

Human rights due diligence process

A practical guide to implementation
for oil and gas companies

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Purpose and scope of this Guide

The purpose of this *Guide* is to assist oil and gas companies in implementing a due diligence process for human rights. This can be an essential part of a company's overall risk management strategy, especially in countries where human rights issues may be more prevalent. The *Guide* aims to:

- clarify what constitutes a due diligence process for human rights;
- clarify the business case for a human rights due diligence process;
- support the development and/or continuous improvement of due diligence processes for human rights; and
- promote consistent approaches to the management of potential human rights issues and impacts.

The *Guide* is not intended to be a prescriptive, 'how-to' document or to serve as a certification of oil and gas companies. Rather, companies are encouraged to use the *Guide* to help develop and implement a human rights due diligence process in a fit-for-purpose way with respect to their existing management systems, business processes and local operating contexts.

The *Guide* is divided into four sections:

- Section 1: What is a human rights due diligence process?
- Section 2: Why is a human rights due diligence process important for the oil and gas sector?
- Section 3: Developing and implementing a human rights due diligence process.
- Section 4: Resources to support oil and gas companies.



Understanding the potential human rights issues and impacts associated with business operations is especially important for oil and gas companies that may operate in countries over several decades, and where local conditions and circumstances can change.

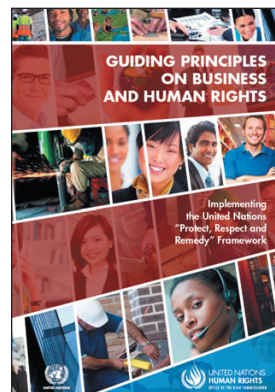
Section 1:

What is a human rights due diligence process?

Human rights are generally defined as basic standards of treatment to which all people are entitled, regardless of nationality, gender, race, economic status or religion. Human rights are relevant to business, and recognized in the Universal Declaration of Human Rights and the International Labour Organization (ILO) Conventions.

In the case of human rights, company due diligence can be described as the reasonable degree of prudence exercised by an organization. A human rights due diligence process is not a legal requirement, but rather a good industry practice to manage potential issues and impacts associated with business operations. It is recognized in external guidelines, such as the United Nations *Guiding Principles on Business and Human Rights (Guiding Principles)*¹. The *Guiding Principles* describe the expectation that all companies meet their responsibility to respect human rights, i.e. that companies should:

- respect human rights in projects or operations;
- seek to prevent or mitigate potential human rights issues that may be caused directly by the company's projects or operations, or by project partners and suppliers;
- have in place policies and processes to manage potential human rights issues;
- express commitment to respect human rights through a policy endorsed by senior leadership;
- conduct assessments to identify potential human rights issues in projects or operations, and have processes in place to manage these issues and track responses;
- communicate with stakeholders about how issues are being addressed; and
- have in place a grievance mechanism to address issues raised by the community.



A human rights due diligence process is recognized in the United Nations Guiding Principles on Business and Human Rights.

According to the *Guiding Principles*, the due diligence process has four main expectations²:

1. Assessing actual and potential human rights impacts.
2. Integrating and acting upon the findings.
3. Tracking responses.
4. Communicating how impacts are being addressed.

The due diligence process builds on the long-standing practice of conducting risk or impact assessments for each stage of the project life cycle, including business development, new capital projects, operations, and decommissioning and divestment. Many established processes, tools and practices have enhanced organizational capability over the years, such as the Environment, Social and Health Impact Assessment (ESHIA) process. Data collection and analysis from the due diligence process would inform the remediation activities if these are required. Moreover, through various IPIECA meetings and workshops, there continues to be a constructive exchange of technical issues and expertise between practitioners from IPIECA member companies and external experts, which enables these processes and tools to be continuously improved.

¹ *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*.

a) United Nations General Assembly Agenda Item 3, Report of the UN Special Representative on the issue of human rights (document ref. A/HRC/17/31, March 2011): www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf; and

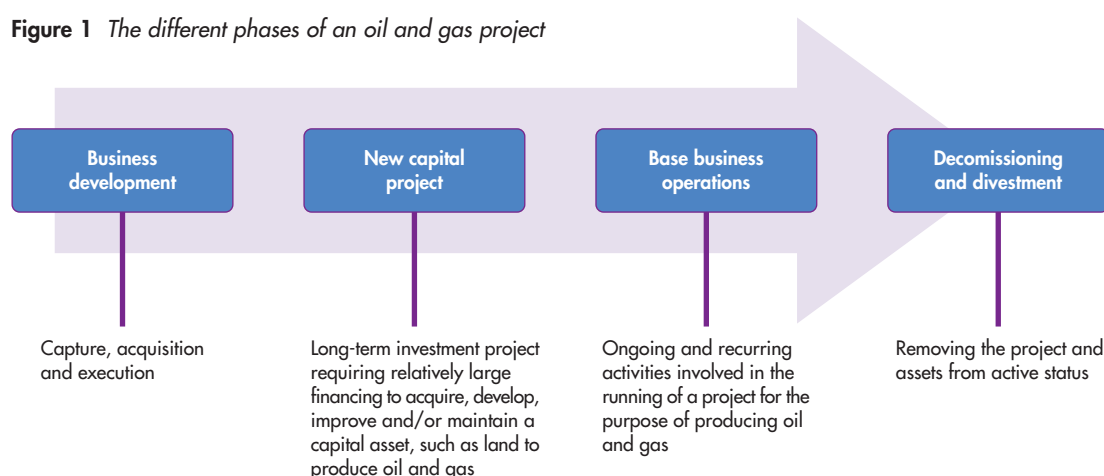
b) UN Office of the High Commissioner for Human Rights (2012). Publication ref. HR/PUB/11/04, January 2012: www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

² Principle 17 of the *Guiding Principles on Business and Human Rights* (see Footnote 1).

Because human rights can: (i) cut across different phases of an oil and gas project life cycle (Figure 1); (ii) be associated with different issues and potential impacts; and (iii) be managed by different company functions, roles and responsibilities, there is no 'one-size-fits-all' approach to implementing human rights due diligence.

This *Guide* addresses these unique attributes in the oil and gas sector and provides a framework for due diligence that is also integrated into existing management systems, processes and tools.

Figure 1 *The different phases of an oil and gas project*



Human rights can cut across different phases of an oil and gas project life cycle.

Section 2: Why is a human rights due diligence process important?

The business case for human rights due diligence is simple and straightforward—it is good business practice to understand the potential human rights issues and impacts associated with business operations, and to factor them into management plans. This is especially important for oil and gas companies that may operate in countries over several decades, and where local conditions and circumstances can change.

Some of the business drivers for having a human rights due diligence process include:

- identification and management of potential impacts on communities—positive and negative;
- prevention of disruptions to construction and future disruptions to operations, and improved business continuity, including provision of reliable energy and management of budgets and schedules;
- improved relationships with local employees and communities based on ongoing engagement and dialogue about project issues and other relevant concerns;
- protection of employees, communities and company assets from potential negative impacts by providing a safe and secure operating environment;
- creation of positive contributions to host communities, e.g. improving access to health, education and livelihoods; and
- protection of the company's reputation, both in the country of operation and internationally, e.g. by being an employer of choice, and helping to ensure continued access to new markets and customers.

Section 3:

Developing and implementing a human rights due diligence process

Tip:

Develop an internal Community of Practice as a global association of practitioners committed to developing, sharing and utilizing knowledge, processes, and tools to build organizational capacity and enhance the effectiveness of the company's programmes.

Tip:

By working within the company's existing management system process, and through cross-functional teams, there can be greater opportunities to build long-term organizational capability and knowledge.

For the purpose of this document, a human rights due diligence process can be framed as a 'plan-do-check' methodology to manage potential human rights issues and impacts. This methodology correlates with the existing management system process (see Figure 2) of many oil and gas companies.

This is a practical approach to implementing a human rights due diligence process for the following reasons:

- It builds on existing mechanisms and governance structures, such as already-established roles and responsibilities, standards, processes, training, guidance, tools and continuous improvement programmes. There may be greater opportunities to manage potential human rights issues and create long-term organizational capacity by working within, and enhancing, the existing system rather than working outside it.
- It enables interaction with the company's process leads, advisors and other experts, thereby capturing and spreading relevant experience and technical knowledge, and building ongoing support such as establishing a community of practice. This also helps to translate human rights issues and relevant external guidance into operational language, processes and plans.
- It can help to minimize unintended risks, such as identifying potential issues and impacts, in circumstances where a systematic approach is not regularly practised. The existing management system process enables not only the identification and assessment of potential issues and impacts but also a process to manage and close out.
- It helps companies to integrate identified potential human rights issues and impacts with social, environmental, health and other impacts. This promotes a more efficient and holistic approach to associated issues (e.g. fresh water) which can have implications for people's access to health, livelihoods and potable water.

Figure 2 The management system process



The remainder of this section describes the following key aspects of the management system approach to managing human rights issues:

- Key components of the human rights due diligence process.
- Potential issues and impacts to be managed.
- Project life cycle associated with due diligence processes.
- Implementation issues to consider.

Key components of the human rights due diligence process

Using the management system process (Figure 2) as the framework for implementation, the core components of a human rights due diligence process are:

- **Vision/objectives:** The company's vision and objectives for managing human rights are articulated and reinforced through a formal Company Code of Conduct, Corporate Social Responsibility (CSR) Policy, Human Rights Policy, Human Rights Statement or other formal mechanism, e.g. operational policy. The objectives should be anchored in the company's key business drivers, e.g. the protection of people and assets.

- **Accountability:** Because human rights issues cut across different company functions, appropriate roles and responsibilities, including accountability, are assigned. Company processes, programmes or tools should specify which function is responsible (who) and the associated roles and tasks (what and how).
- **Assess/plan:** Assessment and planning includes: (i) identifying the phase in the project life cycle; (ii) taking inventory of existing processes, programmes and tools (e.g. Stakeholder Engagement Process, ESHIA Process, Security Assessments) that can be utilized to assess potential issues and impacts; (iii) collating and reviewing information from prior assessments or external sources; and (iv) conducting the assessment to investigate, identify and analyse potential issues and impacts. In some cases, it may be necessary to consider carrying out a tailored human rights issues or impact assessment which is fit-for-purpose for specific company needs or operating contexts.
- **Implementation:** Once potential issues and impacts are identified and prioritized, the findings should be incorporated into a management plan, which includes communication with internal and external stakeholders as needed, with the intent to properly address and close out the issue or impact.
- **Review:** A set of indicators for monitoring, tracking and evaluating the plan is built into the implementation process. The indicators inform the effectiveness of the process and support opportunities for continuous improvement. There is no one-size-fits-all approach to the review process; this will vary depending on the company's existing processes and procedures such as: (i) internal process audits; (ii) internal self-assessments at the business unit level; and (iii) reviews by external third parties. Roles and responsibilities are



assigned to the review process, which includes internal controls on the flow of information together with procedures to integrate the findings in order to improve the process.

- **Improve:** Once the review is completed and the findings properly analysed, any identified opportunities for improvement will serve as the basis for an internal engagement mechanism to enhance the existing process, procedures or programmes, such as internal or process review sessions. The aim of this activity is to improve the process and foster a culture of learning and innovation.

Potential issues and impacts to be managed

For the purpose of this *Guide*, there are four human rights areas germane to the industry: workers; community; security provision; and business relationships/contractors. There are potential issues and impacts associated with these areas and, moreover, there may be existing processes, programmes and tools from which to draw.³ Examples are described in Table 1 (overleaf).

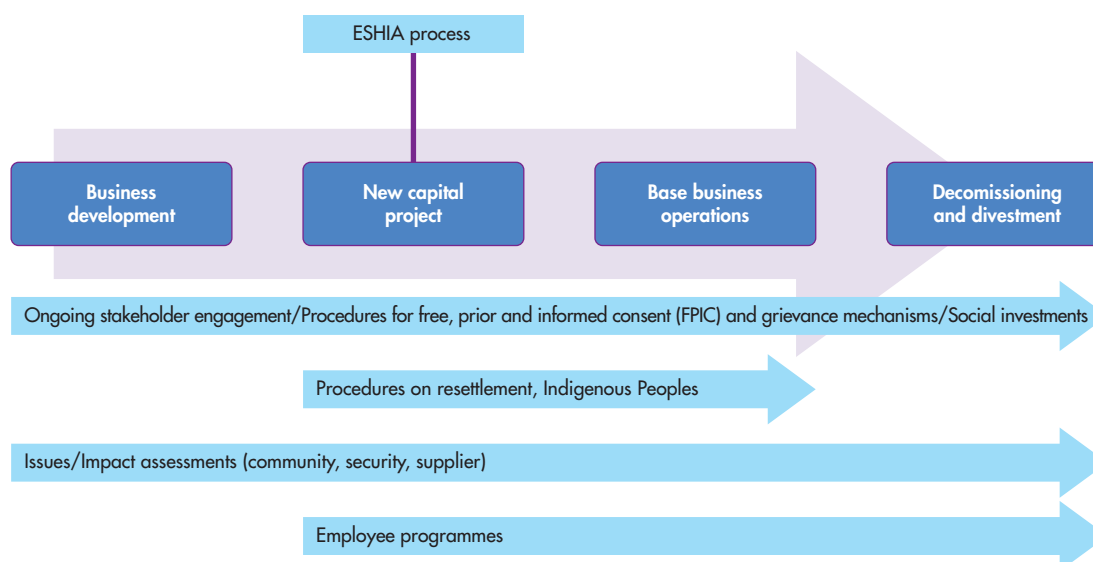
A company's vision and objectives for managing human rights should be anchored in its key business drivers, e.g. the protection of people and assets.

³ The list of areas, issues/impacts and processes/programmes/tools is not exhaustive. Individual oil and gas companies may have additional examples on a case-by-case basis.

Table 1 *Potential issues and impacts, and existing tools from which to draw*

Area	Potential issues/impacts	Existing process/programmes/tools
Workers	<p>Treatment of workers consistent with the International Labour Organization (ILO) Core Labour Standards.</p> <ul style="list-style-type: none"> • Freedom of association and collective bargaining • Prohibit hiring of underage workers as defined in the relevant ILO conventions • Prohibit recruitment, use and practices of forced labour • Prohibit discrimination in hiring practices • Working conditions 	<ul style="list-style-type: none"> • Periodic compliance review of human resource policy and procedures • Compliance reviews with national laws and regulations • Periodic review of employee feedback (e.g. surveys) • Periodic review of 'whistleblowing' and incidence reporting processes and feedback • Workplace HSE risk assessment process
Community	<p>Engagement with communities in a manner that respects human rights:</p> <ul style="list-style-type: none"> • Meaningful consultation (e.g. free, prior informed consultation) regarding project issues and impacts • Mechanisms to receive and respond to community issues and concerns <p>Management of potential project impacts on communities—positive and negative:</p> <ul style="list-style-type: none"> • Resettlement of communities and associated physical and economic displacement • Indigenous populations and other vulnerable groups requiring special attention • Altering existing community access to health, education, clean water, livelihoods and cultural assets 	<ul style="list-style-type: none"> • Risk assessment processes for new country entry • ESHIA process • Stakeholder engagement process • Grievance mechanism process and periodic review of reports • Human rights issue/impact assessments (see Appendix 1 for sample of potential issues) • Periodic review of relevant policies and procedures: managing impacts related to involuntary resettlement, interaction with Indigenous Peoples and interaction with identified vulnerable populations (e.g. women, elderly)
Security provision	<p>Protecting people and assets in a manner that respects human rights and is consistent with the Voluntary Principles on Security and Human Rights or the UN Use of Force Guidelines:</p> <ul style="list-style-type: none"> • Use of force by public security • Use of force by private security • Company-level equipment transfer and usage 	<ul style="list-style-type: none"> • Periodic security risk assessments (see Appendix 2 for sample of potential issues) • Periodic reviews of security management procedures • Periodic review of compliance with requirements in private security contracts
Business relationships/contractors	<p>Engagement with key suppliers to support their respect for human rights, including consistency with ILO Core Labour Standards:</p> <ul style="list-style-type: none"> • Freedom of association and collective bargaining • Prohibit hiring of underage workers as defined in the relevant ILO conventions • Prohibit recruitment, use and practices of forced labour • Prohibit discrimination in hiring practices • Working conditions (e.g. health and safety) • Impacts on communities (e.g. altering existing community access to health, education, clean water, livelihoods and cultural assets) 	<ul style="list-style-type: none"> • Compliance reviews with national laws and regulations • Periodic review of feedback from supplier engagement sessions and forums • Periodic audits of selected suppliers • Pre-qualification supplier screening processes • Periodic review of compliance with requirements in supplier contracts • Company's supplier engagement or management process (e.g. bidding, pre-qualification, contracting, training) • Supplier communications materials

Figure 3 The different phases of an oil and gas project, and associated processes, programmes and tools



Company processes or programmes may already exist which are associated with specific phases of the project life cycle.

Project life cycle associated with due diligence processes

The potential issues and impacts may also be associated with specific project life cycle phases and, moreover, there may be existing processes, programmes and tools designated for those phases (see Figure 3).

Implementation issues to consider

There are several implementation issues for conducting due diligence that should be carefully considered, including:

- **Clear and appropriate roles and local responsibilities:** In oil and gas companies, there may be no single entity that is charged with managing all potential human rights issues and impacts or that have the subject matter expertise. Because human rights may require cross-functional engagement, clear and appropriate roles, responsibilities and accountability should be designated.
- **Legal and regulatory issues associated with human rights issues:** it is recommended that oil and gas companies work in close consultation with key functions (e.g. legal, public affairs/government affairs) to properly assess the legal and regulatory context and to inform implementation of their due diligence.
- **Handling sensitive information:** Implementing a human rights due diligence process can uncover sensitive, personal and confidential information that should be handled carefully. Internal procedures for controlling documentation and the exchange of information is recommended.
- **Prioritizing potential issues and impacts:** Companies should consider ranking and tracking potential issues and impacts to inform their management plans. Periodic assessments of such plans should be conducted to assess whether they are effectively addressing the issues and impacts central to the plan. To inform the prioritization, special consideration should be given to:
 - whether the potential impact is attributed to third parties or other circumstances that may not be controlled by the company;

Companies may take different approaches to implementing a human rights due diligence process depending on the prevalence of human rights issues, the size of the project, and the nature and local context of the operations.



- whether the potential impact is severe;
- whether the potential impact is permanent versus reversible;
- whether the potential impact is local versus dispersed;
- whether the potential impact has direct impacts versus indirect effects;
- the resilience of the impacted people; and
- whether the potential impact is positive versus negative.
- **Engagement and communication:** The assessment of potential human rights issues and mitigation measures should involve ongoing engagement and communications with potentially affected stakeholders (e.g. communities, vulnerable groups). It is good practice to use the stakeholder engagement process to build trust and two-way dialogue, as well as to continuously identify, assess and input key issues, feedback and insights into management plans.
- **Fit-for-purpose approach:** Implementing a due diligence process may vary according to the prevailing business processes of the company, the size of the project, the prevalence of human rights issues and the local context of the operations. Some companies may choose to utilize existing processes and tools to assess issues and impacts, while others may opt for a customized human rights assessment tool. In all cases, the due diligence process should be ongoing and iterative.

Section 4:

Resources to support oil and gas companies

IPIECA has produced a number of useful resources to assist oil and gas companies. There are also several external resources that can provide additional guidance.

IPIECA resources

- *Human Rights Training Tool*
www.ipieca.org/publication/human-rights-training-toolkit-3rd-edition
- *A guide to social impact assessment in the oil and gas industry*
www.ipieca.org/publication/guide-social-impact-assessment-oil-and-gas-industry
- *Oil and gas industry guidance on voluntary sustainability reporting*
www.ipieca.org/publication/oil-and-gas-industry-guidance-voluntary-sustainability-reporting-2010-update
- *Indigenous Peoples and the oil and gas industry: context, issues and emerging good practice*
www.ipieca.org/publication/indigenous-peoples-and-oil-and-gas-industry-context-issues-and-emerging-good-practice
- *Guide to successful, sustainable social investment for the oil and gas industry*
www.ipieca.org/publication/guide-successful-sustainable-social-investment-oil-and-gas-industry
- *Voluntary Principles on Security and Human Rights: Implementation Guidance Tools*
www.ipieca.org/publication/voluntary-principles-security-and-human-rights-implementation-guidance-tools
- *Environmental-Social-Health Risk and Impact Management Process*
www.ogp.org.uk/pubs/389.pdf
- *Guide to operating in areas of conflict for the oil and gas industry*
www.ipieca.org/publication/guide-operating-areas-conflict-oil-and-gas-industry

External resources

- *The Universal Declaration of Human Rights* (United Nations website):
www.un.org/en/documents/udhr/index.shtml
- *ILO Core Labour Conventions* (International Labour Organization website):
www.ilo.org/global/standards/lang-en/index.htm
- *Voluntary Principles on Security and Human Rights* (PDF file):
www.voluntaryprinciples.org/files/voluntary_principles_english.pdf
- *United Nations Guiding Principles on Business and Human Rights* (PDF files):
www.ohchr.org/documents/issues/business/A.HRC.17.31.pdf (Report of the UN Special Representative)
www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (UN OHCHR publication)
- *IFC Performance Standards* (International Finance Corporation website):
www.ifc.org/performancestandards
- *OECD Guidelines for Multinational Enterprises* (Organisation for Economic Co-operation and Development website):
www.oecd.org/daf/internationalinvestment/guidelinesformultinationalenterprises

Appendix 1:

Potential community issues for assessment⁴

Issues	Description
Cultural resources	<ul style="list-style-type: none"> Known or suspected historical, archaeological or palaeontological resources, or natural resources of cultural, religious or scientific importance Locally-established cultural practices, customs or traditions
Land and water	<ul style="list-style-type: none"> Existing land and water uses in or around operations (e.g. homes, gardens, orchards, industry, commerce, recreation, public open space, community facilities, agriculture, hunting, fishing, forestry, tourism, mining, aquaculture/mariculture), including traditional or subsistence lifestyles Operations in or near to an area occupied by sensitive marine, biodiversity or land uses Exclusion zones Resettlement (i.e. physical or economic relocation) of communities
Health and education	<ul style="list-style-type: none"> Access to, and use of, basic education facilities (e.g. children attending school) or primary health facilities, including preventive care or treatment
Livelihoods	<ul style="list-style-type: none"> Local employment patterns or a shift in demand for local skills or competencies Jobs, businesses and sources of income Traditional or subsistence lifestyles Dependence on natural resources for commercial or subsistence income
Vulnerable groups	<ul style="list-style-type: none"> Indigenous Peoples or their lands whose status is regulated wholly or partly by their own customs or traditions, or by special laws or regulations Women, ethnic or linguistic minorities, the elderly or infirm, children and migrant workers

⁴ The list of potential issues is not exhaustive. Individual oil and gas companies may have additional issues on a case-by-case basis.

Appendix 2:

Potential security issues for assessment⁵

Issues	Description
Community grievance	<ul style="list-style-type: none"> Security-related issues triggered by political, economic, social and/or civil issues that have involved local communities (e.g. local protests, uprisings, civil unrest) in the past three years
Violence and conflict	<ul style="list-style-type: none"> Pattern of violence or conflict (or escalation) that involved local communities (e.g. armed conflict, widespread murders) in the past three years
Security providers	<ul style="list-style-type: none"> Pattern of human rights-related incidents or allegations among public security providers in the past three years Responding to incidents in a manner that is consistent with the Voluntary Principles on Security and Human Rights Training its own personnel on the Voluntary Principles on Security and Human Rights or the UN Use of Force Guidelines
Equipment transfer	<ul style="list-style-type: none"> Pattern of misuse of equipment or funds transferred by a company to public and/or private security providers in the past three years

⁵ The list of potential issues is not exhaustive. Individual oil and gas companies may have additional issues on a case-by-case basis.



IPIECA is the global oil and gas industry association for environmental and social issues. It develops, shares and promotes good practices and knowledge to help the industry improve its environmental and social performance, and is the industry's principal channel of communication with the United Nations.

Through its member-led working groups and executive leadership, IPIECA brings together the collective expertise of oil and gas companies and associations. Its unique position within the industry enables its members to respond effectively to key environmental and social issues.

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eni	Occidental	Statoil
ExxonMobil	OMV	Talisman
Hess	Petrobras	Total
Hunt Oil	Petronas	Tullow Oil
Husky Energy	Petrotrin	Woodside Energy
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IPIECA also has an active global network of oil and gas industry association members. Please refer to our website for a full list.

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