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8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
COUNTY OF SAN FRANCISCO

10 _____) Case No. CGC 03-417580
LARRY BOWOTO, et al.,)
11)
Plaintiffs,)
12 vs.) **STATEMENT OF INTEREST OF THE**
) **UNITED STATES OF AMERICA**
CHEVRON CORPORATION, et al.,)
13)
)
14 Defendants.)
_____)

15
16 The United States is in receipt of the Court's January 2, 2007, letter to the Honorable
17 John B. Bellinger III, Legal Adviser, United States Department of State, inviting the United
18 States to "submit a Statement of Interest, setting forth its official views, if any, on whether
19 adjudicating this action or granting the relief that plaintiffs seek would adversely affect the
20 diplomatic efforts of the United States, and, if so, the nature and significance of such effect."

21 The United States appreciates the Court's invitation to submit its views in the captioned case,
22 and has closely reviewed the materials provided by the Court, the plaintiffs, and the defendants.
23 This Statement of Interest, submitted pursuant to 28 U.S.C. § 517,¹ is filed with the Court to set
24 _____

25 ¹ That statute provides that the "Solicitor General, or any officer of the Department of
Justice, may be sent by the Attorney General to any State or district in the United States to attend
26 to the interests of the United States in a suit pending in a court of the United States, or in a court
of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517.

1 forth the views of the United States with respect to certain of the issues raised by this litigation.

2 Specifically, the United States respectfully requests that the Superior Court exercise its
3 equitable discretion to decline to enter injunctive relief, in the form requested by the plaintiffs or
4 otherwise, that would have the effect of mandating compliance, on pain of judicial enforcement
5 and contempt, of the Voluntary Principles on Security and Human Rights (“Voluntary
6 Principles”). The Voluntary Principles were adopted as part of a multilateral effort among
7 various governments, including the United States; a number of nongovernmental human rights
8 organizations; and several companies engaged in the extractive industries with a significant
9 presence in developing nations as guidelines to be followed to maintain the safety and security of
10 these companies’ operations within a framework that ensures respect for human rights and
11 fundamental freedoms. Chevron is a participant in the Voluntary Principles initiative.

12 As explained below and in the attached May 25, 2007, letter to The Honorable Peter D.
13 Keisler, Assistant Attorney General, Civil Division, United States Department of Justice, from
14 the Honorable John B. Bellinger, III, Legal Adviser, United States Department of State, attached
15 hereto as Ex. A, the imposition of these Voluntary Principles by Court Order could have a
16 chilling effect on the continued participation of corporate entities in this effort and, thus, would
17 interfere with an important foreign policy initiative of the Federal Government. Because the
18 Federal Government’s foreign policy interests are entitled to consideration by this Court, the
19 United States respectfully requests that the Court defer to its views concerning the detrimental
20 effect of this portion of plaintiffs’ requested injunctive relief and decline to enter any relief that
21 would compel defendants to implement the Voluntary Principles.

22 Before proceeding further, it is important to note the limitations of the United States’s
23 submission. The United States does not herein take a position with respect to whether the
24 defendants are properly held liable for the claims raised against them, or as to any other legal
25 issue presented by this case; nor does it take a position with respect to whether, if defendants are
26 held liable, injunctive relief, or any other kind of relief, is available or appropriate, nor as to what

1 form such relief would take, apart from the judicially-compelled implementation of the
2 Voluntary Principles.² See Ex. A at 3. As to the entry of that particular form of relief, however,
3 the United States objects for the reasons set forth below.

4 **BACKGROUND**

5 The captioned case is brought by five Nigerian plaintiffs, who purport to represent a class
6 of those similarly situated, against Chevron Corporation and two of its domestic subsidiaries,
7 alleging violations of § 17200 of California’s Business and Professions Code. According to
8 plaintiffs’ Amended Complaint, plaintiffs’ claims arise out of a “series of . . . firearms attacks
9 upon unarmed protestors and unarmed innocent civilians occurring in Nigeria between May 1998
10 and January 1999,” Amended Compl. ¶ 1, in which the plaintiffs and/or members of their
11 immediate families were “either summarily executed by the gunfire, seriously injured by gunfire
12 during the attacks, or tortured by the military and/or police thereafter. . . .” Id. As to each of
13 these attacks, Chevron and its subsidiaries are alleged to have “acted in concert with the Nigerian
14 military and/or police to plan, order and execute the attacks, including, but not limited to, the
15 direct participation of Chevron security personnel and equipment in each of the attacks , and the
16 purchase and/or lease of equipment and/or materials used in the attacks.” Id. Plaintiffs also
17 allege that the defendants have “engaged in Nigerian oil and gas production in a manner that
18 exploits and abuses the local environment and damages the economic well-being of the
19 indigenous, surrounding communities,” id. ¶ 2, and that defendants have “conducted a false
20 public campaign focused on maligning the Nigerian Plaintiffs and their protests and
21 whitewashing the roles of Defendants and the Nigerian government in the attacks.” Id. ¶ 4.

22 On the basis of these allegations, plaintiffs invoke the California Business and
23 Professions Code and allege that these “abuses. . . constitute . . . unconscionable business
24

25 ² In taking no position with respect to any other legal doctrine or issue in this case, the
26 United States wishes to make clear that its decision should not be taken to indicate any view on
27 those matters.

1 practices” that “create[] an unfair business advantage over competitors and harm consumers
2 within the State of California and the United States.” Amended Compl. ¶ 5. Plaintiffs seek
3 disgorgement of profits, restitution, and injunctive, declaratory and other relief under California
4 law.³ Id. As part of the relief they seek, plaintiffs propose a highly detailed injunction to be
5 entered along the lines of a sample submitted for consideration by the Court with respect to
6 plaintiffs’ first cause of action under § 17200 of California’s Business and Professions Code.
7 See Plaintiffs’ Sample [Proposed] Order Regarding Injunctive Relief on Plaintiffs’ First Cause of
8 Action, dated December 4, 2006 (hereinafter “Proposed Injunction”).⁴ This Proposed Injunction
9 specifically requires, in part, that defendants “take all reasonable steps to implement . . . the
10 Voluntary Principles on Human Rights and Security.” Proposed Injunction ¶ G.1. Plaintiffs
11 explain that “Chevron has promised the U.S. Government to institute responsible corporate
12 security practices in Nigeria, and Plaintiffs’ proposed injunction would order defendants to keep
13 their word.” Pltfs’ Explanation of Proposal Regarding Injunctive Relief, dated December 4,
14 2006, at 2.

15 ARGUMENT

16 In reviewing a request for relief in the form of an injunction, a court proceeds as a court
17 of equity. As a result, the power to grant, or deny, injunctive relief rests in the “sound discretion”
18 of the court, to be exercised in accordance with equitable principles and in light of all the facts
19 and circumstances in the case. Merced Mining Co. v. Fremont, 7 Cal. 317, 327-328 (1857). In
20 an equity case, the trial court has “broad and flexible discretionary powers, and can, and
21 undoubtedly would, deny injunctive relief where such relief would be inequitable.” Wholesale
22

23 ³ A case brought by these plaintiffs and others alleging claims and seeking relief under
24 federal law is currently pending in the United States District Court for the Northern District of
California. Bowoto v. Chevron Corp., Civil Case No. 99-02506 (N.D. Cal.).

25 ⁴ The United States is aware that, on May 22, 2007, the Court entered an Order granting
26 defendants’ request for summary adjudication with respect to plaintiffs’ second cause of action,
but has not had the opportunity to procure or review that Order.

1 Tobacco Dealers Bur. of S. Calif. v. Nat'l Candy & Tobacco Co., 82 P.2d 3, 19 (Cal. 1938)
2 (citation omitted); accord Wilton v. Seven Falls Co., 515 U.S. 277, 287 (1995) (courts may
3 decline to exercise their discretion to entertain a claim for equitable relief “even where the suit
4 otherwise satisfies subject matter jurisdictional prerequisites”); Weinberger v. Romero-Barcelo,
5 456 U.S. 305, 311-312 (1982) (“It goes without saying that an injunction is an equitable remedy.
6 . . . The grant of jurisdiction . . . hardly suggests an absolute duty to [act] under any and all
7 circumstances, and a [] judge sitting as chancellor is not mechanically obligated to grant an
8 injunction for every violation of law”).

9 In evaluating the “facts and circumstances” presented by this case in the exercise of the
10 Court’s equitable jurisdiction, the Court “should give serious weight to the Executive Branch’s
11 view of the case’s impact on foreign policy,” Sosa v. Alvarez-Machain, 542 U.S. 692, 733 n.21
12 (2004), and should steer clear of exercising its common law powers in a way that could impinge
13 upon “the discretion of the Legislative and Executive Branches in managing foreign affairs.” Id.
14 at 727; accord Republic v. Austria v. Altmann, 541 U.S. 677, 702(2004) (a court should defer to
15 the “considered judgment of the Executive on a particular question of foreign policy.”); see also
16 Sosa, 542 U.S. at 733 & n.21 (courts should grant “case-specific deference to the political
17 branches”). This is because, under the Constitution, the Federal Government’s Executive Branch
18 is the supreme authority in the arena of foreign affairs. See Am. Ins. Ass’n v. Garamendi, 539
19 U.S. 396, 420-25 (2003); Crosby v. Nat’l Foreign Trade Council, 530 U.S. 363, 384-86 (2000);
20 Japan Line, Ltd. v. County of Los Angeles, 441 U.S. 434, 447-449 (1979).

21 Therefore, as the Court considers the equitable relief requested by the plaintiffs here, the
22 United States urges the Court to defer to the United States’s view that judicial imposition of the
23 Voluntary Principles would interfere with an important foreign policy initiative of the Executive
24 Branch. As explained in Mr. Bellinger’s letter, the Voluntary Principles initiative was
25 established by the Governments of the United States and the United Kingdom in 2000. It now
26 includes the Governments of Norway and the Netherlands and “will likely be expanded to
27

1 include additional governments.” Ex. A at 1 & Attachment 3. The process is the product of a
2 dialogue among these member governments, a number of multinational corporations in the
3 extractive sector, various non-governmental organizations (NGOs), and several observers. Id.;
4 see also <http://www.voluntaryprinciples.org/participants/ngo.php> (identifying the participants in
5 the Voluntary Principles initiative). As stated on the Voluntary Principles website, “[t]hrough
6 this dialogue, the participants have developed a set of voluntary principles to guide Companies in
7 maintaining the safety and security of their operations within an operating framework that
8 ensures respect for human rights and fundamental freedoms.” Ex. A at 1-2; see
9 <http://www.voluntaryprinciples.org/principles/index.php>. At a plenary meeting hosted by the
10 Department of State on May 7-8, 2007, the participants adopted criteria concerning participation
11 in the Voluntary Principles initiative designed to strengthen their implementation, while
12 encouraging “more robust and constructive dialogue” among participants. See Ex. A at 2 &
13 Attachment 4; <http://www.voluntaryprinciples.org/participants/participation-criteria.php>.

14 An “essential feature” of the Voluntary Principles initiative, as the name indicates, is that
15 participation, including adherence to the stated principles, is strictly voluntary. Ex. A at 2. As
16 Mr. Bellinger describes, voluntary participation in the framework adopted by the Voluntary
17 Principles was considered “the most effective way to achieve the objectives underlying the
18 initiative.” Id. Thus, participants in the initiative have acknowledged that “implementation of
19 the Principles is continuously evolving” and have agreed that “the Voluntary Principles do not
20 create legally binding standards, and participation in, communications concerning, and alleged
21 failures to abide by the Voluntary Principles shall not be used to support a claim in any legal or
22 administrative proceedings against any Participant.” Id.; see also Ex. A, Attachment 4,
23 <http://www.voluntaryprinciples.org/participants/participation-criteria.php>.

24 In the view of the Department of State, a decision by this Court to compel defendants to
25 adhere to Voluntary Principles as plaintiffs request would be “clearly inconsistent with the
26 delicately balanced voluntary scheme that the U.S. Government has promoted at the international
27

1 level in order to encourage the active engagement of multinational corporations involved in the
2 extractive sector.” Ex. A at 2. As Mr. Bellinger explains, “[t]here is a significant risk that an
3 injunctive remedy such as that proposed by the plaintiffs could have a chilling effect on the
4 continued participation of corporate participants in the Voluntary Principles initiative, possibly
5 jeopardizing the future of that initiative and other similar corporate social responsibility efforts.”
6 Id. Thus, the Department of State concludes, “[i]ssuing an injunction to compel compliance with
7 the Voluntary Principles would . . . interfere with an important foreign policy initiative of the
8 Executive Branch.” Id. The Court should defer to this conclusion in exercising its equitable
9 powers to determine the appropriateness of any relief that would compel implementation of the
10 Voluntary Principles should the defendants be held liable.

11 **CONCLUSION**

12 In light of the equitable nature of the relief sought by plaintiffs, the Court should exercise
13 its discretion to decline to enter that portion of plaintiffs’ requested relief that would compel
14 defendants to implement the Voluntary Principles.

15 Respectfully submitted,

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Dated: May 29, 2007.

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2007, a copy of the foregoing Statement of Interest of the United States of America was served upon the following counsel of record by by first-class mail, postage prepaid:

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MAY 25 2007

Re: *Bowoto v. Chevron Corporation*
Superior Court of the State of California
Case No. CGC 03-417580

Dear Mr. Keisler:

Judge McCarthy of the Superior Court of California, County of San Francisco, wrote to me on January 2, 2007 (Tab 1) inviting the United States Government to submit a Statement of Interest in the referenced case ("Bowoto") regarding the official views of the Government on whether adjudicating this action or granting the relief that plaintiffs seek would have an adverse effect on the diplomatic efforts of the United States. The Court initially asked that any Statement of Interest be submitted by March 1, 2007. At the Government's request, that deadline has been extended until May 30, 2007.

The claims in California Superior Court assert violations of section 17200 of the California Business and Professions Code based upon alleged unfair business practices and the alleged making of false and/or misleading statements. (As you know, the plaintiffs are separately pursuing a case against Chevron in a federal action in the U.S. District Court for the Northern District of California.) As relief the plaintiffs seek a highly detailed injunction (Tab 2), in addition to restitution, disgorgement of profits, and declaratory relief. The proposed injunctive relief specifically requires, in part, that Defendants "take all reasonable steps to implement ... the Voluntary Principles on Human Rights and Security." Indeed, in the section heading on page two of the brief entitled "Plaintiffs' Explanation of Proposal Regarding Injunctive Relief," Plaintiffs, referring to the two aforementioned sets of principles, state that "Chevron has promised the U.S. Government to institute responsible corporate security practices in Nigeria, and Plaintiffs' proposed injunction would order Defendants to keep their word."

The Voluntary Principles initiative was established by the Governments of the United States and the United Kingdom in 2000. It now includes the Governments of Norway and the Netherlands and will likely be expanded to include additional governments. The process is the product of a dialogue among these member governments, a number of multinational corporations in the extractive sector, various non-governmental organizations (NGOs), and several observers. As stated on the Voluntary Principles website, "[t]hrough this dialogue, the participants have developed a

set of voluntary principles to guide Companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms.” (See text of the Voluntary Principles at Tab 3.) At a Plenary meeting hosted by the Department of State on May 7-8, 2007, the participants adopted criteria concerning participation in the Voluntary Principles initiative designed to strengthen their implementation and expand membership.

An essential feature of the Voluntary Principles, as the name clearly indicates, is that participation, including adherence to the stated principles, is strictly voluntary. The stakeholders have concluded that this is the most effective way to achieve the objectives underlying the initiative. Moreover, the participation criteria agreed to at the May 7-8 meeting (See Tab 4) provide, *inter alia*:

To facilitate the goals of the Voluntary Principles and encourage full and open dialogue, Participants acknowledge that implementation of the Principles is continuously evolving and agree that the Voluntary Principles do not create legally binding standards, and participation in, communications concerning, and alleged failures to abide by the Voluntary Principles shall not be used to support a claim in any legal or administrative proceeding against a Participant.

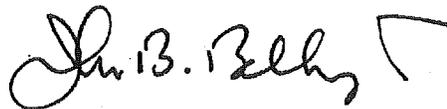
The plaintiffs in *Bowoto* seek to have a California Superior Court compel Chevron, in order to comply with section 17200 of the California Business and Professions Code, to implement the Voluntary Principles. (See Tab 2, Proposed Injunctive Relief, at G.1.) Such an approach is clearly inconsistent with the delicately balanced voluntary scheme that the U.S. Government has promoted at the international level in order to encourage the active engagement of multinational corporations involved in the extractive sector. Additionally, as a multilateral diplomatic initiative being carried out at the national level of the governments involved, there is no role provided for sub-national government entities. There is a significant risk that an injunctive remedy such as that proposed by the plaintiffs could have a chilling effect on the continued participation of corporate participants in the Voluntary Principles initiative, as well as on U.S. diplomacy in the process, possibly jeopardizing the future of that initiative and other similar corporate social responsibility efforts. Issuing an injunction to compel compliance with the Voluntary Principles would thus interfere with an important foreign policy initiative of the Executive Branch.

The Department of State requests that the Department of Justice file a Statement of Interest in which it urges the California Superior Court to use the discretionary power afforded to judges in determining the propriety of equitable remedies, and particularly in evaluating the public interest ramifications of proposed equitable remedies, to decline to grant an injunction that seeks to mandate implementation of the Voluntary Principles.

I wish to note that, in expressing the foreign policy concerns above regarding the injunctive relief sought by the plaintiffs, we are not addressing whether a finding of liability or any relief would be appropriate in this case, including whether there are legal obstacles, such as the Act of State doctrine, to adjudicating the merits of the case. We are also not addressing the propriety of other potential remedies or discounting the possibility that the proposed injunctive relief would be rendered inappropriate by other legal concerns. Finally, we are not expressing a view as to the other issues raised in this case.

We request that you convey this response to the California Superior Court.

Sincerely,

A handwritten signature in black ink that reads "John B. Bellinger, III". The signature is written in a cursive style with a large initial "J" and a checkmark-like flourish at the end.

John B. Bellinger, III

Attachments:

- 1 – Letter from the court
- 2 – Proposed injunctive relief
- 3 – Voluntary Principles
- 4 – Voluntary Principles Participation Criteria

ATTACHMENT 1



Superior Court of California
County of San Francisco

KEVIN M. MCCARTHY
JUDGE

January 2, 2007

The Honorable John B. Bellinger III
Office of the Legal Adviser
United States Department of State
2201 C Street, N.W., Room 6423
Washington D.C. 20520

Re: *Bowoto v. Chevron Corp.* CGC-03-417580

Dear Mr. Bellinger:

As a judge of the Superior Court of the State of California, I am presiding over the above-entitled action in which five Nigerians are suing Chevron Corporation and two of its domestic subsidiaries for injuries and deaths allegedly caused by members of the Nigerian government security forces in Nigeria. The plaintiffs' theory is that the Nigerian government security forces are "unreasonably dangerous" and that the continuing reliance on them by defendants or their Nigerian subsidiary for security in the Niger Delta constitutes an unlawful business practice under California Business and Professions Code § 17200. Plaintiffs seek an injunction regulating the manner in which defendants and their subsidiary may rely on those forces.

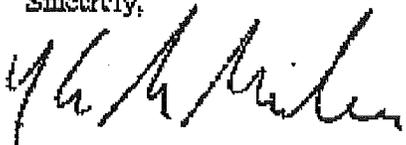
Pending before me is a motion by defendants to dismiss the action as nonjusticiable under the act of state doctrine. In support of their motion, defendants have submitted two letters by the Nigerian Attorney General addressed to his United States counterpart (although plaintiffs question whether they were sent). Following the protocol established in cases such as *In re Apartheid*, 346 F. Supp. 2d 538 (S.D.N.Y. 2005) and *Doe v. Qi*, 349 F. Supp. 2d 1258 (N.D. Cal. 2004), this Court invites the United States to submit a Statement of Interest, setting forth its official views, if any, on whether adjudicating this action or granting the relief that plaintiffs seek would adversely effect the diplomatic efforts of the United States, and, if so, the nature and significance of any such effect.

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For your convenience, enclosed are copies of the parties' briefing on the availability of the act of state doctrine, the letters by the Nigerian Attorney General, and plaintiff's description of the injunctive relief they are seeking.

This Court requests that any Statement of Interest be submitted by March 1, 2007.

Sincerely,



Kevin M. McCarthy
Judge of the Superior Court

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF SAN FRANCISCO**

LARRY BOWOTO, et al.,

Plaintiffs,

v.

CHEVRONTEXACO CORPORATION, et al.,

Defendants.

} Case No: CGC 03-417580
 i Judge: The Honorable Kevin M. McCarthy
) Dept: 306

) **PLAINTIFFS' SAMPLE [PROPOSED]
 ORDER REGARDING INJUNCTIVE
) RELIEF ON PLAINTIFFS' FIRST
) CAUSE OF ACTION**

Date Action Filed: February 20, 2003
 Trial Date: March 1, 2007

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1 Pursuant to the Court's request at the November 15, 2006 hearing, plaintiffs submit the following
2 sample order describing the forms of injunctive relief they anticipate seeking once the appropriate time
3 comes for filing a formal motion for permanent injunction. The following exemplar addresses plaintiffs'
4 first cause of action only, since that was the only aspect of their complaint before the Court at the
5 November 15, 2006 hearing. Pursuant to plaintiffs' understanding of this Court's request, plaintiffs do
6 not address their entitlement to the declaratory relief available to them, as demonstrated in plaintiffs'
7 Memorandum of Points and Authorities in Opposition to Defendants' Motion for Summary Judgment on
Count One Based on Unavailability of Any Remedy (Motion No. 4), filed November 15, 2006, Section
III at pages 14 - 16. Should the Court require a more detailed Proposed Injunction at this stage of the
proceedings, plaintiffs request an opportunity to provide the same pursuant a regularly noticed motion
and according to a briefing schedule agreed to by the parties and approved by the Court.

**A SAMPLE OF INJUNCTIVE RELIEF PROPOSED BY PLAINTIFFS
REGARDING THEIR FIRST CAUSE OF ACTION**

IT IS ORDERED THAT defendants Chevron Corporation, Chevron Investments, Inc., and
Chevron U.S.A., Inc. (hereafter collectively referred to as "Defendants" or "Chevron") and their
respective employees, agents and persons acting with them or on their behalf are enjoined and restrained
as follows:

- A. No later than sixty (60) days after entry of this Order, defendants shall:
1. Reflect on their financial books and records, including Chevron Corporation's Chart of
20 Accounts, monetary payment and provision of food, lodging, facilities or equipment
21 (hereafter collectively referred to as "logistical support") to Nigerian military and police
22 personnel;
 2. Require that any budgets, appropriation requests, financial information, accounting
23 reports, charts of account or other submissions providing financial information regarding
24 Chevron's operations in Nigeria (hereinafter "financial documents") identify as line items
25 monetary payments or provision of logistical support to Nigerian military or police
26 personnel during the period covered by said submissions, and the purpose for each such
27 payment and provision, and further, refuse to accept or approve financial documents
28

- 1 failing to identify the same;
- 2 3. Not finalize Chevron Corporation's Chart of Accounts unless all monetary payments and provision of logistical support to Nigerian military or police personnel for the period covered are reflected as line items on said Chart, including the purpose for each such payment or provision.

B. No later than one - hundred and twenty (120) days after entry of this order, defendants shall:

- 1. Undertake and finance a security review of Chevron's operations in Nigeria (similar to the corporate security review undertaken in January 1999), for the purpose of determining: 1) whether it is practicable to secure Chevron's facilities and personnel in Nigeria without paying or providing any logistical support to Nigerian military and police personnel; and 2) if not practicable, to make recommendations for the implementation of policies, principles, practices, and procedures that would lessen the likelihood of human rights abuses and use of excessive force.
 - a. The Security Review Team shall be made up of five (5) individuals. Chevron shall select one (1) individual from its International Security Department who oversees and monitors the Nigerian security operations and one (1) other individual of its choosing. Plaintiffs shall select two (2) individuals of their choosing. The parties shall agree upon the selection of the fifth member of the Security Review Team; failing such agreement as to the fifth member, the Court shall appoint this individual;
 - 21 b. If the Security Review Team concludes that it is practicable to forego use of the
22 Nigerian military and police to secure Chevron's facilities and personnel in
23 Nigeria, then defendants shall thereafter devise and institute a plan to accomplish
24 the same;
 - 25 c. If the Security Review Team alternatively concludes that it is practicable to lessen
26 the use of Nigerian military and police to secure Chevron's facilities and
27 personnel in Nigeria, then defendants shall thereafter devise and institute a plan to
28 accomplish the same;

2 private contracted - for security personnel assigned to any of
 3 Chevron's operations in Nigeria found to have committed human
 4 rights abuses or used excessive force in the course of their
 5 employment with or on behalf of CNL.

- 6 2. The Security Review Team shall complete its review and issue a Report to be
 7 filed under seal with the Court and served on the parties satisfying the
 requirements laid out in paragraphs i - vi, above, no later than two hundred and
 forty (240) days after entry of this order.
3. Chevron shall implement all of the recommendations of the Security Review
 Team within a reasonable time frame not to exceed three hundred and sixty five
 (365) days after the Report is issued.

13 C. Defendants shall take reasonable steps to ensure accountability for implementation of the
 Security Review Team recommendations by, at a minimum:

- 19 1. Incorporating as part of Chevron's existing personnel evaluation of CNL's managing
 20 director an assessment of the nature and extent of CNL's compliance with the security
 21 policies, principles, practices and procedures promulgated pursuant to the Security
 22 Review Team's recommendations.
- 23 2. Conducting yearly security compliance audits as part of Chevron's existing compliance
 24 review of Chevron's Nigeria operations, which audits are to include measurements of
 achievement related to avoidance of human rights abuse and use of excessive force by
 those individuals who are paid or provided logistical support by CNL, or who utilize
 Chevron/CNL owned or leased facilities or equipment, and the implementation of
 policies, principles, practices, and procedures promulgated pursuant to the Security
 Review Team's recommendations.

25 D. Defendants shall improve the transparency and accuracy of record keeping and reporting
 26 regarding incidents wherein Nigerian military and police commit or are alleged to have
 27 committed human rights abuses and/or use excessive force, conduct timely investigations
 28 regarding such incidents, and remove those Nigerian military and police officers found to commit

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such acts by, at a minimum, implementing the following:

1. Require CNL to keep detailed records of which Nigeria military and police units, and the full names of all officers, who are paid or provided logistical support by CNL, or who utilize Chevron/CNL owned or leased facilities or equipment, and include such information in quarterly reports provided to Chevron's International Security Team;
2. Require CNL to require aircraft pilots, boat drivers, and other transport personnel performing services on behalf of CNL to log any incident which involves the use of force by Nigerian military or police, or which resulted in physical injury to a Nigerian resident, including the time, place, and date of the incident, who transported the Nigerian military or police, the names of any CNL personnel aboard, as well as the names of the Nigerian military or police involved and the Nigerian residents injured, if known; Require CNL to investigate:

- a. Within five (5) days, any incident reported by internal or external sources in which it is alleged that Nigeria military or police paid or provided logistical support by CNL, or utilizing CNL/Chevron owned or leased facilities or equipment, have discharged their weapons, for any purpose, documenting, at a minimum, who fired upon whom, who was injured, when, where, and why, and any measures taken to prevent recurrence of the incident, if applicable;
Within five (5) days, any incident reported by internal or external sources in which it is alleged that Nigeria military or police paid or provided logistical support by CNL, or utilizing CNL/Chevron owned or leased facilities or equipment, have physically injured a Nigerian resident, documenting, at a minimum, who was injured, how, by whom, when, where, and why, and any measures taken to prevent recurrence of the incident, if applicable.
- c. Within five (5) days, any incident reported by internal or external sources in which it is alleged that Nigerian military or police paid or provided logical support by CNL, or utilizing CNL/Chevron owned or leased facilities or equipment, have committed human rights abuse or used excessive force, documenting, at a

- 1 minimum, who was injured, how, by whom, when, where, and why, and any
2 measures taken to prevent recurrence of the incident, if applicable.
- 3 4. If it is determined after the investigation conducted pursuant to paragraph D.3 above that
4 a Nigerian military or police officer involved has committed a human rights violation,
5 used excessive force, and/or violated a security policy, procedure, or practice, including,
6 but not limited to, those policies, procedures, and/or practices promulgated by the
Security Review Team, require that CNL take immediate steps to remove that Nigerian
military or police officer from their security force, or ensure that said officer is not paid or
provided logistical support by CNL, or allowed to utilize CNL/Chevron owned or leased
facilities or equipment in the future.
5. Require CNL to report to proper government authorities in Nigeria any and all allegations
of human rights abuse or use of excessive force by Nigerian military and police personnel
paid or provided logistical support by CNL, or utilizing CNL/Chevron owned or leased
facilities or equipment, and the results of investigations conducted pursuant to
paragraphs D.3-4.
- E. No later than thirty (30) days after entry of this order, defendants shall post in a prominent
location on their respective websites (including external websites) notices of any incidents
wherein Nigerian residents suffered physical injuries (besides work-related injuries) as a result of
the conduct of Nigerian military and police personnel paid or provided logistical support by
CNL, or utilizing CNL/Chevron owned or leased facilities or equipment. Defendants shall post
any such notice within seven (7) calendar days of the incident and the notice shall contain the
following information: date and location of the incident, number of people injured and brief
description of people's injuries. Defendants shall amend any such notice within thirty (30) days
24 of the incident to indicate the cause of the people's injuries (e.g., shot by Nigerian military). All
25 amended notices shall also be compiled and included in Chevron's annual shareholders report
26 and a copy provided to Chevron's Governance Board in California.
- 27 F. No later than thirty (30) days *after entry of* this order, defendants shall post in a
28 prominent location on their respective websites (including external websites) notices of any

1 complaints of use of excessive force or human rights abuses by Nigerian military and police
2 personnel paid or provided logistical support by CNL, or utilizing CNL/Chevron owned or leased
3 facilities or equipment. Defendants shall post any such notice within seven (7) calendar days of
4 the complaint and the notice shall contain the following information: date of the complaint's
5 receipt, issue identified in the complaint, and the name of government entity, agency, or
6 community organization submitting the complaint. If the complaint has been submitted by an
7 individual, the name of the individual shall not be posted; rather the tribal affiliation of the
individual shall be posted, if known. In addition, to the extent that the date and location of the
incident in the complaint is the same as the date and location of the incident posted on the
websites in paragraph E, the notice shall identify that the complaint corresponds to such incident.
All notices shall also be compiled and included in Chevron's annual shareholders report and a
copy provided to Chevron's Governance Board in California.

G. Defendants shall take all reasonable steps to implement the Global Sullivan Principles and the
Voluntary Principles on Human Rights and Security by, at a minimum, complying with the
following:

1. Defendants shall review the Global Sullivan Principles and the Voluntary Principles on
Human Rights and Security (which it adopted and has expressed ongoing support for) to
determine whether it is appropriate to include any of those principles in its Existing Code
of Business Conduct, and report back to the Court and serve on the parties its findings in
that regard.
2. Defendants shall require CNL to distribute to CNL's employees, to private contracted -
for security personnel, and to Nigerian police and military personnel paid or provided
logistical support, or utilizing CNL/Chevron owned or leased facilities or equipment, and
Nigerian police and military command staff, written notice that it is Chevron's official
policy to be in compliance with the Global Sullivan Principles and the Voluntary
Principles on Human Rights and Security, and to include within said notice the referenced
Principles, and to inform said personnel that violations of those Principles will be
reported to the appropriate government authorities or documented as part of

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CNLIChevron performance evaluation;

3. Defendants shall require CNL to include as part of its regular reporting to Chevron any and all steps taken to adhere to the Global Sullivan Principles and the Voluntary Principles on Human Rights and Security in carrying out Chevron's Nigeria operations.

Dated: December 4, 2006

Respectfully Submitted,
HADSELL & STORMER

By:



Barbara Emoe Hadsell

Attorneys for all Plaintiffs

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ATTACHMENT 3

The Voluntary Principles on Security and Human Rights + Introduction

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

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

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

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

Emphasizing the importance of safeguarding the integrity of company personnel and property, Companies recognize a commitment to act in a manner consistent with the laws of the countries within which they are present, to be mindful of the highest applicable international standards, and to promote the observance of applicable international law enforcement principles (e.g., the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials), particularly with regard to the use of force;

The Voluntary Principles

Introduction

Risk Assessment

Interactions: Companies
+ Public Security

Interactions: Companies
+ Private Security

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

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

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

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

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The Voluntary Principles on Security and Human Rights + Risk Assessment

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

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

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

Identification of security risks. Security risks can result from political, economic, civil or social factors. Moreover, certain personnel and assets may be at greater risk than others. Identification of security risks allows a Company to take measures to minimize risk and to assess whether Company actions may heighten risk.

Potential for violence. Depending on the environment, violence can be widespread or limited to particular regions, and it can develop with little or no warning. Civil society, home and host government representatives, and other sources should be consulted to identify risks presented by the potential for violence. Risk assessments should examine patterns of violence in areas of Company operations for educational, predictive, and preventative purposes.

The Voluntary Principles

[Introduction](#)

[Risk Assessment](#)

[Interactions: Companies
+ Public Security](#)

[Interactions: Companies
+ Private Security](#)

Human rights records. Risk assessments should consider the available human rights records of public security forces, paramilitaries, local and national law enforcement, as well as the reputation of private security. Awareness of past abuses and allegations can help Companies to avoid recurrences as well as to promote accountability. Also, identification of the capability of the above entities to respond to situations of violence in a lawful manner (i.e., consistent with applicable international standards) allows Companies to develop appropriate measures in operating environments.

Rule of law. Risk assessments should consider the local prosecuting authority and judiciary's capacity to hold accountable those responsible for human rights abuses and for those responsible for violations of international humanitarian law in a manner that respects the rights of the accused.

Conflict analysis. Identification of and understanding the root causes and nature of local conflicts, as well as the level of adherence to human rights and international humanitarian law standards by key actors, can be instructive for the development of strategies for managing relations between the Company, local communities, Company employees and their unions, and host governments. Risk assessments should also consider the potential for future conflicts.

Equipment transfers. Where Companies provide equipment (including lethal and non-lethal equipment) to public or private security, they should consider the risk of such transfers, any relevant export licensing requirements, and the feasibility of measures to mitigate foreseeable negative consequences, including adequate controls to prevent misappropriation or diversion of equipment which may lead to human rights abuses. In making risk assessments, companies should consider any relevant past incidents involving previous equipment transfers.

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The Voluntary Principles on Security and Human Rights + Interactions Between Companies and Public Security

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

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

Security Arrangements

Companies should consult regularly with host governments and local communities about the impact of their security arrangements on those communities.

Companies should communicate their policies regarding ethical conduct and human rights to public security providers, and express their desire that security be provided in a manner consistent with those policies by personnel with adequate and effective training.

Companies should encourage host governments to permit making security arrangements transparent and accessible to the public, subject to any overriding safety and security concerns.

Deployment and Conduct

The Voluntary Principles

[Introduction](#)

[Risk Assessment](#)

[Interactions: Companies + Public Security](#)

[Interactions: Companies + Private Security](#)

The primary role of public security should be to maintain the rule of law, including safeguarding human rights and deterring acts that threaten Company personnel and facilities. The type and number of public security forces deployed should be competent, appropriate and proportional to the threat.

Equipment imports and exports should comply with all applicable law and regulations. Companies that provide equipment to public security should take all appropriate and lawful measures to mitigate any foreseeable negative consequences, including human rights abuses and violations of international humanitarian law.

Companies should use their influence to promote the following principles with public security: (a) individuals credibly implicated in human rights abuses should not provide security services for Companies; (b) force should be used only when strictly necessary and to an extent proportional to the threat; and (c) the rights of individuals should not be violated while exercising the right to exercise freedom of association and peaceful assembly, the right to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

In cases where physical force is used by public security, such incidents should be reported to the appropriate authorities and to the Company. Where force is used, medical aid should be provided to injured persons, including to offenders.

Consultation and Advice

Companies should hold structured meetings with public security on a regular basis to discuss security, human rights and related work-place safety issues. Companies should also consult regularly with other Companies, host and home governments, and civil society to discuss security and human rights. Where Companies operating in the same region have common concerns, they should consider collectively raising those concerns with the host and home governments.

In their consultations with host governments, Companies should take all appropriate measures to promote observance of applicable international law enforcement principles, particularly those reflected in the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms.

Companies should support efforts by governments, civil society and multilateral institutions to provide human rights training and education for public security as well as their efforts to strengthen state institutions to ensure accountability and respect for human rights.

Responses to Human Rights Abuses

Companies should record and report any credible allegations of human rights abuses by public security in their areas of operation to appropriate host government authorities. Where appropriate, Companies should urge investigation and that action be taken to prevent any recurrence.

Companies should actively monitor the status of investigations and press for their proper resolution.

Companies should, to the extent reasonable, monitor the use of equipment provided by the Company and to investigate properly situations in which such equipment is used in an inappropriate manner.

Every effort should be made to ensure that information used as the basis for allegations of human rights abuses is credible and based on reliable evidence. The security and safety of sources should be protected. Additional or more accurate information that may alter previous allegations should be made available as appropriate to concerned parties.

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The Voluntary Principles on Security and Human Rights + Interactions Between Companies and Private Security

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

The Voluntary Principles

Introduction

Risk Assessment

Interactions: Companies
+ Public Security

Interactions: Companies + Private
Security

Private security should observe the policies of the contracting Company regarding ethical conduct and human rights; the law and professional standards of the country in which they operate; emerging best practices developed by industry, civil society, and governments; and promote the observance of international humanitarian law.

Private security should maintain high levels of technical and professional proficiency, particularly with regard to the local use of force and firearms.

Private security should act in a lawful manner. They should exercise restraint and caution in a manner consistent with applicable international guidelines regarding the local use of force, including the UN Principles on the Use of Force and Firearms by Law Enforcement Officials and the UN Code of Conduct for Law Enforcement Officials, as well as with emerging best practices developed by Companies, civil society, and governments.

Private security should have policies regarding appropriate conduct and the local use of force (e.g., rules of engagement). Practice under these policies should be capable of being monitored by Companies or, where appropriate, by independent third parties. Such monitoring should encompass detailed investigations into allegations of abusive or unlawful acts; the availability of

disciplinary measures sufficient to prevent and deter; and procedures for reporting allegations to relevant local law enforcement authorities when appropriate.

All allegations of human rights abuses by private security should be recorded. Credible allegations should be properly investigated. In those cases where allegations against private security providers are forwarded to the relevant law enforcement authorities, Companies should actively monitor the status of investigations and press for their proper resolution.

Consistent with their function, private security should provide only preventative and defensive services and should not engage in activities exclusively the responsibility of state military or law enforcement authorities. Companies should designate services, technology and equipment capable of offensive and defensive purposes as being for defensive use only.

Private security should (a) not employ individuals credibly implicated in human rights abuses to provide security services; (b) use force only when strictly necessary and to an extent proportional to the threat; and (c) not violate the rights of individuals while exercising the right to exercise freedom of association and peaceful assembly, to engage in collective bargaining, or other related rights of Company employees as recognized by the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

In cases where physical force is used, private security should properly investigate and report the incident to the Company. Private security should refer the matter to local authorities and/or take disciplinary action where appropriate. Where force is used, medical aid should be provided to injured persons, including to offenders.

Private security should maintain the confidentiality of information obtained as a result of its position as security provider, except where to do so would jeopardize the principles contained herein.

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

Where appropriate, Companies should include the principles outlined above as contractual provisions in agreements with private security providers and ensure that private security personnel are adequately trained to respect the rights of employees and the local community. To the extent practicable, agreements between Companies and private security should require investigation of unlawful or abusive behavior and appropriate disciplinary action. Agreements should also permit termination of the relationship by Companies where there is credible evidence of unlawful or abusive behavior by private security personnel.

Companies should consult and monitor private security providers to ensure they fulfil their obligation to provide security in a manner consistent with the principles outlined above. Where appropriate, Companies should seek to employ private security providers that are representative of the local population.

Companies should review the background of private security they intend to employ, particularly with regard to the use of excessive force. Such reviews should include an assessment of previous services provided to the host government and whether these services raise concern about the private security firm's dual role as a private security provider and government contractor.

Companies should consult with other Companies, home country officials, host country officials, and civil society regarding experiences with private security. Where appropriate and lawful, Companies should facilitate the exchange of information about unlawful activity and abuses committed by private security providers.

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ATTACHMENT 4

Voluntary Principles Participation Criteria

Summary

At the 2007 plenary in Washington DC, the participation criteria were formally agreed upon. The criteria articulate the responsibilities of current and future members of the initiative; it is anticipated that the criteria will strengthen implementation of the VPs while also encouraging more robust and constructive dialogue among participants. Some of the key features of the criteria include: minimum requirements for participation; a dispute resolution process to raise concerns about the performance of a participant; accountability mechanisms that include the possibility of expulsion; and more transparent procedures for accepting new members. Additionally, the new criteria enshrine a commitment by participants to report publicly on their implementation of the VPs or their support for implementation once formal reporting criteria are finalized.

Participants

[Governments](#)

[Companies](#)

[Non-Governmental Organizations](#)

[Observers](#)

Participation Criteria

[Overview and Summary](#)

The Criteria

Participants agree that the core objective of the Voluntary Principles is to "guide companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms." Participants acknowledge that engagement and dialogue among the Participants are central to reaching this objective. To facilitate the goals of the Voluntary Principles and encourage full and open dialogue, Participants agree that all proceedings of the Voluntary Principles process are on a non-attribution and non-quotation basis and no distribution of documents to non-participants is permitted except as required by valid legal process or otherwise required by law.

All Participants, including governments, companies and NGOs, must meet the following criteria:

1. Publicly promote the Voluntary Principles;
2. Proactively implement or assist in the implementation of the Voluntary Principles;
3. Attend plenary meetings and, as appropriate and commensurate with resource constraints, other sanctioned extraordinary and in-country meetings;
4. Communicate publicly on efforts to implement or assist in the implementation of the Voluntary Principles at least annually;

5. Prepare and submit to the Steering Committee, one month prior to the Annual Plenary Meeting, a report on efforts to implement or assist in the implementation of the Voluntary Principles according to criteria agreed upon by the participants;
6. Participate in dialogue with other Voluntary Principles Participants; and
7. Subject to legal, confidentiality, safety, and operational concerns, provide timely responses to reasonable requests for information from other Participants with the aim of facilitating comprehensive understanding of the issues related to implementation or assistance in implementation of the Voluntary Principles.

Any Participant's status will automatically become inactive ⁰¹ if it fails to submit an annual report that meets agreed criteria (Participation Criteria number 5, above) and/or categorically refuses to engage with another Participant ⁰² ⁰³.

Participants are permitted to raise concerns regarding whether any other Participant has met the Participation Criteria and, where appropriate, concerns regarding sustained lack of efforts to implement the Voluntary Principles. The ultimate goal of all concerns raised with regard to performance under the Voluntary Principles should be to strengthen individual and collective efforts to implement or assist in implementing the Voluntary Principles through constructive engagement.

Participants will seek to resolve any concerns through direct dialogue with another Participant. If direct dialogue fails to resolve the issue, a Participant may submit its concerns to the Steering Committee ⁰⁴. If determined by consensus of ⁰⁵ the Steering Committee that these concerns are based on reliable information and that the Voluntary Principles process will be strengthened by further consultations, the matter will be referred to the Secretariat within 60 days of its submission to the Steering Committee. The Secretariat will facilitate formal consultations between the interested Participants, subject to the requirement of confidentiality set forth in this document. In no more than six months, the Participants involved in these consultations may present the matter to the annual or special Plenary for its consideration. That Plenary shall decide what, if any, further action is appropriate. The Plenary's role is to make recommendations that will lead to deepening of the Voluntary Principles. Any recommendation of the Plenary, other than expulsion will be taken by a supermajority (66%) of government participants, a simple majority (51%) of non-governmental organization participants, and a simple majority (51%) of company participants represented at the Plenary session. A party to a complaint can request the Steering Committee to conduct a status review of implementation and to consider any issues arising from the implementation of a recommendation. The Steering Committee, on its own discretion, can initiate this process. Categorical failure to implement that Plenary's recommendations within a reasonable period as defined by that Plenary will result in inactive status. Decisions to expel a Participant must be taken by consensus, excluding the Participant raising the concerns and the Participant about whom the concerns are raised ⁰⁶. In the event concerns are raised about more than one Participant, the decisions with respect to each Participant will be reached separately.

To facilitate the goals of the Voluntary Principles and encourage full and open dialogue, Participants acknowledge that implementation of the Principles is continuously evolving and agree that the Voluntary Principles do not create legally binding standards and participation in, communications concerning, and alleged failures to abide by the Voluntary Principles shall not be used to support a claim in any legal or administrative proceeding against a Participant. This shall not preclude any Participant from criticizing the conduct of any other Participant, publicly or privately, subject to the requirement of confidentiality set forth in this document.

Admission of a prospective participant to the Voluntary Principles requires consensus of the existing Participants. If a request for participation is denied, the Participant(s) who has/have objected agree to have their objection(s) made known to the prospective participant concerned, with an explanation of their reason for the objection. The prospective participant may challenge the decision denying it admission and shall have the opportunity to make its case to the Steering Committee, which will report this to all Participants.

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01

Inactive means temporarily being unable to exercise one's rights as a Participant.

02

Engaging with another Participant refers to engagement in good faith.

03

A directive will be given to the Steering Committee stating that situations involving imminent or ongoing litigation will not be subject to this provision.

04

When a concern is raised by or about a Steering Committee member, that member shall be replaced by its immediate predecessor on the Steering Committee. This replacement will occur only with respect to and for the duration of the said concern.

05

Consensus means unanimous agreement of all active participants.

06

This requirement for consensus applies to expulsion. It does not apply to inactive status, which results from violation of criterion 5 — categorical refusal to engage with the other participants — or from categorical failure to implement recommendations of the Plenary, as outlined previously.

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