how to react to certain situations. For example, the VPs recommend that companies conduct regular checks on the human rights records of private and public security members. However, they do not indicate what steps should be taken if these security checks uncover any allegations of human rights violations (Orsini, 2009: Personal Communication).

Like many other CSR initiatives, the VPs have no meaningful monitoring and reporting that takes place. Companies therefore have less incentive to implement the VPs to their full potential. While members of the VPs do submit reports detailing their activities relating to the VPs, there are no set requirements for these reports, nor are there any repercussions if a company has not put in a significant effort in implementing the VPs. The lack of accountability raises the concern that companies are signing on to the VPs as a public relations exercise, and are not adequately attempting to integrate the VPs into corporate policies and actions. As John Ruggie mentioned in his speech at the 2007 VPs plenary, "[t]he next step needs to be quick agreement on internal and external reporting criteria, including specific performance measures, drawing on best practices already established by a number of participating companies".

It should be noted that there have been some steps taken towards increasing the reporting aspect of the VPs. The annual implementation reports that are required for each member have been re-examined over the past year, and guidelines have been created in order to detail what are the expectations of these reports and what information they should entail. The draft reporting guidelines will be tested this year in order to gather constructive feedback from VP members (Bannerman, 2009).

A further challenge has been the size and capacity of the VPs secretariat. Currently, the secretariat is composed of two staff members from the International Business Leaders Forum and two staff members from Business for Social Responsibility. The work conducted by these staff members for the VPs is done on a part time basis, as the staff members have other responsibilities to fulfill with their respective organizations. As the VPs have been growing over the past years, and with the recognition that there is a need for more robust procedures, those currently working for the VPs secretariat are overwhelmed. There is a need for expansion in staffing for the secretariat of the VPs, in order for the secretariat to have the capacity to be more efficient and to take on greater responsibility as membership expands. This point has been highlighted by John Ruggie, in which he stated that there is a need for the VPs to have “more routine procedures to keep decisions flowing and the networks connected, which in turn also requires an adequately staffed Secretariat” (Ruggie, 2007b: 6). There has been some recognition of this need by members of the VPs, and the current secretariat has been asked for suggestions on how a stronger bureaucracy could operate for the VPs (Bannerman, 2009).

A further challenge for members of the VPs has been establishing meaningful consultative relationships between companies, NGOs and government. The VPs have been successful in opening up a forum for dialogue regarding issues of security and human rights, however the unstructured nature of the VPs have led to irregular sharing of information and best practices among its members. This point was also mentioned in John Ruggie’s speech at the 2007 VPs Plenary meeting, as he stated that “The VPs potentially constitute a powerful learning network, but that potential can be realized only if the initiative is structured and run accordingly” (Ruggie, 2007: 6). Pax Christi has criticized the VPs process for being a top-down initiative, as there is often limited consultation with the communities of people whom the VPs are supposed to protect. They state that thus far, “local tri-partite processes remain exceptional” (SDN – CSCR/ACCR – IKV Pax Christi, 2008: 1)

In addition, there continues to be challenges with the differences in expectations of the VPs among the various pillars. While there has been a rebuilding of trust following the

tensions that occurred between members of the VPs regarding participation criteria, there are still some obstacles that are present (Bannerman, 2009; Personal Communication). NGOs continue to advocate for a more robust system, while some company members want the VPs to remain a forum for dialogue with no strict demands made of its members (Tripathi, 2008; Personal Communication). This has also been highlighted by the inability of some companies and some NGOs to form meaningful consultative relationships due to differences in opinions regarding how the VPs should be implemented. For example, Occidental Petroleum had engaged in preliminary discussions with Pax Christi, however both the company and NGO were unable to come to any kind of agreement regarding a proper way forward for more meaningful consultation (Orsini, 2009).

There have also been some limitations as the overall involvement of governments in the initiative has been minimal, especially in those host countries experiencing instability and conflict. "Opening the process to host governments will also help turn the initiative into a truly collaborative process, as host governments have a crucial role to play in ensuring the effective implementation of the Principles" (Brew, 2006). The strong in country process in Colombia, with a highly involved Colombian government, provides a good example of the importance of host government involvement. In support of this, the executive summary of the Five-Year Overview of the Voluntary Principles on Security and Human Rights states that "the in country process in Colombia has demonstrated the importance of host state cooperation and participation, such as that demonstrated by the Colombian Vice President Francisco Santos, who chairs the National Committee, and Human Rights Advisor Carlos Franco" (VPs Executive Summary 2006). This point was reiterated by John Ruggie during his speech at the VPs plenary in 2007. Ruggie stated that in order for the VPs to become more effective, a more robust in-country process is necessary, ones that include extensive stakeholder consultation, host governments and security forces, especially in countries experiencing similar instability as Colombia (Ruggie, 2007).

However, it is not only the involvement of host states that is necessary, as home states have an important role to play as well. This point was also highlighted by Salil

Tripathi when comparing the VPs with the Kimberley Process at the International Seminar for Business and Human Rights. He spoke of the perception that the Kimberley Process has been a relatively successful multistakeholder initiative, while the perception of the VPs has been that they seem to be struggling. Tripathi attributed this difference in part to the higher level of state involvement that occurred from the beginning of the Kimberley Process. This provided an element of leadership and guidance for the initiative. The VPs on the other hand, while giving all members an equal ownership in the process, had no supervision or leadership in the process to determine an appropriate course of action.

Alexandra Guaqueta has also commented on the limited involvement of governments in the process of the VPs. She has pointed out that the responsibility to uphold human rights still remains with the state, and the VPs process should encourage governments to do so (Guaqueta, 2009: Personal Communication). Although the VPs have been around for nine years, there are only five government members, with one of those recently joining in the past few months.

Yet, while encouraging governments to join the VPs process, there are two challenges that are encountered when doing so. The first challenge is that some states lack the capacity to do so, especially those in the developing world. This is particularly problematic as it excludes those countries that the VPs were designed for (Ramzi, 2009). *Efforts to build the capacity of developing countries to participate in the VPs and to address issues of human rights and security are required* (Ruggie, 2007b: 6). Also, home states of companies operating in developing countries that do not have the necessary resources should provide them for their companies. This should come in the form of training for embassy staff in such countries, which will enable them to provide concrete recommendations and advice to companies operating abroad.

The second challenge is with states that have a poor human rights record, as they raise the concern of states free-riding on the VPs. Alexandra Guaqueta maintains that this too can be addressed, with the use of a strategic staged-based approach. This would see governments meeting a certain set of requirements prior to joining the VPs, with further requirements to be met within 2 to 4 years of joining (Guaqueta & Ganesan, 2008).

Transparency also remains a challenge for the VPs and its members. Due to the sensitive nature of the discussions held among members of the VPs, meetings are confidential. The reports produced by members of the VPs regarding their implementation and annual activities also remain confidential. This poses a challenge as the lack of transparency enables the secretive nature of the extractive industries. While it is understandable that certain information remain confidential, there are ways in which the VPs can become more transparent. For example, elements of the reports made by the members of the VPs or the analysis that is performed on these reports could be made available to the public. This would allow for greater accountability by the members of the VPs in terms of their implementation of the VPs.

The VPs have faced many challenges over the past nine years, and will likely face further ones in the coming years. While the process has been slow, the VPs seem to be heading in the direction of becoming a more robust and structured initiative that will assist in expanding the ability of its members to use the VPs as a tool for incorporating human rights and security issues into various aspects of its framework. This process however requires greater momentum from all participants. Without an effective bureaucracy, as well as members that are willing to take the lead in making the VPs more robust, the entire initiative will continue to evolve slowly and with a lesser impact on human rights and security.

CHAPTER 7: FUTURE RESEARCH ON VOLUNTARY CODES OF CONDUCT

The comparative case study analysis performed for this research has demonstrated that at least three companies, two of which represent most-likely examples, are implementing the VPs to a certain degree into the policies and procedures of their operations in Colombia, also a most-likely case. This analysis therefore provides evidence that strengthens the first stated hypothesis, and weakens the claim made by many sceptics of CSR initiatives, which is that voluntary initiatives are adopted solely to boost the reputation of the company, and are not actually implemented. It is therefore plausible that other initiatives adhered to by companies are also taken seriously by their members, and may have positive impact on company behaviour.

Yet, because Colombia and the selected companies represented most-likely cases, the conclusions cannot be extended to other locations and other companies. Colombia is a state that has provided a greater level of support to the VPs than most. This has led to the country having a relatively robust in-country process, with the government being heavily involved in introducing the VPs to various business sectors across the state. While there certainly remain challenges in implementing the VPs, particularly the difficulty in overcoming the human rights taboo and creating a culture of awareness regarding human rights in the Colombian government and in companies, the level of cooperation by the government has still facilitated the process. This is an important consideration, as the results of this study do not necessarily imply that the VPs are being implemented in a meaningful way in other countries or by other companies. What it does demonstrate is the potential for the VPs to work in the context for which they were created. It also provides evidence that indicates a potential benefit of voluntary initiatives.

Also, it is important to consider that incorporating the VPs into policy does not always equate to effective implementation. Companies can put in place a variety of policies and practices in an attempt to safeguard human rights, yet if these policies and practices are not effective, the impact is minimal. Therefore, there are two paths that research in the field of voluntary initiatives can explore in order to better understand the impact of voluntary initiatives. These two paths will facilitate the discovery of variables

that may lead to voluntary initiatives being more effective at achieving their intended goals.

The first path is to identify variables that impact the likelihood of a company implementing a voluntary initiative. Various hypotheses can be tested in order to identify these variables. For example, companies may be more likely to implement a voluntary initiative that focuses on egregious human rights violation than one that focuses on transparency because the company may perceive that the negative backlash may be greater for being accused of complicity in human rights violations than for a lack of transparency.

Another hypothesis to be tested is that larger, publicly traded companies with greater resources will demonstrate greater implementation of voluntary initiatives because they are able to hire more personnel dedicated towards corporate responsibility. All three companies examined in this study have numerous personnel that work on CSR issues. For example, Talisman hired Reg Manhas as the company's Vice-President of Corporate Responsibility and Government Affairs. Manhas is supported by a number of employees working in the company's Corporate Responsibility department. This puts the company in a position where it has greater resources in terms of human capital, and often financially, to implement the VPs more efficiently.

The second path takes this research one step further and involves researching the policies and practices that have been implemented in order to understand the impacts that they are having, whether positive or negative. This includes determining what it is about certain voluntary initiatives that work, and what seems to be lacking in order for the initiative to be more effective. This will enable companies to tailor the policies and systems that they have put in place so that they can assure the highest degree of due diligence. One example of a potential hypothesis is that voluntary initiatives are more effective if they involve a greater degree of consultation with civil society and communities who are stakeholders in their operations. Therefore, policies and procedures that are created in conjunction with the feedback of these stakeholders are moulded to best fit the needs of

both the company and the stakeholders it was designed for, and are therefore more effective.

However, the task of conducting research on the effectiveness of company policies and procedures is complex, as it is difficult to determine both whether or not it is the policy or procedure that is having a specific impact, or whether outside factors come into play, as well as whether or not negative impacts have been avoided because of the policies and procedures that have been implemented. Further research should include comprehensive stakeholder engagement, particularly with community members, as this will allow for a greater understanding of how these policies and procedures are affecting those they are designed to protect. It would also examine the impact of company behaviour prior to the creation of existing policies and procedures, and compare it with the outcomes following the creation of new policies and procedures. This will allow some analysis of whether or not these issues are being addressed more appropriately and effectively with the implementation of these policies and procedures.

The research and analysis performed for this study has revealed that voluntary codes of conduct are not always adopted solely to generate a good corporate reputation, and as is the case for the companies examined, voluntary codes of conduct can be a valuable tool to generate ethical business conduct. While this has weakened the claims of those who are sceptical of voluntary initiatives, it does not mean that voluntary initiatives can replace legal regulation at the national and international level. Voluntary initiatives remain incapable of generating meaningful accountability, or adequately penalizing those companies who are found complicit in grave human rights violations. Also, they may not have the same impact on companies that are not large high profile companies, as they do not experience the same pressure or benefits from implementing voluntary initiatives. The value in voluntary initiatives, which is to provide companies with best practice guidelines and networking opportunities to share experiences should be coupled with effective legal regulation, both nationally and internationally, in order to assure compliance and accountability, particularly when it comes to human rights. As companies increasingly begin to operate in conflict zones and states with poor human rights records, it is essential

that they respond with the greatest due diligence possible, and attempt to use their relationship with various governments to improve the human rights situation for the citizens surrounding their operations.

ANNEX 1: MEMBERS OF THE VPS

Governments

Netherlands
Norway
United Kingdom
United States
Canada

Companies

Amerada Hess Corporation
AngloGold Ashanti
Anglo American
BG Group
BHP Billiton
BP
Chevron
ConocoPhillips
ExxonMobil
Freeport McMoRan Copper and Gold
Hydro
Marathon Oil
Newmont Mining Corporation

Occidental Petroleum Corporation
Rio Tinto
Shell
StatoilHydro
Talisman Energy

NGO's

Amnesty International
The Fund for Peace
Human Rights Watch
Human Rights First
International Alert
IKV Pax Christi
Oxfam

Observers

International Committee of the Red Cross
International Council on Mining & Metals
International Petroleum Industry
Environmental Conservation Association

ANNEX 2: KEY INFORMANTS

Doug Bannerman	Business for Social Responsibility, co-manager of the VPs Secretariat
William Godnick	International Alert
Ricardo Gomez	Former CEO of Cerro Matoso
Alexandra Guaqueta	Cerrejon Coal Mine, Public Affairs
Doug Maddams	Talisman Energy, Corporate Responsibility and Government Affairs Talisman Energy
Yadaira Orsini	Occidental Petroleum, Social Responsibility Coordinator
Justyna Potocki	Talisman Energy, Corporate Responsibility and Government Affairs Talisman Energy
Sabrina Ramzi	DFAIT, Policy Analyst
Mark Reading	Talisman Energy, International Security Manager
Salil Tripathi	Formerly with International Alert
Claude Voillat	International Committee of the Red Cross
Egbert Wesselink	IKV Pax Christi

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