

The Legal, Environmental and Social Prospects of the Term 'Good Oilfield Practice' within the Onshore Upstream Oil Industry: *Law in the Making?*

By

Mohammed Al-Najjar and Professor A F M Maniruzzaman***

1. Introduction

Extractive activities, including petroleum onshore upstream operations, are confirmed to be causing severe social and environmental damage.¹ A number of methods have been proposed to control and mitigate these adverse impacts. A common approach is enforcing companies to adhere to local regulations. However, in cases where these regulations are immature, contracting parties – including states – usually come to an understanding that operators should, alternatively, resort to the principle of ‘good oilfield practice’ (GOP) as their main source of socio-environmental responsibilities.²

However, the principal difficulty that is likely to emerge when contractors and operators are referred to GOP as their basis for accountability, is that GOP is a broad concept lacking a precise interpretation and internationally recognised definition. This vagueness and inadequacy will be discussed throughout this paper, before moving on to seek efficient interpretive methods within the social and environmental arena within which oil operations are occurring.

* PhD Candidate, University of Portsmouth, U.K..LL.B., LL.M. in International Law (University of Sheffield, UK), He is a legal counsel at the Iraqi Oil Marketing Company (SOMO), and a former lawyer in Baghdad’s civil and personal-status courts.

** Chair in International and Business Law, University of Portsmouth, and Professorial Honorary Fellow, Centre for Energy, Petroleum, Mineral Law and Policy (CEPMLP), University of Dundee, U.K.

¹ D. O’Rourke and S. Connolly, ‘just oil? the distribution of environmental and social impacts of oil production and consumption’ (2003) 28(1) Annual Review of Environment and Resources; N. Taher and B. Hajjar, ‘Environmental Concerns and Policies in Saudi Arabia’ (2013) Energy and Environment in Saudi Arabia: Concerns & Opportunities; A.E. Ite and others, ‘Petroleum Exploration and Production: Past and Present Environmental Issues in the Nigeria’s Niger Delta’ (2013) 1 American Journal of Environmental Protection; Jr. J.D. Hekel, ‘When Big Oil Comes to a Small Town: The ExxonMobil Oil Spill in Mayflower in Context’ (2014) 14 Sustainable Development Law & Policy; O.F. Oluduro & O. Oluduro, ‘Oil Exploitation and Compliance with International Environmental Standards: The Case of Double Standards in the Niger Delta of Nigeria’ (2015) 37 JL Pol’y & Globalization; Sjøfjell, Beate, The Environmental Integration Principle: A Necessary Step Towards Policy Coherence for Sustainability (December 3, 2018). in The EU and the Proliferation of Integration Principles under the Lisbon Treaty, Francesca Ippolito, Maria Eugenia Bartolino and Massimo Condinanzi (eds), Routledge, 2019, Chapter 6, University of Oslo Faculty of Law Research Paper No. 2018-31, Available at SSRN: <https://ssrn.com/abstract=3294910>; Veerle Heyvaert and Leslie-Anne Duvic-Paoli (eds.), Research Handbook on Transnational Environmental Law (Edward Elgar, 2020).

² Examples of petroleum contracts and regulations that require the application of GOP in the absence of effective national laws are provided below.

Thus, this article will commence with demonstrating the current understanding and characterisation of the term GOP within a wide range of legal, judiciary, contractual and secondary sources. The second section will be dedicated to highlight some legal and contractual examples where commitment to GOP is a prerequisite. This will entail investigating current legal and mandatory nature of this term as well as the key institutional normative sources of GOP. Mindful of these classifications, in this article, it will be endeavoured to discover the ambiguities and inefficiencies of the present-day comprehension of the concept GOP in order to suggest methods of developing this notion to meet the evolving socio-environmental and human rights expectations of the industry. This will require seeking approaches of incorporating the emerging theories of CSR, business and human rights, and procedural participatory practices into the term GOP and suggesting techniques for their promotion and application within the petroleum industry.

2. Denotations of the Term 'Good Oilfield Practice' within Different Contexts

In this part, it will be demonstrated those opinions that have been stipulated in a variety of sources aiming at defining GOP and delineating its key characteristics. It will commence with analysing those contractual, legal, and judiciary provisions that have been attempting to regulate the industry by referring to those models that could be pursued by companies to facilitate their compliance with their domestic and international obligation to apply GOP. The other references used in the interpretation of GOP are the observations of a range of concerned researchers and academics.

2.1. The Primary Definitions of GOP

2.1.1. The Contractual and Legal Explanations of the Term

Petroleum contracts are the key sources that determine the operational, financial, and environmental responsibilities of the involved parties. Compared to regulations, contracts are normally more expansive in putting forward up-to-date and detailed socio-environmental roadmaps for the industry actors. Nevertheless, as a precautionary and complementary measure, they require compliance with GOP. The definition of GOP in these agreements is typically general and flexible, which causes confusion for the internal and external concerned bodies in identifying the responsibilities of the operators. Iraq's TSC is an example of a petroleum agreement that has attempted to explain the term GOP, as follows:

All those uses and practices that are, at the time in question, generally accepted in the international petroleum industry as being good, safe, economical, environmentally sound and efficient in exploring for, developing, producing, processing and transporting Petroleum. They should reflect standards of service and technology that are either state-of-the-art or otherwise economically appropriate to the operations in question in respect of new facilities and should

be applied using standards in all matters that are no less rigorous than those in use by the Companies in other global operations.³

From this definition, it can be understood that this agreement sets three criteria for GOP: the acts that reflect the latest technologies in the industry; the measures that, in addition to being safe, good, and efficient, ensure economic gains; and, procedures that are not less efficient than those used by the same company elsewhere.

Other selected examples of petroleum agreements that provide a broad definition of the term GOP are the Timor-Leste Model PSC, the Cambodian Petroleum Agreement, and the Brazilian Draft of Concession Contract.⁴ Timor-Leste PSC and the Cambodian Agreement are comparable in terms of invoking the principle of due diligence and linking good practices to the actions of prudent operators in similar circumstances.⁵ However, the Cambodian Agreement endeavoured to assign the sources of these practices by referring to ‘best industry standards’ and ‘world best environmental practices’, which may not be successful for the below-mentioned reasons. The Brazilian Concession Contract went further, to provide some technical instructions within the definition of GOP (or the Best Practices of the Oil Industry) by requiring the employment of best available technologies for a safe and sustainable operation of facilities, protection of the environment and local communities, reduction of the risk of oil spills and other harmful activities, and the minimisation of the consumption of unsustainable natural resources.⁶

These definitions raise several issues. First, they use general terms such as ‘prudent and diligent operators’ and ‘reasonably be expected’, which are incapable of being set as a benchmark for determining the boundaries and delineating the peculiarities of GOP. They also do not specify who the prudent and diligent operators are, and on what basis the skills that are reasonably

³ Iraq’s Rumaila Field Technical Service Contract, signed between Iraq’s South Oil Company, BP Iraq NV, PetroChina Company Limited, and Iraq’s Oil Marketing Company in 2009, art. 1.9, available at: <http://platformlondon.org/documents/BP-CNPC-Contrac-Oct-8-2009.pdf>

⁴Timor-Leste’s PSC, Model Production Sharing Contract under the Petroleum Act, available at <<https://www.laohamutuk.org/Oil/PetRegime/PSC%20model%20270805.pdf>>; Cambodian Model Petroleum Agreement (2004), available at <https://cdn.globalwitness.org/archive/files/pdfs/psc_draft.pdf> ; Brazil’s Draft of Concession Contract for Exploration and Production of Oil and Natural Gas, by the National Agency Of Petroleum, Natural Gas and Biofuels – ANP, Federal Republic of Brazil, Ministry of Mines and Energy, 2015, available at:

<http://rodadas.anp.gov.br/arquivos/Round_13/Edital_R13/Minuta_do_contrato_R13_english_03082015.pdf>

⁵ Timor L’Este PSC, in article 1.1, defined GOP as those ‘practices and procedures employed in the petroleum industry worldwide by prudent and diligent operators under conditions and circumstances similar to those experienced in connection with the relevant aspect or aspects of the Petroleum Operations’. While the Cambodian Agreement, in article 1.2, defined GOP as those ‘standards and practices, and exercise of that degree of skill, prudence and foresight, that would reasonably be expected of persons carrying out international petroleum operations, and adherence to best industry standards of the international petroleum industry, including world best environmental practices’

⁶ Brazil’s Draft of Concession Contract, in article 1.3.30, defined ‘Best Practices of the Oil Industry’ as ‘the best and safest procedures and technologies available in the oil and gas industry worldwide, which shall: (a) ensure the operational safety of facilities, preserving the life, physical integrity and human health; (b) preserve the environment and protect adjacent communities; (c) prevent or reduce to an accepted minimum to the risk of oil spill, natural gas, oil products and other chemicals exposure of which may be harmful to the environment; (d) the conservation of petroleum resources and gases, which implies the use of adequate methods and processes to maximize hydrocarbon in terms of technically, economically and environmentally sustainable, with a corresponding control of reserves decline, and to minimize surface losses; (e) minimize consumption of natural resources in operations.’

expected from persons carrying out petroleum operations can be identified.⁷ The Cambodian Agreement and the Brazilian contract also employ loose terminology that is unlikely to identify the sources of GOP by stating that these procedures and technologies are ‘available in the oil and gas industry worldwide’⁸ or can be derived from ‘world best environmental practices’,⁹ without specifying the countries, petroleum agreements, and/or organisational guidelines that can be used as a reference for determining good practices.

Legally speaking, some DOPCs’ national laws and regulations attempt to define the term GOP.¹⁰ However, they approach this term differently and use different phrases to describe it, such as ‘Normal Practice of the International Petroleum Industry’¹¹ and ‘Best International Techniques and Practices’.¹² Some are limited to illustrating the outlines without determining the peculiarities and requirements, simply describing GOP as those acts that are generally accepted as good, safe, environmentally friendly, and efficient in carrying out operations for petroleum exploration and production.¹³ Other laws added the criteria of a prudent and diligent operator in similar conditions in relation to the conservation of petroleum resources, operational safety, and environmental protection.¹⁴

The Nigerian Mineral Oils (Safety) Regulations 7 (1962) and the Pakistani Onshore Petroleum (Exploration and Production) Rules (2013) took a different path, pointing to specific guidelines from which the main principles of GOP can be derived.¹⁵ They listed a number of institutional guidelines to be the basis for these standards, which include, among others, the Institute of Petroleum Safety Codes, the American Gas Association (AGA), the American Petroleum Institute (API), the American Society of Mechanical Engineers (ASME), the American Society for Testing and Materials (ASTM), the British Standards Institute (BSI), and the International Organization for Standardization (ISO).

This reference to the source of GOP can, to a large extent, facilitate the task for the contracting parties, home states, and judicial bodies to recognise the environmental responsibilities of contractors and operators. However, when the source is not clearly spelled out, which is the

⁷ K. Tienhaara, ‘Environmental aspects of host government contracts in the upstream oil & gas sector’ (2010) 8(3) Oil, Gas and Energy Law Intelligence, 5,6

⁸ Brazil’s Concession Contract (n 4) art. 1.3.30

⁹ Cambodian Agreement (n 4) art. 1.2

¹⁰ See Table 1 below

¹¹ COTE D’IVOIRE Petroleum Code (Law 96-669) Of 29 August 1996, available at: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_prov_meas/Volume_IV/Annex_LA-7.pdf

¹² Petroleum Law of the Republic of Suriname (No. 7, 1990), available at: <https://www.staatsolie.com/media/htzpfxt/petroleum-law.pdf>

¹³ Guyana’s Petroleum (Exploration and Production) Act (1998) Chapter 65:10; The Federal Oil and Gas Draft Law (The Iraqi Government Version) Compiled by the Federal Ministry of Oil, Presented to the Council of Ministers on 25th August 2011, available at: <https://www.iraq-businessnews.com/wp-content/uploads/2011/10/CoR-Draft-Oil-and-Gas-Law-English-Version-by-IEI.pdf>; Namibia’s Petroleum (Exploration and Production) Act 2 of 1991, available at: [https://www.lac.org.na/laws/annoSTAT/Petroleum%20\(Exploration%20and%20Production\)%20Act%202%20of%201991.pdf](https://www.lac.org.na/laws/annoSTAT/Petroleum%20(Exploration%20and%20Production)%20Act%202%20of%201991.pdf)

¹⁴ Sao Tome and Principe’s Fundamental Law on Petroleum Operations National Assembly (No.16/2009), art. 24.1, available at: http://stp-eez.com/DownLoads/LR_Docs_Eng/Schedule_1A_Petroleum_Operations_Law_16_2009_Eng.pdf; Kenya Petroleum Act No.2 of 2019, Part I(2), available at: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/2019/PetroleumAct_No._2of2019.pdf

¹⁵ Nigerian Mineral Oils (Safety) Regulations 7 (1962), available at: <http://extwprlegs1.fao.org/docs/pdf/nig92408.pdf>; Pakistan Onshore Petroleum (Exploration and Production) Rules, 2013, Part I.2 (xv), available at: <https://www.extractiveshub.org/servefile/getFile/id/2562>.

case in Iraq and other DOPCs, the question that will be raised is, how will these obligations be identified? Answering this question is highly dependent on whether it is possible to put forward a more accurate, precise and internationally accepted definition of the term GOP, which is one of the main objectives of this paper.

As part of this study, the researchers identified and examined a number of petroleum contracts through an online search, mostly using the website LawInsider,¹⁶ which provides a wide-range of collection of texts of agreements. This required filtering the data to specify those contracts which either define and require the application of GOP or simply request its consideration in specific operational or/and environmental aspects. The other limitation applied was choosing the contracts that have been signed by developing states either with MNOCs or national companies and are backed by domestic laws or regulations to require the adoption and implementation of GOP. In Table 1 below, these contracts, the way they have approached GOP, and their supporting national laws and regulations are presented.

2.1.2. *The Judicial Interpretation of GOP*

Undoubtedly, judicial bodies can play a substantial role in imposing GOP and holding Multinational Oil Corporations (MNOCs) accountable for any deviation from these standards. However, in order for these bodies to monitor and weigh MNOCs' compliance with GOP, they need an instrument to interpret GOP, introduce its sources, and accordingly determine the environmental requirements for each case. Unfortunately, 'there is little case law on what constitutes good oilfield practice'.¹⁷ Therefore, the cases that consider the obligation of MNOCs to apply best practices will be carefully studied in order to identify the underlying means used by courts to determine companies' fulfilment of GOP.

The study that has been conducted thus far has shown that different courts in different cases apply different rationales to assess the degree to which MNOCs apply GOP. This topic has also been under discussion in the academic arena. Therefore, it will be analytically examined to find whether in these schools of thoughts there is a general trend of conceptualization of GOP, or alternatively a novel interpretive approach could be invented.

Good practice in protecting the environment can have numerous facets. Where there is a human aspect involved, a variety of binding international rules can be invoked. As a result, fundamental human rights empower judicial national and international bodies to exercise their jurisdiction over private firms (such as oil companies) and decide compensation for affected parties. There is also an emerging trend suggesting that damaging the environment and contributing to climate disruption can in itself be deemed as violation of human rights.¹⁸ Recently, the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR) adopted this view in their decision on the *Costa Rica vs Nicaragua* case.¹⁹

¹⁶ "Contract Database and Search Engine" (*Law Insider*) <<https://www.lawinsider.com/>> accessed May 24, 2020.

¹⁷ *P. Burns Resources Limited v Locke, Stock & Barrel Company Ltd.*, 2014 ABCA 40. The Court of Appeal of Alberta, para. 43.

¹⁸ D. Estrin and B.H. Kennedy, 'Achieving Justice and Human Rights in an Era of Climate Disruption' (2014) International Bar Association Climate Change Justice and Human Rights Task Force Report

¹⁹ International Court of Justice (2 February 2018), certain activities carried out by Nicaragua in the border area (*Costa Rica v. Nicaragua*) compensation owed by the republic of Nicaragua to the republic of Costa Rica; Advisory Opinion of the Inter-American Court of Human Rights (IACtHR) (15 November 2017)

Some international agreements can be invoked by courts in linking GOP (as an environmental protection and climate change mitigation measure) to human rights, such as the Stockholm Declaration, Rio Declaration, and Aarhus Convention, which will be further investigated in this article.²⁰

The other method that has been used by courts to interpret GOP is referring to the principal guidelines that put forward measures of environmental protection within the onshore upstream industries, such as the Australian Petroleum Production & Exploration Association (APPEA), American Petroleum Institute (API), and International Organization for Standardization (ISO) guidelines.²¹ These guidelines can be employed by courts to interpret petroleum laws and/or enforce and prosecute environmental offences.²² According to Alexandra Wawryk, these guidelines can be used by national courts for different purposes, provided that they are generally endorsed and implemented by petroleum corporations. These guidelines can determine the boundaries and the liabilities of these companies in case they are litigated against. They can also be invoked by national courts to interpret the contractual clauses that require the implementation of GOP.²³

In this context, Wawryk suggests two procedures be applied by courts to select the most appropriate codes of practice for each case. First, is to investigate the most stringent guidelines of an industry association to which the oil company is a member. Second, is to look at the operating practices of the same company in other jurisdictions and choose the most stringent practice as constituting GOP.²⁴ However, applying these approaches requires judicial independence and, where in some developing countries, particularly Iraq, the judiciary is highly influenced by economic and political decisions, choosing the ‘strictest level of behaviour outlined in guidelines and codes rather than the lowest common denominator’ does not seem to be a straightforward task.²⁵

In some other cases, the national law has been used as a benchmark for interpreting GOP and identifying corporations’ socio-environmental obligations. A good example of this is the *Bodo Community and others v Shell Petroleum Development Company of Nigeria Ltd* case,²⁶ which referred to the Nigerian Mineral Oils Regulations,²⁷ the regulations that explicitly stipulate the sources of GOP.²⁸ However, this method requires a developed domestic legal and

²⁰ Declaration of the United Nations Conference on the Human Environment (Stockholm Declaration) 1972; Rio Declaration on Environment and Development, UN Doc. A/CONF.151/26 (vol. I), 31 ILM 874 (1992); The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention), Denmark, 25 June 1998

²¹ ‘Environment Publications’ (APPEA) <<https://www.appea.com.au/safety-environment/environment-publications/>> accessed May 28, 2020; ‘Environment’ (Energy API) <<https://www.api.org/oil-and-natural-gas/environment>> accessed May 28, 2020; ‘ISO 26000:2010’ (ISO September 15, 2017) <<https://www.iso.org/standard/42546.html>> accessed May 28, 2020; ‘ISO 14001:2015’ (ISO September 14, 2015) <<https://www.iso.org/standard/60857.html>> accessed May 28, 2020

²² A.S. Wawryk, ‘Adoption of International Environmental Standards by Transnational Oil Companies: Reducing the Impact of Oil Operations in Emerging Economies’ (2002) 20 *Energy & Natural Resources*, 428

²³ *Ibid*

²⁴ *Ibid* 432

²⁵ *Ibid*

²⁶ *The Bodo Community and Others v Shell Petroleum Development Company of Nigeria Ltd TCC*, Bailii, [2014] EWHC 2170

²⁷ Nigerian Mineral Oils (Safety) Regulations 7 (1962)

²⁸ This Law stipulates that GOP ‘shall be construed to be adequately covered by the appropriate current Institute of Petroleum Safety Codes, the American Petroleum Institute Codes or the American Society of Mechanical Engineers Codes’

environmental system capable of monitoring and regulating the performance of MNOCs, which is currently absent in some DOPCs, including Iraq. In other examples, the performance of companies and their compatibility with GOP was evaluated in light of either their internal instructions or contractual obligations.²⁹ The problem that arose in these cases was the fragility and uncertainty of these sources in determining the environmental obligations of defendants, which led the courts to resort to alternative methods of dispute resolution.³⁰

An example in which a court attempted to combine three of the above-mentioned methods (national law, international guidelines, and internal procedures) in order to reach a better understanding of the term GOP, is the *Environment Protection Authority v Great Southern Energy* case.³¹ According to this case, Great Southern Energy, which was charged with a water pollution offence under the *Clean Waters Act 1970*,³² willingly raised the point of acting in compliance with ISO 14001 EMS guidance and spent over \$1 million to obtain the ISO certification. The court then compared the actions taken with these standards and reached the conclusion that the company had failed to appropriately train its staff to deal with similar circumstances. The court also considered that there had been a failure in the system and practices adopted by the defendant at the time of the incident. Furthermore, the court investigated the company's internal instructions and guidelines on oil spills and other environmental considerations. However, as companies cannot only be obliged to uphold their own rules where they simultaneously have legal and contractual commitments to act in accordance with GOP, the court compared the internal procedures of the company with national laws and industry best practices. Accordingly, it established that there had been deficiencies in the company's actions and guidelines, such as overlooking the significant process of bunding (i.e., constructing a retaining wall around storages and oil treatment plants). Nevertheless, the court considered the company's prediction of the harm caused, achievement of ISO 14001 certification, and amendment of its internal code of conduct to ensure more protection and less harm, as mitigating factors. Consequently, the judicial description of GOP that can be derived from this case is that it refers to those obligatory practices imposed by the laws of the area within which the company operates as well as the measures voluntarily adopted by the company that can stem from international organisations, such as ISO.

In the *P. Burns Resources Limited v Locke, Stock & Barrel Company Ltd (LSB)* case,³³ LSB was blamed for suspending oil and gas production in a particular well for two 90-day periods under a lease granted by P. Burns Resources Limited. This was considered a violation of the lease and led to its termination, which was confirmed by a partial summary judgment. This decision was appealed before the chambers judge. LSB appealed the decision on a number of grounds, including that the non-production was in accordance with GOP. Although the chambers judge admitted that 'there is little case law on what constitutes good oilfield practice', they concluded that the interruption of the production by LSB for two extended periods could not constitute GOP, and could not find any reason for the cessation of the production that was beyond the control of the lessee. Thus, the decision was to uphold the partial summary judgment in terminating the lease.

²⁹ *P. Burns Resources Limited v Locke, Stock & Barrel Company Ltd*. [2014] ABCA 40 (CanLII), <<http://canlii.ca/t/g2w8b>> ; and *Petrobank Energy and Resources Ltd. v. Safety Boss Ltd.*, [2012] ABQB 161 (CanLII), <<http://canlii.ca/t/fqhgf>>

³⁰ D. Mousseau (ed), 'The Operator's Standard of Care in Wellsite Operations' (2002) 5 JV Views: Petroleum Joint Venture Association, p.8

³¹ *Environment Protection Authority v Great Southern Energy* [1999] NSWLEC 192

³² *Clean Waters Act 1970 No 78*, New South Wales, Australia

³³ *P. Burns v Locke* case (n 29)

The chambers judge's decision was appealed by LSB before the Court of Appeal of Alberta. This court stated that the chambers judge had disregarded expert testimonies in determining the technical actions that could be regarded as GOP and in deciding whether there was a genuine reason for trial. This was after the failure of the respondent to meet the court's demand to submit evidence of what constitutes GOP. As a result, the Court of Appeal decided that the 'appeal is allowed [and] the partial summary judgment terminating the appellant's petroleum and natural gas lease is set aside'. The court also mentioned some other cases in which the meaning of GOP was debated, such as *Novalta Resources Ltd. v. Ortynsky Exploration Ltd.*, *Durish v. White Resource Management Ltd.*, and *Canadian Superior Oil Ltd. v. Crozet Exploration Ltd.*³⁴ The conclusion that can be drawn from the opinion of this court is that expert testimony can be employed as another significant source for construing the term GOP and outlining its main requirements and characteristics.

2.1.3. The Characterisation of GOP by Secondary Sources

There have been attempts by some scholars to delineate and analyse the main characteristics of the term GOP. John Chandler, for instance, puts forth some important discussions about the implications and evolution of the concept of GOP.³⁵ He mentions that the term GOP was not intended to encompass infrastructure sharing or economic benchmarks but rather to provide basic standards or methods of conducting exploration and drilling in a safe and effective manner.³⁶ Chandler suggests amending the current definition of GOP in order to encompass regional matters by considering the maximisation of hydrocarbon recovery in a technically and economically sustainable manner, and the usage of operational and structural safety methods and processes to prevent accidents.

Mike Bunter, on the other hand, presented a thorough investigation of the implications of the term GOP in order to provide an in-depth examination of the BP Macondo well blowout case. In this context, Bunter states that 'little attention has been paid to a rigorous legal analysis of the term GOP', and points out that GOP's 'definition seems simple enough but deceptively broad'.³⁷ According to Bunter, 'GOP provides a set of rules by which petroleum professionals self-regulate the conduct of petroleum operations on a day-by-day basis', and suggests that the 'imposition of these tough standards takes place in an evolving process of self-regulation by skilled oil-men'.³⁸ He adds that these rules should be about not only the equipment and techniques used in petroleum operations, but also apply to the personal conduct of employees, supervisors, and management as well as to the environment and safety.³⁹ Bunter goes further to consider some oilfield practices as customary or common law, by describing this as the 'imposition of the Customary Law of the Oilfields', where their breach could 'attract the strongest condemnation and might be subject to legal penalties'.⁴⁰ He also points out that the

³⁴ Ibid; *Novalta Resources Ltd. v. Ortynsky Exploration Ltd.*, 1994 CanLII 9248 (AB QB), <<http://canlii.ca/t/2brd0>> ; *Durish v. White Resource Management Ltd.*, 1998 ABQB 801 (CanLII) <<http://canlii.ca/t/5pz3>>; *Canadian Superior Oil Ltd. v. Crozet Exploration Ltd.*, 1982 CanLII 1083 (AB QB), <<http://canlii.ca/t/27pjd>>

³⁵ J.A. Chandler, *Petroleum Resource Management: How Governments Manage Their Offshore Petroleum Resources* (Edward Elgar Publishing 2018), p. 189

³⁶ Ibid 185, 186

³⁷ M.A.G. Bunter, 'World-wide standards of Good Oilfield Practice: the impact of the blow-out, deaths and spill at the BP Macondo well, the MC 252/1-01, US Gulf of Mexico' (2013) 11(2) *Oil, Gas & Energy Law Intelligence*

³⁸ Ibid 3

³⁹ Ibid 2

⁴⁰ Ibid

standards of GOP have been constantly changing and evolving to adapt to and incorporate up-to-date techniques of petroleum production and exploration.

The uncertainty and ambiguity of the term GOP opens the floor for debate over the reasons behind leaving this term without a clear definition, and whether this omission has been intentional or not. The negative perspective on this is that the industry has purposefully left GOP without clear boundaries in order to undermine the obligations of MNOCs in carrying out a certain set of standards, and hence reduce certain costs and the likelihood of being held accountable for negligence. By contrast, the positive perspective, that this is the more commonly held attitude, suggests that not restricting the content of GOP provides it with the ability to encompass novel technologies and methods of oilfield management and socio-environmental protection. Patricia Park adopted the latter perspective, confirming that the inherent ambiguity grants GOP the flexibility and adaptive capability to keep up faster and easier with changeable circumstances.⁴¹ Chandler also considers this lack of agreed definition of the term GOP as a positive attribute, providing room for arguing the degree of consensus on the practices, which was regarded as one of the main features of GOP by the Australian Offshore Petroleum and Greenhouse Gas Storage Act 2006.⁴²

However, the disadvantage of this ambiguity is that it makes the task of judiciary and other concerned bodies in determining the responsibilities of MNOCs and holding them accountable to these, more difficult. In this regard, Wawryk indicates that ‘there is a trade-off between the need for flexibility, encapsulated in such phrases as "good oilfield practice", and the ambiguity inherent in these terms’.⁴³ In other words, referring to GOP without stipulating its definite components can be advantageous in terms of allowing these measures to keep pace with industry advances, but simultaneously causing the term GOP to remain blurred and uncertain for enforcement purposes.

Some scholars also suggest that the flexibility of GOP is necessary not only for keeping up with technical advances, but also for its applicability in different ecological and demographic extractive areas, which requires different socio-environmental commitments.⁴⁴ As such, labelling environmental standards as ‘good’ (or ‘best’), according to this perspective, would be highly dependent on the area in which they are intended to be applied. According to this assumption, it would be inappropriate to globally introduce an environmental procedure as being the best applicable action. This means that only in areas with similar characteristics can a set of integrated practices be described as the most appropriate. Therefore, for instance, Iraq and other Persian Gulf oil-producing countries can have their own environmental standards that may not necessarily be defined as good or ideal elsewhere. Park agrees that in defining GOP, local conditions must be taken into account, and it is the operator’s responsibility to choose the best practice and justify their selection to the host government.⁴⁵ This assumption is supported by the International Association of Oil & Gas Producers (IOGP), which suggests that the absence of an internationally agreed definition of GOP can be taken advantage of through choosing standards and solutions commensurate with the area and conditions of operations.⁴⁶

⁴¹ Patricia Park, *International Law of Energy and Environment* (2nd edn, 2013), p. 12

⁴² Chandler (n 35) 186

⁴³ Wawryk (n 22)

⁴⁴ F. Jahn, M. Cook and M. Graham, *Hydrocarbon Exploration and Production* (2nd edn, 2008)

⁴⁵ Park (n 41) 13

⁴⁶ International Association of Oil & Gas Producers, ‘Regulators’ Use of Standards’ (Report No. 426, OGP, 2010)

Therefore, theoretically speaking, the term GOP has been prone to different interpretations and analysis, and the common view is that the term GOP, whether intentionally or unintentionally, has been left elastic and blurred, and changes with changing circumstances. Nonetheless, from a legal and judicial perspective, this vagueness may not prevent the delineation of some of the characteristics of GOP under the influence of petroleum practices and standards that have been nationally imposed, internally favoured, and internationally practised, accepted, and recommended by industry-linked organisations.

3. The Requirement to Apply GOP in Petroleum Operations

Many DOPCs, including Iraq, have been attempting to present their own environmental legal and contractual requirements.⁴⁷ However, since most of these countries lack an advanced and mature environmental system, they make reference to GOP as the main source of corporate social and environmental obligations. This condition, as will be demonstrated below, can be found in both the oil contracts and national acts of DOPCs. The Cambodian Regulation, for instance, suggested these standards to be the benchmark for assessing companies' performance in the absence of related local regulations.⁴⁸

Iraq's *Federal Oil and Gas Draft Law* demands that the contractor and the operator in their exploration, development, and production operations 'avoid wasting, prevent leaks from pipelines, and provide optimal maintenance of the energy in the Oil Reservoir using the Best Oil and Gas Industry Practices and Best Practices in Pipelines Management'.⁴⁹ Under the *Oil and Gas Law of the Kurdistan Region* (No. 28, 2007: art. 7) the Minister of Natural Resources of the Region is required to exercise their powers in a manner that ensures the protection of the environment is consistent with good oil industry practices. In addition, this law, in Article 37, requires Production Sharing Contracts (PSC) to include 'provisions for securing the health, safety and welfare, environmental protection [...] consistent with international standards', and comprise 'good oil field practice and procedures employed in the petroleum industry worldwide by prudent and diligent operators under' similar circumstances'.⁵⁰ In Table 1 below, more examples are given of legislations that require governments and the industry to consider GOP in their agreements and operations.

With respect to petroleum contracts, the Iraqi Technical Service Model Contract in Article 41.1 requires the contractor and operator to apply GOP (or Best International Petroleum Industry Practices (BIPIP)) in conducting and monitoring petroleum operations and in the protection of the environment and local communities.⁵¹ Article 41.11 also recommends that all necessary actions (including site restoration) in the event of any oil spills, blowouts, fires, accidents, or emergencies arising from petroleum operations and affecting the environment, to be taken in

⁴⁷ A.F.M. Maniruzzaman and K. Al-Saleem, 'The Energy and Environment Dilemma: Sustainably Developing Iraqi Oil and Gas in International Law and Policy – Prospects and Challenges' (2017) 15(3) *Oil, Gas & Energy Law Intelligence*

⁴⁸ Cambodia Regulations on General Conditions of Supply of Electricity in the Kingdom of Cambodia 2003, Chapter 8: 8.1. 62, available at: http://www.cambodiainvestment.gov.kh/regulations-on-general-conditions-of-supply-of-electricity_030117.html

⁴⁹ The Federal Oil and Gas Draft Law (n 13) Chapter VI, art. 33

⁵⁰ *Oil and Gas Law of the Kurdistan Region* No 28 (2007) art. 37, available at: <http://gjpi.org/wp-content/uploads/2009/04/oil-and-gas-070708090735.pdf>

⁵¹ Rumaila TSC (n 3) '41.1 In performance of this Contract, Operator shall conduct Petroleum Operations with due regard to the protection of the environment and conservation of natural resources and shall in particular: (a) adopt Best International Petroleum Industry Practices in conducting and monitoring its Petroleum Operations ...'

accordance with BIPIP. Furthermore, this TSC, in Articles 9.15 and 11.6, calls for the implementation of BIPIP in all operations, plans and production schedules.⁵²

Under the Kurdistan Regional Government's (KRG) PSC, GOP is expressed as the 'prudent international petroleum industry practice'. According to this contract, the contractor and operator, in performing petroleum operations, abandonment, removal, and closure of wells must pledge to protect the environment, prevent any pollution, and preserve the fauna, flora, ecosystems, water sources, agricultural areas, and fisheries in accordance with 'prudent international petroleum industry practice in similar physical and ecological environments and any then applicable Kurdistan Region Law'.⁵³ More examples of petroleum contracts that require considering GOP in oil and gas operations and the protection of the local communities and ecosystems are provided below in Table 1.

⁵² Ibid

⁵³ Kurdistan Regional Government Taq Taq Production Sharing Contract, signed between KRG, GENEL Energy and Addax Petroleum in 2008, art. 37 (14)

Table 1, examples of petroleum-related contracts and legislations within underdeveloped and developing countries that require the implementation of and define GOP

Petroleum agreement	Defines GOP	Requires GOP	Comments	Relevant national law	Defines GOP	Requires GOP	Comments
Algeria's Exploration and Exploitation Agreement ⁵⁴	No	Yes Art. 7.2		Not known			
Angola's PSC ⁵⁵	No	Yes Art. 14(1)		Angola Petroleum Activities Law ⁵⁶	No	Yes Art. 7.1	
Brazil's PSC ⁵⁷	Yes Art. 1.2.28	Yes Art.s 2.2, 19.10, 26.1, 26.9	Asserted the application of GOP in the protection of environment and sustainability. Identified ANP, Brazilian public authorities, and internationally recognised bodies and associations of the oil industry as the sources of GOP.	Brazil's Law No. 12.351 ⁵⁸	No	Yes Art. 11	

⁵⁴ Agreement for Exploration and Exploitation of Liquid Hydrocarbons between Sonatrach and Anadarko Algeria Corporation, available at: <https://www.lawinsider.com/contracts/657Ufg0BhACNWAvEggRAPa/anadarko-petroleum-corp/corporation-agreement/1997-05-14>

⁵⁵ Production Sharing Contract between Sociedade Nacional De Combustíveis De Angola, Empresa Pública - (SONANGOL, E.P.) and CIE Angola Block 20 LTD. Sonangol Pesquisa E Produção, S.A. BP Exploration Angola (KWANZA BENGUELA) Limited China Sonangol International Holding Limited in the Area of Block 20/11, available at: <https://www.lawinsider.com/contracts/2MzSaszRpIiMWxuxMW84Qq/cobalt-international-energy-inc/production-sharing-contract/2012-02-21>

⁵⁶ Republic of Angola Petroleum Activities Law No. 10/04 of 12 November 2004, available at: <http://extwprlegs1.fao.org/docs/pdf/ang81903E.pdf>

⁵⁷ Brazil's Production Sharing Agreement for Exploration and Production of Oil and Gas, Federative Republic of Brazil Ministry of Mines and Energy, 5th Production Sharing Bidding Round, Brazil 2018, Section 26, available at: <https://www.lawinsider.com/contracts/2Gd2ddtWiwe>

⁵⁸ Brazil's Law No. 12.351 on the exploitation and production of oil, natural gas and other liquid hydrocarbons, and amending the National Energy Policy, available at: <https://www.ecolex.org/details/legislation/law-no-12351-on-the-exploitation-and-production-of-oil-natural-gas-and-other-liquid-hydrocarbons-and-amending-the-national-energy-policy-lex-faoc121303/>

Petroleum agreement	Defines GOP	Requires GOP	Comments	Relevant national law	Defines GOP	Requires GOP	Comments
Cambodian Model Petroleum Agreement ⁵⁹	Yes Art. 1.2	Yes Art.s 8.3, 15.1, 20.3, 20.4, 20.5, 20.6, 20.7, 22.1, 28.1, 38.2	Required the application of GOP in reservoir management, financial and insurance procedures, technical, safety and environmental matters. Also referred to the resolution of disputes about the degree of compliance with GOP, which seems innovative (art. 38.2).	Cambodian Regulations 2003 ⁶⁰	No	Yes Chapter 8: 8.1. 62	Suggested 'best industry standards' to be the benchmark in the absence of related local regulations.
China's Exploration, Development and Production Contract ⁶¹	NO	Yes Art. 8.6	Required applying GOP in the protection of local communities, workers and the environment.	China's Regulation on the Exploitation of Onshore Petroleum Resources ⁶²	No	Yes Art. 22	
Colombia's Association Contract ⁶³	No	Yes Chapter II (5.1), Clause 10.2		Not known			
Cote D'Ivoire's PSC ⁶⁴	Yes Art. 1.43	Yes Art.s 2.3, 6.6	Referred to international conventions as one of GOP's sources.	Cote D'Ivoire's Petroleum Code ⁶⁵	No	Yes Art. 54	Used the term 'Normal Practice of the International Petroleum Industry'

⁵⁹ Cambodian Model Petroleum Agreement (n 4)

⁶⁰ Cambodian Regulations (n 48)

⁶¹ Petroleum contract for Zitong block, Sichuan basin of the people's republic of China Beijing, China September, 2002 contract for exploration, development and production in Zitong block, Sichuan basin of the people's republic of China between China National Petroleum Corporation and Pan-China Resources Ltd. Beijing, China September 19, 2002, available at: <https://www.lawinsider.com/contracts/SDO1YaQoNUUuRhO8gMlpa/ivanhoe-energy-inc/0/2003-03-20>

⁶² Regulations of the People's Republic of China on Exploitation of On-shore Petroleum Resources in Cooperation with Foreign Enterprises, available at: <http://extwprlegs1.fao.org/docs/pdf/chn149784.pdf>

⁶³ Colombia "Rio Magdalena" Association Contract 2002, available at: <https://www.lawinsider.com/contracts/4MoMSz9KSuFgZN4zuMZM5J/aviva-petroleum-inc-tx/certificate-of-incorporation/2002-03-29>

⁶⁴ Republic Of Cote D'Ivoire, Hydrocarbons Production Sharing Agreement Block CI-526, 21 December 2017, available at: <https://www.lawinsider.com/contracts/268wrOe8kRRggDSNYdfu2T/kosmos-energy-ltd/production-sharing-agreement/2018-02-26>

⁶⁵ COTE D 'IVOIRE Petroleum Code (n 11)

Petroleum agreement	Defines GOP	Requires GOP	Comments	Relevant national law	Defines GOP	Requires GOP	Comments
Egypt's Concession Agreement ⁶⁶	No	Yes Art. IV(e)		Not known			
Georgian PSC ⁶⁷	Yes Art.1.4 6	Yes Art. 2.4, 24.4	Provided general definition without identifying the sources.	Not known			
Guinea's PSC ⁶⁸	No	Yes Art.s 1.2.2, 4.3, 4.5		Guinea's Hydrocarbons Law No. 8/2006 ⁶⁹	No	Yes Art.s 5, 33, 115	
India's Model PSC ⁷⁰	No	Yes Art.s 8.3, 10.7.c, 14.1.a, 14.6.a, 14.7.1- 2, 14.9.b	Described GOP as 'Modern Oilfield and Petroleum Industry Practices' and required it in measuring, environmental protection, contingency plan, insurance and site restoration procedures.	India's Petroleum and Natural Gas Rules, 1959 ⁷¹	No	Yes Art. 19(b)	

⁶⁶ Concession Agreement for Petroleum Exploration and Exploitation between The Arab Republic of Egypt and the Egyptian General Petroleum Corporation and Dover Investments Limited in East Wadi Araba Area Gulf of Suez A.R.E. 2001, available at: <https://www.lawinsider.com/contracts/4rMjHYQgh8a0et8hM1TiA1/mogul-energy-international-inc/concession-agreement/2006-11-17>

⁶⁷ Agreement between Canargo Samgori Limited and Georgian Oil Samgori Limited, Covering: The Samgori Production Sharing Contract, Georgia, January 2004, available at: <https://www.lawinsider.com/contracts/gkrbLIN9V9Wn6WCXS6xuB/canargo-energy-corp/production-sharing-contract/2004-05-06>

⁶⁸ Production Sharing Contract Between the Republic of Equatorial Guinea and Guinea Ecuatorialde Petroleos and Kosmos Energy Equatorial Guinea for Block "S", available at: <https://www.lawinsider.com/contracts/7vK1HH5BODDhGgsFmi7UO/kosmos-energy-ltd/production-sharing-contract/2018-05-07#determination-of-commerciality>

⁶⁹ Hydrocarbons Law No. 8/2006, of 3 November of the Republic of Equatorial Guinea, available at: [http://www.equatorialoil.com/PDFs%20for%20download/EG%20Hydrocarbons%20Law%20\(English%20Translation\)_v7.1.pdf](http://www.equatorialoil.com/PDFs%20for%20download/EG%20Hydrocarbons%20Law%20(English%20Translation)_v7.1.pdf)

⁷⁰ India's Model Production Sharing Contract, Fifth offer of Blocks, Ministry of Petroleum and Natural Gas, Government of India in 2005, art. 14, available at: <http://petroleum.nic.in/sites/default/files/MPSC%20NELP-V.pdf>

⁷¹ India's Petroleum and Natural Gas Rules, 1959, available at: <http://dghindia.gov.in/assets/downloads/l2.pdf>

Petroleum agreement	Defines GOP	Requires GOP	Comments	Relevant national law	Defines GOP	Requires GOP	Comments
Iraq's TSC ⁷²	Yes Art. 1.1.9	Yes Art.s 9.15, 11.6, 41.1, 41.11		Iraq's Federal Oil and Gas Draft Law ⁷³	Yes Part I, Chapter I, Art. 1.26	Yes Chapter VI, art. 33	Defined GOP as 'Best International Petroleum Industry Practices – good, safe, environmentally friendly, economic and effective practices in Petroleum Exploration and Production'.
Kenya's PSC ⁷⁴	No	Yes Art.s 14(1), 8(2)(e), 10(2), 20(1), Part III (1.2.1), 42 (2)(c), 8(1)	Required the application of GOP in keeping records, disposing of waste oil and salt water, drilling, production, financial management, decommissioning, and all petroleum operations.	Kenya's Petroleum Act No.2 of 2019 ⁷⁵	Yes Part I (2) ⁷⁶	Yes Art.s 19.1(j), 59(1)	Required all petroleum agreements to consider the application of GOP (art.19.1.j).
Kurdistan PSC ⁷⁷	No	Yes Art. 37 (14)	Used the term 'prudent international petroleum industry practice'.	Kurdistan Oil and Gas Law ⁷⁸	No	Yes Art.s 7, 27(2), 37	

⁷² Rumaila TSC (n 3)

⁷³ Iraq's Oil and Gas Draft Law (n 13)

⁷⁴ Republic of Kenya, Production Sharing Contract Between the Government of the Republic of Kenya and CAMAC Energy Kenya Limited Relating to Block L16, available at: <https://www.lawinsider.com/contracts/7ugQC6T7jylkF546AKW1C7/camac-energy-inc/production-sharing-contract/2012-08-08>

⁷⁵ Kenya Petroleum Act (n 14)

⁷⁶ Ibid, Part I.2 "best petroleum industry practices" means such practices, methods, standards and procedures generally accepted and followed internationally by prudent, diligent, skilled and experienced operator in upstream petroleum operations, including practices, methods, standards and procedures intended to- (a) conserve petroleum by maximizing recovery of petroleum in a technically and economically sustainable manner; (b) promote operational safety and prevention of accidents; and (c) protect the environment by minimizing the impact of upstream petroleum operations'

⁷⁷ Kurdistan PSC (n 53)

⁷⁸ Kurdistan Oil and Gas Law (n 50)

Petroleum agreement	Defines GOP	Requires GOP	Comments	Relevant national law	Defines GOP	Requires GOP	Comments
Malaysia Operating and Maintenance Agreement ⁷⁹	No	Yes Art. 4.1		Not known			
Mauritania Exploration-Production Contract ⁸⁰	No	Yes Art. 2.4 and 6.5		Mauritania's Law No. 2010-33 ⁸¹	No	Yes Art. 31	
Namibia's Model Petroleum Agreement ⁸²	No	Yes 11.3, 11.11, 12.1	Clause 1(y) referred to Act 2 of 1991 for the definition. This contract required GOP to be applied in petroleum operations and minimising environmental damage.	Namibia's Petroleum Act 2 of 1991 ⁸³	Yes Definitions ⁸⁴	Yes Art. 38 (1)	
Pakistan's Model PCA ⁸⁵	No	Yes Art.s 2.2, 5.4.1, 29.1	Art. 1.36 referred to the definition provided by Pakistan Onshore Petroleum Rules.	Pakistan's Onshore Petroleum Rules ⁸⁶	Yes Part 1.2 (xv)	Yes Art.s 58(1), 59(1), 60(2)	Listed petroleum institutions as the foundation for GOP.

⁷⁹ FPSO Operating and Maintenance Agreement for FPSO Hull no. 2284 Kikeh field, Block K Offshore Sabah, Malaysia between Malaysia International Shipping Corporation Berhad and Murphy Sabah Oil Co., Ltd. Contract Number Murphy/Kikeh/K003B (2005), available at: <https://www.lawinsider.com/contracts/2ZGTpPnMkZYPbAKTwhmdBw/murphy-oil-corp-de/maintenance-agreement/2005-03-16>

⁸⁰ Islamic Republic of Mauritania Exploration-Production Contract between the Islamic Republic of Mauritania and Tullow Mauritania Limited C18 2012, available at: <https://www.lawinsider.com/contracts/2MZ482yYAvwjFYMEYNYeDe/kosmos-energy-ltd/contract/2018-02-26>

⁸¹ Islamic Republic of Mauritania, Law No. 2010-33 dated 20 July 2010 Instituting Code of Crude Hydrocarbons, available at: http://www.petrole.gov.mr/IMG/pdf/code_des_hydrocarbures_in_english.pdf

⁸² Namibia Model Petroleum Agreement, available at: <https://www.lawinsider.com/contracts/f4YFdt57aQD>

⁸³ Namibia's Petroleum Act (n 13)

⁸⁴ Ibid, Definitions: "good oilfield practices" means any practices which are generally applied by persons involved in the exploration or production of petroleum in other countries of the world as good, safe, efficient and necessary in the carrying out of exploration operations or production operations'.

⁸⁵ Pakistan Model Petroleum Concession Agreement, (2001), available at: <https://www.lawinsider.com/contracts/fGwIDyXwFK8>

⁸⁶ Pakistan Onshore Petroleum Rules (n 15)

Petroleum agreement	Defines GOP	Requires GOP	Comments	Relevant national law	Defines GOP	Requires GOP	Comments
Philippines's Service Contract ⁸⁷	No	Yes Art. 7.01		Philippines's Department Circular ⁸⁸	No	Yes Rule 2(f)	
POLAND's Exploration and Exploitation of Natural Gas and Oil Agreement ⁸⁹	No	Yes Art. 8.2, 9.1		Not known			
Pre-Export Finance Facility Agreement Erin Petroleum Nigeria Ltd ⁹⁰	No	Yes Art. 25.27		Nigerian Mineral Oils (Safety) Regulations ⁹¹	No	Yes Part III (7) Part	Identified the sources of GOP by referring to specific petroleum institutions.
Sao Tome and Principe PSC ⁹²	Yes ⁹³	Yes Art. 3.4		Sao Tome and Principe Law No. 16/2009 ⁹⁴	Yes Art. 24.1	Yes Art. 24.1	

⁸⁷ Philippines Service Contract (2014), available at: <https://www.lawinsider.com/contracts/f8USUbkJ3wx>

⁸⁸ Department Circular No. DC 2017-11-0012, Rules and Regulations Governing the Philippine Downstream Natural Gas Industry, available at: <https://www.doe.gov.ph/sites/default/files/pdf/issuances/dc2017-11-0012.pdf>

⁸⁹ Mining Usufruct Agreement with respect to Prospecting for and Exploration and Exploitation of Natural Gas and Oil Between the State Treasury of the Republic of Poland and Apache Poland Sp. Zo.o. and FX Energy Poland Sp. Zo.o. (EAST), commercial partnership, available at: <https://www.lawinsider.com/contracts/11XVrX13XaNwGZR0iLiNI/fx-energy-inc/0/1997-11-14>

⁹⁰ Erin Energy Corporation as Parent and Erin Petroleum Nigeria Limited as Company and the Mauritius Commercial Bank Limited as Mandated Lead Arranger and the Mauritius Commercial Bank Limited as Agent and the Mauritius Commercial Bank Limited as Security Agent and the Entities Listed in Schedule 1 as Original Lender USD 100,000,000 Pre-Export Finance Facility Agreement, 6 February 2017, available at: <https://www.lawinsider.com/contracts/1UFIRNR7EhJYAMGw6WAJUZ/erin-energy-corp/facility-agreement/2017-02-09>

⁹¹ Nigerian Mineral Oils Regulations (n 15)

⁹² Production Sharing Contract Between the Democratic Republic of Sao Tome and Principe Represented by Agencia Nacional Do Petroleo De Sao Tome and Principe BP Exploration (STP) Limited and KOSMOS Energy Sao Tome and Principe for Block 10, available at: <https://www.lawinsider.com/contracts/1ETvb1Y4Ae3otQQ8rK30Sp/kosmos-energy-ltd/production-sharing-contract/2018-05-07>

⁹³ Ibid, 1. Definitions and Interpretation, "Good Oil Field Practice" means the standards, methods and practices generally used in good and prudent international offshore oil and gas field practice'.

⁹⁴ Sao Tome and Principe Petroleum Operations Law (n 14)

Petroleum agreement	Defines GOP	Requires GOP	Comments	Relevant national law	Defines GOP	Requires GOP	Comments
Suriname's PSC ⁹⁵	No	Yes Art.s 6.1.1, 6.1.2, 6.4, 8.1, 24.2.1, 24.3, 29.1.1, 7.1(a), 17.2, 17.3, 17.4	Required considering 'Accepted Petroleum Industry Practice' in a number of ecological and technical aspects,	Suriname's Petroleum Law 1990 ⁹⁶	No	Yes Art. 6	Defined it as the 'best international techniques and practices' to be applied by state enterprises when concluding petroleum agreements.
Timor-Leste's PSC ⁹⁷	Yes ⁹⁸	Yes Art. 5.1.a		Timor-Leste Decree-Law 18/2020 ⁹⁹	No	Yes Art. 6, 48, 117, 118, 123, 138, 19(6), 39, 42, 64, 103, 73, 75, 79, 89, 149, 151, 164, 165	A new legislation identifying the necessity of considering GOP in all technical, management, financial, social-environmental aspects of petroleum operations. It also suggests solutions for inconsistency between GOP and applicable laws, and methods of proving that a particular practice is a GOP. Art. 6 (1-3).

⁹⁵ Production Sharing Contract for Petroleum Exploration, Development and Production Relating to block 45 offshore Suriname between Staatsolie Maatschappij Suriname N.V. and Kosmos Energy Suriname, available at: <https://www.lawinsider.com/contracts/1SNkd1iYOF65FgyQFpUAB0/kosmos-energy-ltd/production-sharing-contract/2013-11-05>

⁹⁶ Suriname Petroleum Law (n 12)

⁹⁷ Timor-Leste's PSC (n 4)

⁹⁸ Ibid, Art.1.1 "Good Oil Field Practice" means such practices and procedures employed in the petroleum industry worldwide by prudent and diligent operators under conditions and circumstances similar to those experienced in connection with the relevant aspect or aspects of the Petroleum Operations, principally aimed at guaranteeing: a) conservation of petroleum and gas resources, which implies the utilization of methods and processes to maximize the recovery of hydrocarbons in a technically and economically sustainable manner, with a corresponding control of reserves decline, and to minimize losses at the surface; b) operational safety, which entails the use of methods and processes that promote occupational security and the prevention of accidents; c) environmental protection, that calls for the adoption of methods and processes which minimise the impact of the Petroleum Operations on the environment'

⁹⁹ Timor-Leste Decree-Law 18/2020, 13 May, Onshore Petroleum Activities, available at:

<http://www.anpm.tl/wp-content/uploads/2017/05/Final-Draft-Onshore-Decree-Law-English-050517.pdf>

http://www.mj.gov.tl/jornal/public/docs/2020/serie_1/SERIE_I_NO_20.pdf

Petroleum agreement	Defines GOP	Requires GOP	Comments	Relevant national law	Defines GOP	Requires GOP	Comments
Trinidad and Tobago's PSC ¹⁰⁰	No	Yes Art.s 7.1, 10.3, 10.14	Required applying 'sound and current international petroleum industry practice' in conducting petroleum operations and preserving the environment.	Trinidad and Tobago's Petroleum Act ¹⁰¹	No	Yes Art. 42. (2)	

¹⁰⁰ Trinidad and Tobago PSC 2014, available at: <https://www.lawinsider.com/contracts/813ucajUzUB>

¹⁰¹ Laws of Trinidad and Tobago, Petroleum Act 46 of 1969, available at: <http://laws.gov.tt/tddl-web2/revision/download/26484?type=amendment>

The general trends that can be identified in this table are, first, that most petroleum contracts require GOP to be considered in technical, management, and environmental protection procedures, while less attention is given to social and human rights aspects. Second, only the Pakistani and Nigerian laws¹⁰² identified the guidelines of particular international petroleum institutions to be the basis for GOP, while the rest either did not specify the sources¹⁰³ or prioritised national laws over international guidelines.¹⁰⁴ Third, the most recent legal sources, such as the Timor-Leste Decree-Law 18/2020 and Kenya's Petroleum Act No.2 of 2019, established a roadmap for resolving inconsistencies between GOP and national laws, and approaches of distinguishing GOP from other practices.¹⁰⁵ These legislations also expanded the concept of GOP and required a wide-range adoption of these standards in all technical, administrative, fiscal, social, and environmental aspects of petroleum operations. This emphasis on GOP in the latest legal sources could indicate the fact that the concept has been increasingly contributing to determining operators' obligations, which indicates the urgent need to outline the content of this term and the nature of its relationship with local legislation. In short, this table demonstrates that the petroleum agreements and national laws of developing countries frequently refer to GOP as a significant source of MNOCs' responsibilities and as filling the regulatory gap in their systems. This provides a strong motivation for carrying out an in-depth investigation into the implications of this term and methods of developing it to meet modern socio-environmental expectations.

4. The Legal Status and Mandatory Nature of GOP

There is near consensus that the term GOP lacks a clear and internationally recognised interpretation.¹⁰⁶ Thus, different primary and secondary sources have adopted distinct methods to define the term GOP and to identify the main social and environmental obligations of the upstream industry under this set of standards. Nevertheless, GOP has been accepted by some as referring to all those measures and standards recommended by specialised international institutions.¹⁰⁷ It is also suggested that GOP can reflect those procedures voluntarily adopted by well-known multinational petroleum corporations over a long period of time, that have been consistently stipulated in petroleum contracts and are internationally accepted.¹⁰⁸ These diverse foundations of GOP may not be clearly distinguishable or contradictory, and can represent cooperative and complementary bases for these standards, especially when companies' practices and precedents are inspired by institutional guidelines.

¹⁰² Nigerian Mineral Oils Regulations (n 15); Pakistan Onshore Petroleum Rules (n 15)

¹⁰³ E.g. Iraq's Oil & Gas Draft Law (n 13); Namibia's Petroleum Act (n 13)

¹⁰⁴ E.g. Brazil's PSC (n 57)

¹⁰⁵ Timor-Leste Decree-Law (n 99); Kenya's Petroleum Act (n 14)

¹⁰⁶ Z. Gao (ed), *Environmental Regulation of Oil and Gas* (KLUWER LAW INTERNATIONAL 1998), 13; T. Daintith and G. Willoighby, *UK Oil and Gas Law* (Sweet & Maxwell 1996) p. 5386; Bunter (n 37) 3

¹⁰⁷ T. Boykett and others, *Oil Contracts How to Read and Understand a Petroleum Contract* (ed. Version 1.1, Times Up Press 2012), pp. 151-155; Jahn (44) 88; Wawryk (n 22) 404; examples of the institutions are: the Australian Petroleum Production and Exploration Association (APPEA), International Petroleum Industry Environmental Conservation Association (IPIECA), International Organization for Standardization (ISO) and the American Petroleum Institute (API)

¹⁰⁸ Bunter (n 37); A.S. Wawryk, 'Petroleum regulation in an international context: The universality of petroleum regulation and the concept of *lex petrolea*' in T. Hunter, *Regulation of the Upstream Petroleum Sector: a Comparative Study of Licensing and Concession Systems* (Edward Elgar Publishing 2015), 34

De Jesus distinguishes between GOP and the standards that evolved from petroleum contractual clauses and the publications of professional associations.¹⁰⁹ This preferential perspective of De Jesus in undermining the scope of GOP could be due to an attempt to support the argument that these contractual clauses and publications alongside GOP are contributing to the formation of *lex petrolea*. Therefore, by this separation and granting *lex petrolea* a unique foundation, De Jesus attempts to avoid confusion between GOP and *lex petrolea* and to maintain *lex petrolea*'s superiority and independence, which could otherwise be questioned. The same argument may apply to the principle of 'reasonable and prudent operator', which was defended by Chandler and compared with GOP. Chandler states that this principle is more precise and enforceable than GOP, where GOP's focus is more on 'good and safe practices in general operations rather than the commercial interests of any person'.¹¹⁰ Chandler claims that this has meant that GOP is not often raised in judicial proceedings.

The legal status of GOP and its categorisation as soft or hard law has been a subject of controversy, a fact that presents an obstacle to the arbitrary and judiciary interpretation and enforcement of these practices. Although there is a strong argument that these guidelines signify non-binding rules with the status of soft law, some suggest that particular elements of these standards can have the potential to gradually develop, or have already developed, to become hard law.¹¹¹ Examples of these elements are the application of environmental impact assessment (EIA) or the recognition of the customary rights of indigenous peoples to access land and other natural resources, and to enjoy a healthy and clean environment, which have been codified in a number of international documents, such as the Antarctic and World Bank guidelines.¹¹²

Wawryk and De Jesus claim that these elements of GOP will potentially create a new set of transnational rules known as *lex petrolea* beyond the conventional treaty and customary international law, through being constantly practised and accepted by petroleum industries and international arbitral tribunals.¹¹³ Wawryk supports this idea by raising the point that the legitimacy of these practices as law is derived from their use and acceptance by the members of the international petroleum industry, which could be regarded as *opinio juris*.¹¹⁴

On the other hand, some do not support the idea that these practices have gained legal status and suggest that they are still within the scope of soft law that has only the potential to provide groundwork for future hard law.¹¹⁵ The Rio Declaration (1992) can be mentioned as an example which, although technically a 'soft law' instrument, sets out several principles and participatory environmental-related practices that are now widely considered to be part of customary law.¹¹⁶

¹⁰⁹ A.O. De Jesus, 'The Prodigious Story of the *Lex Petrolea* and the Rhinoceros. Philosophical Aspects of the Transnational Legal Order of the Petroleum Society' (2012) 1(1) TPLI Series on Transnational Petroleum Law

¹¹⁰ Chandler (n 35) 189

¹¹¹ Wawryk (n 108)

¹¹² Wawryk (n 22) 410; Protocol to the Antarctic Treaty on Environmental Protection (Madrid), adopted 4 October 1991, 30 *ILM* 1455 (1991); Environmental Assessment Sourcebook (Washington DC, World Bank, 1991)

¹¹³ Wawryk (n 108) 20, 35; De Jesus (n 109) 40

¹¹⁴ Wawryk (n 108) 7

¹¹⁵ J.A. Zerk, *Multinationals and Corporate Social Responsibility: Limitations and Opportunities in International Law* (Cambridge Studies in International and Comparative Law) (Cambridge University Press 2006), p. 71

¹¹⁶ P.W. Birnie, A.E. Boyle and C. Redgwell, *International Law and the Environment* (Oxford University Press 2009), p.109

The binding nature of these rules and their enforceability is thus highly dependent on the likelihood of their application as blackletter law and/or legitimisation by arbitral tribunals.¹¹⁷ Nonetheless, there is no doubt that best petroleum practices have gone beyond national laws and been applied globally, and have had a direct impact on the performance of transnational corporations.

There has also been debate over the approaches of reinforcing the obligatory nature of these guidelines and the process of their transformation from non-binding soft law to international hard law, where three key techniques have been proposed:¹¹⁸

- Incorporating non-binding norms into treaties or UN resolutions
- Creating customary law by being considered ‘legally authoritative by a sufficient number of countries over a sufficient length of time’¹¹⁹
- Nationally, through their adoption by petroleum contracts and domestic laws or/and application by domestic courts¹²⁰

However, the application of these hardening methods is not without difficulties. For example, as Jennifer Zerk explains, ‘customary international law is normally binding on all states, but treaties are only capable of binding the states that choose to become a party to them’.¹²¹ Which, in this case, means that if these good practices are stipulated in international treaties, they will remain limited to the signatories and be incapable of being imposed on the whole industry. Furthermore, Zerk acknowledges the impediments to creating novel customary law, such as the long formation period and the lack of certainty in these types of rules.¹²²

As stated above, the guidelines and practices that represent the basis for GOP have different elements, and these different elements may possess different legal values, a fact which must be taken into consideration in describing and categorising these standards. For instance, the technical aspects, due to their constantly changing and developing nature, will likely stay within the framework of non-binding, flexible, and discretionary technical guidelines. Whereas management procedures, such as the environmental management system (EMS), are of a more static nature, which enables them to be regulated and enforced in the form of fixed standards that could be adopted within national and international laws.

Furthermore, those aspects that are already codified by international documents and considered as universally binding, such as the protection of human rights, cannot in any way be, in this context, labelled as discretionary or adaptable.¹²³ Therefore, identifying the content of GOP and its legal and judicial interpretation and enforceability depends on the status of each component and whether it is an absolute non-binding guideline, soft law in a transition phase, or binding international law. Moreover, for future studies, this variety in legal values should encourage a bottom-up approach to analysing the legal status of GOP through investigating

¹¹⁷ Wawryk (n 108) 35

¹¹⁸ Wawryk (n 22) 427

¹¹⁹ P. Babie and P. Leadbeter, *Law as Change: Engaging with the Life and Scholarship of Adrian Bradbrook* (University of Adelaide Press 2014), p. 234.

¹²⁰ I.I. Salih, ‘Duty of Transnational Oil Corporations in Relation to Harm Caused in Countries of Operations: Alternative Mechanism for Effective Compensation - The Case of Oil Industries in Nigeria’ (2017) SSRN Electronic Journal; Wawryk (n 22) 428

¹²¹ Zerk (n 115) 69

¹²² Ibid 64-66

¹²³ Wawryk (n 22) 410-11

the non-binding environmental rules under soft law, self-regulation, and model contracts to suggest or predict their incorporation into national and international binding laws.

4.1. The principal sources of GOP

There is no international convention addressing the issue of the environmental impacts of onshore petroleum operations and their remedial measures, mainly due to the fact that onshore operations, unlike offshore operations, are considered to be a sovereign matter, historically being regulated nationally and subjected to the domestic jurisdiction of states.¹²⁴

Furthermore, as mentioned above, most DOPCs, including Iraq, lack a comprehensive legal system capable of regulating all industry's social and environmental procedures. Therefore, it is suggested that GOP within the onshore upstream industries of DOPCs can reflect the voluntary environmental guidelines and policies adopted by the most well-known multinational petroleum corporations for an extended period of time, consistently stipulated in petroleum contracts and are internationally accepted.¹²⁵ The guidelines of the below-mentioned organisations can also be inspired by the best practices of the member operators. As such, there could be a mutual effect between these organisations and the practices of companies, where the guidelines represent manifestations of companies' practices and vice versa, where companies' performance is influenced by the guidelines.

These guidelines and standards are mainly derived from the publications of several dedicated international petroleum associations, environmental NGOs, and IGOs.¹²⁶ The following organisations are suggested to be the main sources reflecting GOP:¹²⁷

- International Petroleum Industry Environmental Conservation Association (IPIECA)
- American Petroleum Institute (API)
- Australian Petroleum Production and Exploration Association (APPEA)
- Global Reporting Initiative (GRI)
- International Organisation for Standardization (ISO)
- International Finance Corporation (IFC)
- United Nations Global Compact (UNGC)
- United Nations Environment Programme (UNEP)
- International Association of Oil and Gas Producers (OGP)
- Extractive Industries Transparency Initiative (EITI)
- World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines)¹²⁸

These guidelines have influenced the industry in different ways. Some of these guidelines are directed towards a specific region (such as the API), while others are of a more general and transboundary nature (such as the UNGC). On the other hand, some institutions are confined to addressing a specific aspect within the industry, such as the GRI, which focuses on the

¹²⁴ Ibid 403

¹²⁵ Bunter (n 37); Wawryk (n 108) 34

¹²⁶ Wawryk (n 22) 404

¹²⁷ Boykett (n 37) 151; Jahn (n 44) 88; Barclays' Environmental and Social Risk Briefing, Oil & Gas (2015), pp.25-26

¹²⁸ IFC Performance Standard (1), Assessment and Management of Environmental and Social Risks and Impacts (January 1, 2012)

reporting process, while others attempt to provide comprehensive set of instructions covering the socio-environmental facets of the industry, such as the IPIECA.

These guidelines, in general, form the basis of the components of GOP, where most oil companies are members of these organisations and have been exchanging experiences in regard to information, experiments, and documentation. However, the multiplicity and diversity of these guidelines and standards could be another factor rendering the term GOP and the socio-environmental requirements it encompasses ambiguous and indefinite.¹²⁹

As has been stated before, GOP has not benefitted from a thorough national or/and international academic, judicial, and legal explanation. Consequently, the socio-environmental requirements it encompasses have remained similarly incomplete and vague. This has urged some scholars, such as Wawryk, to attempt to classify the components of GOP by highlighting the most prominent contemporary practices of the industry globally. Wawryk summarises the main environmental requirements, in accordance with stakeholders' present comprehension of the term GOP, as the adoption and implementation of environmental impact assessment (EIA); environmental management systems (EMS); environmental performance evaluation (EPE); environmental monitoring and auditing; and environmental reporting.¹³⁰

5. The Ambiguity and Inefficiency of the Contemporary Concept of GOP

This paper has examined the term GOP by analysing its current legal status and definitions. It has been shown that there are a variety of legal, contractual, and instructive sources around the world that have endeavoured to delineate the main particularities of this term. This could eventually enable the industry to recognise and adopt a specific set of rules and measures in fulfilment of the requirements of GOP. Additionally, the area within which operations take place can be crucial in identifying and meeting local standards and preferences.¹³¹

The questions that arise in this context are: can selecting a particular code of practice and regarding it as GOP in accordance with domestic requirements, judicially and legally discharge corporations from applying other international norms? How can judicial authorities rule on whether a company has neglected a vital practice, despite not being required by domestic laws and contracts? Here, the necessity of an internationally recognised and agreed definition of the term GOP will emerge.

Although the term GOP has been widely used, it seems that little attention has been paid by the international community to putting forward a clear interpretation and legal analysis of the term.¹³² This has been an obstacle to the imposition of GOP. The sources that require compliance with GOP usually mention general terms in describing GOP, such as 'acting in due diligence and prudence' or 'commitment to applying standards ordinarily exercised by operators engaged in similar activity under similar circumstances'.¹³³ These types of definitions, although giving more options to the industry, which could be an advantage in terms of providing the term GOP with the flexibility and ability to keep up with technical advancements, conflict with the legal and judicial need for a clear determination and

¹²⁹ Wawryk (n 22) 431

¹³⁰ Wawryk (n 22) 406

¹³¹ Wawryk (n 22)

¹³² Bunter (n 37) 2; Tienhaara (n 7) 5

¹³³ Barry Barton, 'Offshore Petroleum and Minerals: Plugging Gaps in the Present Framework', Presented at conference 'Coastlines: Spatial Planning for Land and Sea', University of Waikato, Auckland, 1-2 June 2011

classification of companies' socio-environmental responsibilities.¹³⁴ This situation has been described by Wawryk as a 'trade-off between the need for flexibility, encapsulated in such phrases as "good oilfield practice", and the ambiguity inherent in these terms.'¹³⁵

Concerned environmental bodies, such as NGOs, governmental local authorities, and the operators themselves are expected to monitor and enforce the application of GOP, and in case of any non-compliance, the violator should be held accountable. However, if GOP is not clearly defined and listed, this control process will be undermined; this is exacerbated by the absence of a robust local or global alternative benchmark for assessing companies' socio-environmental performance.

In most DOPCs' laws and petroleum agreements, where GOP has been stipulated as a source of environmental responsibility,¹³⁶ a clear reference to what constitutes GOP is lacking. This causes confusion for host countries and contractors, as well as deteriorating the environmental protection systems within the sector overall. Furthermore, in the case of a contradiction between national laws and companies' voluntary initiatives and internal procedures in categorising the term GOP, both DOPCs' regulations and agreements typically fail to specify which should receive preference.¹³⁷ The implications of the term GOP are also geographically confined to specific field and local concerns, a fact that means this issue is rarely addressed within a regional or international scope.¹³⁸

According to India's Good International Petroleum Industry Practices (GIPIP) report, due to the lack of clarity of GOP principles, 'enforcement and adherence to GIPIP is fraught with subjectivity and prone to unnecessary disputes'.¹³⁹ These guidelines suggest the establishment of an *ad hoc* national committee responsible for determining what constitutes GOP, which can receive assistance from professional external institutions.

Another factor that makes having an integrated international interpretation of GOP particularly important, is that most developing and emerging economies lack a strong and independent judiciary and, at the same time, they are highly dependent on oil revenues, often at the expense of environmental and social priorities. This means that, in the absence of a recognised definition of GOP, the term could be interpreted by the judicial institutions in these countries in a way that requires 'the lowest level of environmental protection rather than the most stringent practices' in order to smoothen production, attract more investors and, ultimately, achieve greater economic gains.¹⁴⁰

Petroleum service and production contracts and legislation within DOPCs usually reflect state policies, whether intentionally or unintentionally, in leaving GOP a vague and broad concept

¹³⁴ David Brothwick, Report of the Montara Commission of Inquiry (June 2010), 4.109

¹³⁵ Wawryk (n 22)

¹³⁶ Examples of laws and petroleum contracts require the application of GOP are given in Table 1 (Section 3.4.1.1)

¹³⁷ A.F.M. Maniruzzaman and K. Al-Saleem, 'The Energy and Environment Dilemma: Sustainably Developing Iraqi Oil and Gas in International Law and Policy – Prospects and Challenges' (2017) 15(3) Oil, Gas & Energy Law Intelligence, p.38; J.P. Ismaila, 'The Rights to Explore for and Exploit Petroleum: What Manner of Award of Rights is Best Suited for the Iraqi Petroleum Industry?' (2013)16 CEPMLP Annual Review - CAR

¹³⁸ Chandler (n 35)

¹³⁹ Directorate-General of Hydrocarbons, Government of India, Good International Petroleum Industry Practices (GIPIP) (2016), p.6

¹⁴⁰ Wawryk (n 22)

lacking clear definition and legal basis.¹⁴¹ Examples of insufficient definitions of the term GOP can be found in Iraq's Federal Oil and Gas Draft Law and Iraq's Rumaila Field Technical Service Contract (TSC). The Federal Draft Law defines GOP as 'effective good, safe, environmentally friendly and economic practices in petroleum exploration and production'.¹⁴² Although in Iraq's TSC the parties attempted to provide a somewhat more detailed definition, it remains within the same grey area in terms of not determining the definite sources of and legal grounds for these practices.¹⁴³

This uncertainty surrounding the term GOP seems to be an international issue concerning not only oil-based economies but has also been identified by the regulators of some developed countries. David Brothwick makes this clear in a report to the Australian Ministry of Resources and Energy, known as the 'Report of the Montara Commission of Inquiry', in which it is stated that this ambiguity of the term GOP 'has left regulators with an ambiguous standard to rely on when assessing applications submitted by operators'.¹⁴⁴ He suggests that in order to improve this concept, reference should be made to standards that are more specific. Brothwick also recommends that the definition provided by the Australian Offshore Petroleum and Greenhouse Gas Storage Act (2006) could be amended by replacing the word 'mean' with 'includes' to make an inclusive definition providing room for further development of the term.¹⁴⁵ Upon these suggestions, the Commonwealth Government accepted these amendments to the definition of GOP, but the changes have not been implemented.¹⁴⁶

In general, GOP can be described as being an ambiguous, misleading, and deceptively broad notion that lacks legal analysis and is incapable of clearly specifying the lower and higher socio-environmental standards for the oil sector.¹⁴⁷ There is no internationally agreed definition or interpretation of the term, and as such it mainly functions as a general reference.¹⁴⁸ This would leave stakeholders and judiciaries with a variety of choices and interpretations, which may undermine the monitoring and enforcement of socio-environmental obligations. Therefore, it is essential in the next sections to identify innovative interpretive tools capable of generating a more comprehensive and integrated definition and adding socio-environmental dimensions to the current primitive comprehension of the term.

¹⁴¹ Gao (n 106) 13, 16; Daintith and Willoighby (n 106) 5386

¹⁴² Iraq's Oil & Gas Draft Law (n 13) Twenty Seventh

¹⁴³ Rumaila TSC (n 3) art. 1.9, quotation provided above

¹⁴⁴ David Brothwick, Report of the Montara Commission of Inquiry (June 2010) para. 4.109, available at: <<https://www.iadc.org/wp-content/uploads/2016/02/201011-Montara-Report.pdf>>

¹⁴⁵ Ibid, 191; Australia's Offshore Petroleum and Greenhouse Gas Storage Act (2006) amended in 2012. This act stated that 'good oilfield practice means all those things that are generally accepted as good and safe in: (1) the carrying on of exploration for petroleum; or (2) petroleum recovery operations'.

¹⁴⁶ Chandler (n 35) 190

¹⁴⁷ T.W. Donovan, 'Analysis: Iraqi Legal Regime Protects Environment' (Iraq Oil Report, January 31, 2011) <<https://www.iraqoilreport.com/news/analysis-iraqi-legal-regime-protects-environment-5318/>> accessed December 4, 2017; Bunter (n 37) 3; T. Hunter, *Regulation of the Upstream Petroleum Sector: a Comparative Study of Licensing and Concession Systems* (Edward Elgar Publishing 2015), p.33

¹⁴⁸ Department of Resources, Energy and Tourism, 'Good Oilfield Practice: A Guideline in Relation to OPGGSA 2006' (2013); S. Schubach, 'Health, Safety and Integrity Regulation—Australian Oil and Gas Law' (NOPSEMA, 2012); International Association of Oil & Gas Producers, 'Regulators' Use of Standards' (Report No. 426, OGP, 2010)

6. Methods of Improving the Contemporary Concept of GOP to Meet the Growing Socio-Environmental and Human Rights Expectations

6.1. CSR as an Effective Tool in Expanding the Scope and Application of GOP

Before addressing the question of how CSR is suggested to be employed in producing a modern understanding of the term GOP, it is important to establish why CSR could be selected as an interpretive tool in the first place. The main rationale behind choosing CSR as an interpretive tool is, first, the unavoidable interrelationship, and mutual influence of the petroleum industry on adjacent communities and ecosystems. The nature of extractive operations and the associated water, air, soil, and noise pollution, in addition to the large-scale involvement of capital and labour, renders this industry one of the most socio-environmentally affecting sectors. Mindful of that, the legal accountabilities of oil and gas companies cannot be determined and judicially pursued without comprehending their socio-environmental responsibilities, which are best manifested within the evolving notion of CSR. To put it differently, CSR is an ideal tool for redefining the term GOP due to its capability to encompass other normative perspectives, such as human rights, ESG¹⁴⁹, and participatory responsibilities, which are necessary in protecting local communities and environments from the detrimental effects of extractive activities. It has been observed in a recent study¹⁵⁰:

“First, CSR has grown to become more central to business operations, with environmental, social and governance (ESG) principles assuming a pivotal role in the context of the purpose of the corporation: as such, dedicated CSR roles will be necessary to ensure organizations track and achieve their goals. In addition, the ESG metrics used by investors and stakeholders to evaluate the environmental impact of corporations are also gaining in importance, as ESG forms of investing are affirming themselves in a post-Covid 19 world. Finally, other trends such as impact investing, human rights in the supply chain, as well as the rise of cause marketing in building brand equity, are also coming at the forefront of the CSR debate. These elements become “interwoven around the themes of globalization, competitive advantage, and measurable social impact”, which have all gathered enormous importance in a post-Covid 19 world.”¹⁵¹

¹⁴⁹ See Liang, Hao and Renneboog, Luc, ‘Corporate Social Responsibility and Sustainable Finance: A Review of the Literature’ (September 24, 2020). European Corporate Governance Institute – Finance Working Paper No. 701/2020, available at: <https://ssrn.com/abstract=3698631> or <http://dx.doi.org/10.2139/ssrn.3698631>; Mülbert, Peter O. and Sajnovits, Alexander, ‘The Inside Information Regime of the MAR and the Rise of the ESG Era’ (October 27, 2020). European Company and Financial Law Review, 2021 (Forthcoming), European Corporate Governance Institute - Law Working Paper No. 548/2020, available at SSRN: <https://ssrn.com/abstract=3719944> or <http://dx.doi.org/10.2139/ssrn.3719944>

¹⁵⁰ Kletia Noti, *et al*, ‘Corporate social responsibility (CSR) and its implementation into EU Company law’ (EU, JURI Committee, 05-11-2020 PE 658.541), available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL_STU\(2020\)658541_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL_STU(2020)658541_EN.pdf)

¹⁵¹ Ibid. (footnotes omitted).

Another reason is the growing importance of CSR in the era of climate change, where it is known that the petroleum industry is a major contributor to global greenhouse gas emissions. In addition, the growing risk of climate change, and the awareness of the same, have been contributing to the gradual conceptual shift of CSR, among organisations and communities, from voluntary initiatives to mandatory responsibilities.¹⁵²

From the industry perspective, incorporating CSR into the obligatory application of GOP could be beneficial as, in recent decades, companies' long-term financial success has been progressing in parallel with their socio-environmental performance excellence.¹⁵³ Hence, evaluating their performance and commitment to GOP through examining the degree of their compliance with their social, human rights, and environmental responsibilities could create a benefit for those companies that have been pioneering innovative socio-environmental development strategies by granting them competitive advantages.¹⁵⁴ Furthermore, introducing CSR as an essential component of GOP will be an effective incentive in promoting investment in renewable energy and adopting climate change initiatives, which are much demanded and commonly expected at both national and international levels.¹⁵⁵

However, bringing CSR into oil and gas operations may not be a straightforward task. Multinational companies in this sector are mainly bound by domestic laws and bilateral agreements with host states, and when these host states lack robust and integrated social and environmental regulations, they will have no option but to refer to GOP as the main source of companies' responsibilities. In this case, considering CSR as GOP could be an ideal technique for granting CSR the mandatory nature of GOP, while GOP can enjoy the precision and transparency of CSR principles. In this way, the convergence of the two could achieve a dual and cooperative benefit from both perspectives.

Therefore, this research suggests employing the growing notion of CSR to provide an integrated, socio-environmentally sound, and up-to-date interpretation of the term GOP. The current understanding of the term GOP is mainly constrained to up-to-date technical procedures with some attempts to incorporate community development and environmental considerations. Hence, the use of CSR to redefine GOP should be done in a way that ensures a radical change in stakeholders' comprehension of the term GOP by considering all social, environmental, and human rights obligations of MNOCs as needing to reflect good oilfield practices throughout all operational stages. On a positive note, it can be assuring that in corporate governance the

¹⁵² M.W. Allen and C.A. Craig, 'Rethinking Corporate Social Responsibility in the Age of Climate Change: a Communication Perspective' (2016) 1 *International Journal of Corporate Social Responsibility*; Damilola S. Olawuyi 'Climate Justice and Corporate Responsibility: Taking Human Rights Seriously in Climate Actions and Projects', (2016) 34 *Journal of Energy and Natural Resources Law* (1), 2016, p.27.

¹⁵³ G. Kell, 'Five Trends That Show Corporate Responsibility Is Here to Stay' (The Guardian August 13, 2014) <<https://www.theguardian.com/sustainable-business/blog/five-trends-corporate-social-responsibility-global-movement>> accessed March 3, 2019; Kletia Noti, *et al*, 'Corporate social responsibility (CSR) and its implementation into EU Company law' (EU, JURI Committee, 05-11-2020 PE 658.541), available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL_STU\(2020\)658541_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658541/IPOL_STU(2020)658541_EN.pdf)

¹⁵⁴ M.E. Porter and M.R. Kramer, 'Strategy and society: The link between competitive advantage and corporate social responsibility' (2006) *Harvard Business Review*; A. F. M. Maniruzzaman, 'The Issue of Resource Nationalism: Risk Engineering and Dispute Management in the Oil and Gas Industry', 5 *Texas Journal of Oil, Gas and Energy Law* (University of Texas, U.S.A.) (issue no.1, 2009-2010), p. 79.

¹⁵⁵ J.G. Frynas, *Beyond Corporate Social Responsibility: Oil, Multinationals and Social Challenges* (Cambridge University Press 2009), 7; Andrew Crane, Abigail McWilliams, Dirk Matten, Jeremy Moon, and Donald S. Siegel, *The Oxford Handbook of Corporate Social Responsibility*, 2008.

issue of CSR is no longer remaining on the back burner as it seems to be gradually progressing towards the mainstream policy and decision making process of the corporate board room as a matter of its progressive mandatory nature in some jurisdictions.¹⁵⁶

6.2. Employing Human Rights Principles in Developing the Notion of GOP

Oil companies are major contributors to global environmental degradation and climate change. The widespread environmental impacts of their activities have entailed detrimental social and health consequences, which necessitates the consideration of human rights in their operations. The protection of human rights has historically been considered the core responsibility of sovereign states. However, in light of the growing role of multinational companies (MNCs) in steering the global economy and workforce, it has become inevitable that the private sector must be brought into human rights discourses. This has driven some international organisations to put forward guidelines, including the UN Guiding Principles on Business and Human Rights (UNGPs), to affirm and outline companies' international obligations and to delineate between state and non-state actors' human rights responsibilities. Under these guidelines, companies are advised to comply with international human rights laws, exercise due diligence, and make an effective contribution to community development.

The unavoidable interconnectivity and mutual influence between environmental degradation and human rights has led to the employment of documentary, legal, and judicial means for establishing a common ground for these variables. This is likely to facilitate the transfer of voluntary environmental measures to the domain of coercive human rights obligations. This will eventually pave the way for optimum compliance of the private sector with international norms in maintaining the emerging right to a safe, clean, healthy, and sustainable ecosystem, known as 'environmental human rights'.

These environmental rights are upheld by some international instruments, such as the Stockholm Declaration and the Aarhus Convention. The UN has also recently endeavoured, through its independent expert John Knox, to establish legal and logical grounds for environmental rights by examining in depth the impact of ecological degradation and climate change on human health and social life. This has led to the conclusion that where severe damage to the environment occurs as a result of an act or omission of a state, organisation or individual, they could be prosecuted for violation of a fundamental human right. Some judicial opinions, such as in the *Nicaragua vs Costa Rica* case and the IACtHR's Advisory Opinion (OC-23/17), have adopted this perspective and endorsed the nexus between environmental and human rights concerns.¹⁵⁷ These sources and others¹⁵⁸, which support the inevitable

¹⁵⁶ See Lin, Li-Wen, 'Mandatory Corporate Social Responsibility Legislation around the World: Emergent Varieties and National Experiences' (February 1, 2020). University of Pennsylvania Journal of Business Law, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=3678786>; A.F.M. Maniruzzaman, 'Creeping legitimacy of corporate social responsibility' (2011) 85 *Amicus Curiae* 1-2

¹⁵⁷ *Costa Rica v. Nicaragua* (n 19); Advisory Opinion (OC-23/17) Requested by the Republic of Colombia, Inter-American Court of Human Rights, 15 November 2017, available at: <https://elaw.org/system/files/attachments/publicresource/English%20version%20of%20AdvOp%20OC-23.pdf>

¹⁵⁸ UN Human Rights Council, Resolution on Human Rights and the Environment, UN Doc A/HRC/RES/19/10, 19 April 2012; Human Rights Council, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, UN Doc. A/HRC/22/43, 24 December 2012; Human Rights Council, Report of the Independent Expert on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, John H. Knox, UN Doc A/HRC/25/53, 30 December 2013

interconnectivity between environmental and human rights considerations, can bestow upon ‘good oilfield practice’ a socio-environmental character within the framework of international human rights law.

Thus, the widespread environmental impacts of the operations conducted by the petroleum industry makes it a major (potential) violator of international human rights law. Consequently, this sector (in its activities and environmental protection measures), in order to avoid perpetrating environmental violations, is highly expected to consider the main international rules governing the human rights obligations of business enterprises, such as the UN Three Pillars Framework and Guiding Principles. The principles of these guidelines have been brought to the oil and gas sector through several means, including voluntary internal implementation, national regulation, and their promotion by petroleum institutions such as IPIECA.

Home states’ extraterritorial jurisdiction and parent companies’ liability for the acts of their subsidiaries abroad, based on the duty of care, are also likely to bring developed countries’ human rights responsibilities and multilateral treaties to the arena of private oil companies and affiliates operating in developing countries. Among these human rights responsibilities that have the potential to reshape the concept of GOP are the promotion of environmental and climate justice amid disadvantaged communities, especially in developing and underdeveloped countries. A fundamental requirement for achieving this type of justice is engaging local communities in decision making, providing them with information on the potential environmental and human rights impacts of operations, and providing them with effective remedies and justice.

6.3. Incorporating Procedural Participatory Practices into the Conventional Concept of GOP

As has been explained throughout this article, the wide-range of socio-environmental impacts of oil operations have behoved the authors to seek legal means for obliging oil companies to recognise and uphold universal ‘environmental rights’. As suggested by Xiao Zhu, the generic term ‘environmental rights’ could refer to both substantive and procedural rights.¹⁵⁹ Substantive environmental rights are defined as those rights that fall mainly within the scope of state responsibilities and are claimable by all individuals under international human rights law, such as the right to a healthy and safe environment, and the right to clean water and air. Procedural rights are those rights crucial to facilitating the enjoyment of substantive rights and necessary in paving the way for public and private bodies in their decision making and planning for the protection of the environment and society through engaging affected communities in this process.

These procedural participatory rights – also known as access rights – have primarily been developed as state obligations based on the three pillars concept, mainly drawing on the Rio Declaration (Principle 10) and Aarhus Convention, which are the rights to public participation,

¹⁵⁹ Xiao Zhu, Shenghang Wang and Eva-Maria Ehemann, 'Development of Environmental Rights in China: Substantive Environmental Rights or Procedural Environmental Rights' (2017) 12 *Frontiers L China* 24; Minas, Stephen, 'Towards Environmental Rule of Law? Environmental Standards for Investment in the Belt and Road Initiative, Asian Infrastructure Investment Bank and BRICS New Development Bank' (June 21, 2020). Rafael Leal-Arcas (ed.), *The Future of International Economic Law and the Rule of Law* (Chişinău, Eliva Press 2020), Available at SSRN: <https://ssrn.com/abstract=3696142>

access to information, and access to remedy and justice.¹⁶⁰ These procedural rights are significant to this study, as they can form a practical and normative road map for oil companies in developing their socio-environmental performance and locating the concept of GOP within the framework of environmental human rights principles.

Due to the expansion of the role of MNCs in controlling global markets and being accountable for a large proportion of worsening pollution and climate change globally, there have been attempts to bring these procedural obligations into the private sector arena. A number of organisations, under the auspices of the UNGPs, have issued guidelines to regulate these rights within the private sector, including the oil industry, most significantly the IFC, OECD, ISO, GRI and IPIECA. Nonetheless, the enforceability and mandatory nature of these procedures within the private sector remains questionable, especially in countries that are not members to these conventions and organisations, and lack robust and advanced social and environmental regulatory systems, such as Iraq and many other oil-producing countries. Since MNOCs in these countries are contractually and sometimes legally obliged to adopt GOP in their operations, and as long as the term GOP lacks clarity, in this article, it is suggested to reconstruct it within the framework of companies' human rights and environmental responsibilities and considering procedural obligations as the main components of these practices.

The procedural participatory practices could represent a socio-environmental risk management guidance to any state or non-state organisations, including oil companies. However, the adoption and implementation of these procedures within the context of GOP, in a developing country like Iraq, requires specific techniques and trained personnel as well as a flexible regulatory and legal system capable of encompassing these practices, promoting them, and rendering them judicially trackable and enforceable. Thus, in the next sections, some practical methods of implementing these standards will be suggested at the corporate technical and state legal and judicial levels.

The main aim of this study is to develop the concept of GOP to encompass corporations' environmental and human rights responsibilities. As was demonstrated above, access rights are fundamental components of environmental human rights. The perceptions of access rights and environmental rights have developed alongside each other throughout the last century to become, first, obligatory for states, and, second, applicable and enforceable amongst the private sector. The development of this concept, as part of states' general obligation to protect human

¹⁶⁰ Ibid 30; A. Papantoniou, 'Espoo Convention on Transboundary Environmental Impact Assessment and Kiev Protocol on Strategic Environmental Assessment' (2017) *Multilateral Environmental Treaties* 403; A. Boyle, 'Human Rights and the Environment: Where Next?' (2012) 23(3) *EJIL* 622; Iñigo del Guayo, et al (eds), *Energy Justice and Energy Law* (OUP, 2020); Ioanna Hadjiyianni, 'Access to Justice in Environmental Matters in the EU Legal Order – Too little too late?' (4 November 2020), available at: <https://europeanlawblog.eu/2020/11/04/access-to-justice-in-environmental-matters-in-the-eu-legal-order-too-little-too-late/>; Andrew Wills, 'Inuit-owned Pituvik partners with Innergex to build hydroelectric plant in northern Quebec' (8 November 2020), available at: <https://www.theglobeandmail.com/business/article-inuit-owned-pituvik-partners-with-innergex-to-build-hydroelectric/>

rights, began with the adoption of the International Bill of Human Rights and progressed throughout a series of international agreements, such as the Rio Declaration and the Aarhus Convention, to become applicable within the field of environmental protection.

The international tendency to hold corporations accountable for human rights violations, and to consider environmental degradation as such a violation, have resulted in the emergence of a number of international guidelines, such as the UNGPs, IFC Principles, and the OECD Guidelines, which govern and establish companies' environmental and human rights responsibilities. Environmental access rights and procedural obligations, as part of these responsibilities, have been endorsed by these international sources. However, the methods of applying these procedures and their enforceability on MNOCs within developing countries with poor socio-environmental regulatory systems remain controversial.

It has been identified throughout this study that one of the main sources of MNOCs' social and environmental responsibilities in developing countries is petroleum agreements. It has also been identified that the majority of the agreements in these countries refer to GOP as a benchmark for assessing companies' performance. However, an internationally recognised definition of this term is currently absent. Therefore, it is assumed that home states' executive, legal, and judicial authorities can interpret this term in light of their particular socio-environmental needs and within the scope of corporate international environmental and human rights obligations.

As was explained previously, access rights have been crucial in maintaining indigenous populations' fundamental right to a clean, safe, and healthy environment. Therefore, based on international human rights law, which establishes these rights, local authorities must have the power to hold MNOCs accountable for any deviation from or negligence in providing and protecting these rights. Nonetheless, the uncertainty about applying international rules to MNOCs within host states may lead to following the contractual approach, which is locally enforceable for all contracting parties, where petroleum contracts typically determine the penalties and the methods of dispute resolution. Therefore, in this paper, the contractual term GOP is chosen to be the basis for imposing access rights by defining it within the context of corporations' social and environmental obligations.

The suggested method for integrating CSR and human rights principles into the concept of GOP is that, first, petroleum contracts provide a comprehensive definition of the term GOP, in which they specify the international sources that establish corporations' principal social, environmental, and human rights responsibilities, such as the UNGPs. Second, these agreements, in order to practically guide MNOCs in adopting socio-environmental standards, should clearly state that participatory practices are significant procedural environmental human rights obligations and their implementation should be considered as part of companies' commitment to international good oilfield practices. It is also advisable that a reference be made to the key legal basis and practical guidance that regulate and facilitate the application of access rights including the Rio Declaration (Principle 10), the Aarhus Convention, and the IFC, OECD, and IPIECA guidelines.

Clear strategies for the implementation of participatory procedures should be adopted at all operational stages, starting from project planning and feasibility studies, through the

development, construction, and production, and ending with the decommissioning phase.¹⁶¹ During the project's planning and baseline study preparation, it is crucial to analyse past and present stakeholder data and to consult and inform local communities about the potential impacts of the project on their health and environment. This consultation during the planning stage can also be upheld by engaging stakeholders and affected communities in the initial EIA process.

Determining the nature and scale of operations and selecting the location should be based on the collected information. In addition to local communities, companies must engage local governments and NGOs in the early strategic planning process. The company's existing grievance mechanism should be reviewed and modified in light of the collected information and consultations about current and past risks and complaints in the area of operations. A successful process of structuring participatory procedures also requires a thorough investigation and consideration of domestic legal and regulatory frameworks and requirements.¹⁶²

Following the planning phase and during the construction of the project's facilities, stakeholders must be kept informed about the development scale and the potential effects on the environment and local communities. At this stage, the company must have in place a clear procedure and strategy for engaging stakeholders, receiving suggestions and complaints and processing them.¹⁶³ Following this, and during the production stage, stakeholders must be updated on a regular basis about the progress in the transaction process, from the construction to the production phase, and the extent to which the project has achieved its pre-set targets. A consistent and organised method of information disclosure, consultation, and reporting to stakeholders must be established at this level. The grievance mechanism must remain functional, and engaging a third party or an independent monitoring panel should be considered in certain circumstances.¹⁶⁴

A good practice in implementing participatory obligations during the decommissioning phase is to review the decommissioning plan in light of stakeholders' opinions and interests, to have an early discussion about any uncertainty or fears that might accompany this process, and to provide stakeholders with updates about the decommissioning progress and the transfer and management of assets and liabilities. The company must, at this stage, try to resolve and close all pending grievances and complaints.¹⁶⁵

There are various software and online platforms that can be used by companies to organise and track their stakeholder engagement and consultation strategies throughout the above-mentioned operational stages. These technical services can also assist corporations in developing their grievance mechanisms, land management, data collection, and impact assessment, and in measuring the degree of compliance with internal sustainability social and environmental goals and external laws and regulations. Boréal, ¹⁶⁶ Darzin Software,¹⁶⁷

¹⁶¹ D. Sequeira and M. Warner, *Stakeholder engagement: a good practice handbook for companies doing business in emerging markets* (English), IFC good practice handbook, IFC E&S. Washington, D.C., 2007, 110

¹⁶² Ibid 111

¹⁶³ Ibid 135

¹⁶⁴ Ibid 143

¹⁶⁵ Ibid 151

¹⁶⁶ 'Stakeholder Engagement Software, and More' (Boréal) <<https://www.boreal-is.com/>> accessed May 31, 2020

¹⁶⁷ 'Public Consultation Software' (Stakeholder Engagement App April 9, 2020) <<https://www.darzin.com/>> accessed May 31, 2020

SustaiNet(StakeTracker),¹⁶⁸ and SMART(Syrenis.Ltd)¹⁶⁹ can be cited as examples of sophisticated multi-functional software capable of carrying out the aforementioned tasks and processing wide-scale stakeholder engagement data. It is also suggested that Blockchain technology be employed in developing a global transparency system for sustainability information in the energy sector.¹⁷⁰ The benchmarks that can be used in programming and operating these instruments within the petroleum industry are the participatory principles designed for the private sector and recognised by international organisations, such as the IFC, OECD, GRI, ISO 26000, and IPIECA.

7. Conclusion

The wide-ranging detrimental impacts of onshore upstream petroleum operations on vulnerable local groups and ecosystems, especially within developing and underdeveloped countries, requires putting more pressure and restrictions on MNOCs to comply with international standards. The inadequacy of social and environmental regulatory systems in these countries and the immaturity of international means of monitoring the performance of MNOCs and prosecuting them for environmental and human rights violations, has temporarily made petroleum agreements the dominant force in regulating and imposing socio-environmental values. Upon the examination of such agreements in developing countries, including Iraq, it was observed that MNOCs under these contracts are obliged to undertake their operations and structure their social and environmental policies in accordance with GOP.

There have been some attempts by scholars to outline the main characteristics of GOP in order to facilitate the evaluation of companies' performance.¹⁷¹ The most prominent attitude summarising these views is that GOP represents those practices rooted in the voluntary environmental guidelines and policies adopted by the most well-known multinational petroleum corporations over a prolonged period of time and that have been frequently stipulated and internationally accepted in petroleum contracts. These guidelines and standards are mainly derived from the publications of professional associations, environmental NGOs, and IGOs. Currently, the main practices established under these sources and introduced as GOP are the environmental impact assessment, environmental management system, environmental performance evaluation, environmental monitoring and auditing, and environmental and social reporting.

Nevertheless, taking into consideration the immense social and environmental risks associated with hydrocarbon activities, the current definitions of the term GOP seem to be inadequate, lacking a legal and enforcement basis. This renders the re-definition of GOP within the framework of corporate socio-environmental responsibilities unavoidable. The interpretive legal tool developed by this research to expand the concept of GOP to encompass environmental, social, and human rights concerns is a three-pillar conceptual framework

¹⁶⁸ 'Stakeholder Information Management Software' (SustaiNet) <<https://www.sustainet.com/>> accessed May 31, 2020

¹⁶⁹ 'Stakeholder Engagement Software' (Effective Stakeholder Engagement | SMART) <<https://www.syrenis.com/smart.html>> accessed May 31, 2020

¹⁷⁰ L. Downes and C. Reed, 'Blockchain for Governance of Sustainability Transparency in the Global Energy Value Chain' (2018) 283 Queen Mary School of Law Legal Studies Research Paper; Picciau, Chiara, 'The (Un) Predictable Impact of Technology on Corporate Governance' (July 4, 2020). Bocconi Legal Studies Research Paper No. 3643500, Hastings Business Law Journal, Forthcoming, Available at SSRN: <https://ssrn.com/abstract=3643500> or <http://dx.doi.org/10.2139/ssrn.3643500>.

¹⁷¹ Bunter (n 37), Chandler (n 35), Park (n 41), Jahn (n 44), Wawryk (n 22), Wawryk (n 108)

combining CSR, human rights, and their facilitating and associated participatory procedural obligations. These corporate liabilities have emerged domestically and globally as a response to the increasing role of multinational companies in governing the global economy, as well as their significant contribution to the ongoing major environmental and climate crisis. The significance of these responsibilities and their procedural requirements in mitigating the social impacts of environmental degradation, has urged the international community to seek regulation and documentation, which culminated in the adoption of a number of international conventions and guidelines, such as the Rio Declaration, the Aarhus Convention, UNGPs, IFC Performance Standards, OECD Guidelines for MNEs, ISO 26000, and the UNHRC Resolutions and reports by John Knox.

The rationale behind choosing these recognised social and human rights responsibilities and practices in restructuring the perception of GOP is the identified correlation between the environmental degradation and climate change, which are aggravated partly due to the expansion of petroleum activities worldwide, on the one hand, and their effects on people's health and livelihood on the other. This causation suggests that the concept of GOP can be pushed beyond limited technical environmental protection procedures to imply social and human rights considerations. The inadequacy of the domestic social and environmental legal systems in developing host states and their reliance on the contractual term GOP in mapping MNOs' behaviour also necessitate a reinterpretation of GOP in an integrative way that guarantees filling this local legislative and regulatory void.

The suggested approach for incorporating CSR and human rights principles within the concept of GOP is that petroleum contracts provide an inclusive description of the term GOP in which they refer to the key international sources that establish corporations' primary social, environmental, and human rights responsibilities, such as the UNGPs, OECD Guidelines for Multinational Enterprises, and ISO 26000. Furthermore, these agreements, and in order to pave the way for the adoption of these socio-environmental principles by MNOs, should explicitly necessitate the implementation of procedural participatory obligations (i.e. stakeholder engagement in decision making, environmental information disclosure, and access to effective grievance mechanisms) as an indivisible part of companies' contractual and legal commitment to international GOP. This research also recommends that the GOP clause include a reference to the main documents that delineate access rights and duties and instruct on methods of their application and protection, such as the Rio Declaration (Principle 10), the Aarhus Convention, IFC Performance Standards, and IPIECA Guidelines. This reinterpretation of GOP can be harnessed by judiciaries in presenting a more coherent and robust legal basis on which companies can be socially and environmentally held accountable.